

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 1084 OF 2019

DIST. : AHMEDNAGAR

Ravindra s/o Mohanrao Garje,)
 Age : 40 years, Occu.:)
 R/o. Shastri Nagar, Shevgaon,)
 Tq. Shevgaon, Dist. Ahmednagar.).. **APPLICANT**

VERSUS

1. The State of Maharashtra)
 Through its Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai - 32.)

2. The Collector,)
 Collector Office, Ahmednagar,)
 Tq. Dist. Ahmednagar.)

3. The Sub Divisional Officer,)
 Pathardi Division, Pathardi,)
 Tq. Pathardi, Dist. Ahmednagar.)-- **RESPONDENTS**

 APPEARANCE :- Shri Dhananjay Mane, learned
 Advocate for the applicant.

: Shri N.U. Yadav, learned Presenting
 Officer for the respondents.

CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman

DATE : 27th MARCH, 2023

ORAL - ORDER

1. Heard Shri Dhananjay Mane, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.
2. Before adverting to the submissions advanced on behalf of the applicant and the respondents it is necessary to record certain facts or the history of the present litigation. It is thus :-
3. The applicant was appointed as a Talathi in the year 1998 more particularly vide order dated 29.4.1998. He was discharging the duties at village Tisgaon, tq. Pathardi, Dist. Ahmednagar. The applicant submitted his written resignation on 1.1.2015. The resignation so submitted by him was accepted on 2.1.2015. The applicant, however, on 7.1.2015 submitted an application thereby revoking the request for resignation. The said request was rejected on 19.1.2015. The applicant against the said order approached this Tribunal by filing the Original Application No. 493/2015. The application so filed though was rejected by the Tribunal, liberty was granted to the applicant to submit a detailed representation/application praying for reconsideration of his request for withdrawal of his resignation. The authority concerned reconsidered the request

for withdrawal of the resignation as was directed by this Tribunal and passed an order on 31.7.2019 thereby accepting the request of the applicant by putting certain conditions on the applicant. The applicant is aggrieved by the very first condition imposed in the said order whereby the applicant was required to submit a bond undertaking therein that he will not approach any Court or Tribunal or Hon'ble High Court etc. with a prayer for consideration of the period of break as the continuity in service or will not claim any monetary benefit of the period of break. I deem it appropriate to reproduce herein below the impugned order dated 31.7.2019 and the conditions which were imposed therein, which read thus:-

“उपविभागीय अधिकारी पाथर्डी भाग, पाथर्डी यांचे कार्यालय
मौजे माळी बाभुळगांव, ता. पाथर्डी, जि. अहमदनगर
दुरध्वनी क्रमांक - ०२४२८/२२२ ३६३

विषय :- राजीनामा रद्द करून पुनर्नियुक्ती देणेबाबत...

- वाचले :-
१. शासन निर्णय क्रमांक एसआरव्ही-१०९२/१०३३/प्र.क्र. ३३/९२/८ मंत्रालय, मुंबई ४०० ०३२, दि. २.१२.१९९७..
 २. श्री. आर.एम.गर्जे, तत्का. तलाठी यांचा अर्ज दिनांक ०१/०१/२०१५.
 ३. इकडील आदेश क्रं. कावि/आस्था/०१/२०१५, दिनांक ०२/०१/२०१५.
 ४. मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ औरंगाबाद यांचेकडील मूळ अर्ज ४९३/२०१५ चा दिलेला निकाल दिनांक ११/१२/२०१८.
 ५. श्री. आर.एम.गर्जे, तत्का. तलाठी यांचा अर्ज दिनांक १५/०२/२०१९.

६. मा. जिल्हाधिकारी अहमदनगर यांचेकडील पत्र क्रं. मह/आस्था/कार्या.५अ/५८७/२०१९, दिनांक १३.०५.२०१९
७. महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ मधील कलम ४६(४)(ए).

कावि/आस्था/३८८/२०१९

पाथर्डी, दिनांक ३१.०७.२०१९

आदेश

ज्याअर्थी, श्री. आर.एम.गर्जे, तत्कालीन तलाठी तिसगांव, तहसिल कार्यालय, पाथर्डी यांनी त्यांचे वैयक्तिक खजगी कारणास्तव तलाठी पदाचा दिनांक ०१.०१.२०१५ रोजी राजीनामा या कार्यायास सादर केला होता. त्यानंतर या कार्यालयाकडील आदेश क्रं. कावि/आस्था/०१/२०१५ दिनांक ०२.०१.२०१५ अन्वये श्री. गर्जे यांचा राजीनामा मंजूर करणेत आला.

सादर राजीनामा मंजूर केलेनंतर श्री. आर.एम.गर्जे यांनी महाराष्ट्र प्रशासकीय प्राधिकरण न्यायाधिकरण, खंडपीठ औरंगाबाद यांचेकडेस महाराष्ट्र शासन (उपविभागीय अधिकारी, पाथर्डी) यांच्या विरुद्ध मूळ अर्ज क्रमांक ४९३/२०१५ द्वारे दाखल केला. मूळ अर्ज क्रमांक ४९३/२०१५ चा दिनांक ११.१२.२०१८ रोजी निकाल झाला, त्याद्वारे श्री. आर.एम.गर्जे यांचा राजीनामा मंजूर करणे बाबत नियुक्ती प्राधिकारी यांना ३ महिन्यात त्यांनी घेतलेल्या निर्णयाबाबत पुनर्विचार करावा असा आदेश दिला आहे.

त्यानंतर इकडील पत्र क्रं. कावि/आस्था/१८२/२०१९ दिनांक २९.०४.२०१९ अन्वये मा. जिल्हाधिकारी अहमदनगर (महसुल शाखा) यांचेकडेस मार्गदर्शन मागविणेत आले होते. त्याबाबत मा. जिल्हाधिकारी अहमदनगर (महसूल शाखा) यांनी त्यांचेकडील पत्र क्रं. मह/आस्था/कार्या.५अ/५८७/२०१९ दिनांक १३.०५.२०१९ अन्वये त्यांनी कळविले आहे कि, श्री. गर्जे यांनी सादर केलेल्या अर्जावर नियमानुसार निर्णय घेऊन त्याबाबत त्यांना लेखी स्वरूपात कळविणेबाबत मा. न्यायाधिकरणाने आपणांस स्पष्ट आदेश दिलेले आहेत. तलाठी संवर्गाचे नियुक्ती प्राधिकारी “उपविभागीय अधिकारी” हे असून तलाठी संवर्गातील कर्मचा-यांचा राजीनामा मंजूर करण्याचे अधिकार देखील “उपविभागीय अधिकारी” (आपणांस) आहेत. याद्वारे कळविणेत येते कि दिनांक ११.१२.२०१८ रोजीच्या निकालानुसार श्री. गर्जे यांनी सादर केलेल्या अर्जाबाबत विहित मुदतीत शासन तरतुदीनुसार तात्काळ निर्णय घेऊन, त्याबाबत श्री. गर्जे यांना लेखी स्वरूपात कळविणेत यावे. मा. न्यायाधिकरणाकडील आदेशाचा अवमान होणार नाही याबाबत दक्षता घ्यावी, असे कळविले आहे.

ज्याअर्थी मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण यांनी दिलेल्या निकालास अनुसरून व मा. जिल्हाधिकारी अहमदनगर (महसुल शाखा) यांनी संदर्भ क्रं. ६ अन्वये कळविलेनुसार तलाठी संवर्गाचे नियुक्ती प्राधिकारी “उपविभागीय अधिकारी” असल्याने नैसर्गिक न्याय तत्वानुसार श्री. गर्जे यांना पुनर्नियुक्ती देणेत यावी, या निष्कर्षापत मी आलो आहे.

त्याअर्थी वरील सर्व बाबींचा विचार करून महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ मधील कलम ४६(४)(ए) अन्वये श्री. आर.एम. गर्जे यांनी सक्तीच्या कारणास्तव राजीनामा दिलेला आहे आणि त्यांना मुलतः राजीनामा देणे भाग पडले आहे त्या परिस्थितीमध्ये महात्वाचा बदल झाल्यामुळे श्री. गर्जे यांनी राजीनामा मागे घेणेची विनंती

केलेली आहे. त्यामुळे नैसर्गिक न्याय तत्वानुसार श्री. आर.एम. गर्जे यांना खालील अटी व शर्तीच्या अधीन राहून पुनर्नियुक्ती देणेत येत आहे तसेच दिनांक ०९.०९.२०१५ ते रुजू होईपर्यंतच्या खंडीत कालावधी हा सेवेच्या सर्व प्रयोजनार्थ अकार्यदिन कालावधी म्हणून घोषित करणेत येत आहे.

सहि/-
(देवदत्त केकाण)
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पाथर्डी भाग, पाथर्डी.

अटी व शर्ती -

१. श्री. आर. एम. गर्जे यांनी राजीनामा दिल्यापासून दिनांक ०९.०९.२०१५ ते पुनर्नियुक्ती नंतर हजर होईपर्यंत असलेल्या खंडीत कालावधी बाबत कोणत्याही मा. न्यायालय/मा. उच्च न्यायालय/ वरिष्ठाकडे अथवा मा. न्यायाधिकरण प्राधिकरणाकडे खंडीत कालावधी ग्राह्य धरणेविषयी अथवा खंडीत कालावधीतील अर्थिक लाभ मिळणेबाबत दाद मागता येणार नाही.

२. खंडीत कालावधीत श्री. आर.एम. गर्जे यांचे विरुद्ध कुठलाही फौजदारी/वैयक्तिक अथवा अर्थिक गुन्हा दाखल झालेला नाही याबाबत प्रमाणपत्र सादर करावे.

३. खंडीत कालावधीत श्री. गर्जे यांनी खाजगी नोकरी किंवा धंदा केले नसलेबाबत प्रमाणपत्र सादर करावे.

४. पुनर्नियुक्तीच्या ठिकाणी हजर झालेनंतर शाकीय कामकाज करण्यास सक्षम असलेबाबत मा. वैद्यकीय अधिकारी यांचे प्रमाणपत्र एक महिन्याच्या आत सादर करावे.

सदरचा आदेश आज दिनांक ३१ जुलै, २०१९ रोजी माझे सही/शिक्यानिशी दिला असे.

सहि/-
(देवदत्त केकाण)
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4. It is the precise argument of learned counsel that the condition no. 1 imposed by the respondents for taking back the applicant in service is against the constitutional provisions and also the provisions of the Indian Contract Act. The learned counsel submitted that since the respondents refused to get joined the applicant unless he submits the bond containing the

terms & conditions as mentioned in the impugned order, there was no other alternative for the applicant except to approach this Tribunal. The learned counsel invited my attention to rule 46(6) of the Maharashtra Civil Services (Pension) Rules, 1982. It reads thus :-

“46. Forfeiture of service on resignation

(1) to (5) -- -- --

(6) When an order is passed by the appointing authority allowing a person to be taken him back in service and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.”

5. The learned counsel submitted that the impugned order is contrary to the aforesaid rule. The learned counsel submitted that in the impugned order the respondents have also stated that the period from 1.1.2015 till the date of joining of the applicant on the basis of the order dated 31.7.2019 will be treated as ‘not on duty’ (अकार्यदिन). The learned counsel submitted that the applicant is not claiming any benefit of pay and allowances of the period in which he did not work. However, the applicant apprehends that if the aforesaid period is held as break in service, he will be deprived of other benefits for which he is entitled. The learned counsel further submitted

that if the impugned order is read as whole along with the conditions imposed, the applicant will be treated as a fresh appointee. The learned counsel, in the circumstances, prayed for setting aside the aforesaid part in the impugned order.

6. The respondents have resisted the contentions raised in the application, as well as, prayers made therein. The learned Presenting Officer was fair in submitting that the first condition has not been happily worded. The learned Presenting Officer, however, submitted that accepting that the aforesaid condition was imposed, in fact, no benefit was withdrawn of the applicant and the applicant did not have any occasion to approach the Tribunal/Court against the said order for the reason that nothing adverse was there in the said order. In the circumstances, according to the learned Presenting Officer, the applicant should not have apprehended anything against him and should have joined immediately by executing the bond as mentioned in the said order.

7. I have considered the submissions advanced on behalf of the applicant and the State authorities. I may not indulge in making discussion as about the procedure to be followed in accepting or rejecting the resignation tendered by the Government servant. Now the request of the applicant of taking

back his resignation has been accepted by the respondents vide the impugned order. The only issue which falls for my consideration in the present matter is whether respondents could have incorporated the aforesaid condition in the said order, which I have reproduced hereinabove.

8. The condition as has been imposed is apparently illegal and unsustainable. While allowing the applicant to take back his resignation no such condition could have been imposed by the respondents that in respect of the intervening period between 1.1.2015 till resuming the duties after permitting the applicant to take back his resignation he will not claim any relief in respect of the period of break in service from any Court or from the Hon'ble High Court or from the superior officers or from the Administrative Tribunal. No person can be deprived from approaching the Court of law for ventilating his grievance and for redressal of injustice caused to him. Imposition of such condition is also against the provisions under the Indian Contract Act, 1872 and more particularly section 28 thereof.

9. In the order dated 31.7.2019 while allowing the request of the applicant to take back the resignation submitted by him the respondent no. 3 has recorded an unambiguous finding that the resignation was tendered by the applicant for some compelling

reasons and the request for withdrawal of the said resignation has been made by him as a result of material change in the circumstances, which originally compel him to tender the resignation. The respondent no. 3 has also referred to rule 46(4)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. Sub clause 4 of rule 46 contains more 3 conditions (b), (c) (d) in addition to condition (a). Sub-rule 4 of rule 46 provides that the appointing authority may consider the request of a person who had earlier resigned his post under Government to take him back in service in the public interest on the conditions which are incorporated in sub-clauses (a), (b), (c) and (d). It is thus evident that except conditions (a), (b), (c) and (d) no other conditions could have been imposed by respondent no. 3 while passing the impugned order.

10. The condition no. 1 is also against provision under sub-rule 6 of rule 46 of the M.C.S. (Pension) Rules, 1982. Above referred sub-rule 6 provides that, "when an order is passed by the Government allowing a person to be taken him back in service and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service". The prohibition imposed in condition no. 1 does have direct nexus

with the provisions under sub-rule 6 of rule 46. When sub-rule 6 provides that the order passed under sub-rule 4 of rule 46 shall be deemed to include condonation of interruption in service, the conflicting prohibition has been imposed vide aforesaid condition no. 1 that the applicant will never insist for condonation of interruption in service.

11. There is substance in the submission made on behalf of the applicant that if the interruption in service is not condoned by the respondents and on the basis of condition no. 1 imposed in the impugned order, if the applicant also gets bound and prevented from challenging such decision, great prejudice is likely to be caused to the applicant. The learned counsel submitted that the applicant has rendered the services in the Government for the period of about 16 years till 1.1.2015. If the interruption in his service is not condoned, the applicant will lose all of his past service and perhaps may be deprived from getting the pension on the basis of remaining period of his service. Rule 47 of the M.C.S. (Pension) Rules, 1982 deal with the aspect of 'effect of interruption in service'. Clause 1 of rule 47 speaks that 'an interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases'. Below the said sub-clause, 5 circumstances

are given. I deem it appropriate to reproduce sub-rule 1 of rule 47 of the M.C.S.(Pension) Rules, 1982, which reads thus:-

“47. Effect of interruption in service

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases:-

(a) authorized leave of absence;

(b) unauthorized absence in continuation of authorized leave of absence so long as the post held by the absentee is not filled substantively;

(c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of Superannuation while under suspension;

(d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;

(e) joining time while on transfer from one post to another.”

12. Case of the applicant does not fall within any of the exceptions noted in rule as above. It is thus evident that if the interruption in service is not condoned, the past service of the applicant shall stand forfeited. The learned counsel submitted that the applicant is not claiming that he shall be paid wages of the said period from 1.1.2015 to 31.7.2019 or any monetary

benefit of the said period; the applicant is claiming only continuity in his service so that his past service also can be considered for the purpose of pension and pensionary benefits.

13. As I noted hereinabove, while allowing the request of the applicant to take back his resignation, in the order dated 31.7.2019 respondent no. 3, when has recorded an unambiguous finding that the resignation was tendered by the applicant for some compelling reasons and the request for withdrawal of the said resignation has been made by him as a result of material change in the circumstances, which originally compel him to tender the resignation, the respondent no. 3 could not have imposed condition no. 1 in the impugned order and also could not have held that the period between 1.1.2015 till the date on which the applicant would resume his duties will be held as break in service for all the purposes. The condition so imposed and declaration so made in the order is contrary to the M.C.S. (Pension) Rules, 1982. The impugned order to that extent, therefore, needs to be quashed and set aside.

14. The next question which falls for my consideration is about the monetary benefits of the intervening period. As has come on record, after the order dated. 31.7.2019 was passed by

the respondent no. 3 the applicant had promptly approached the office of Tahsildar, Pathardi on 9.8.2019 and submitted the joining report. It is the contention of the applicant that he was asked to comply with the terms and conditions incorporated in the order dated 31.7.2019 and was told that only thereafter he will be allowed to resume the duties. Why the applicant was reluctant to execute the bond as was required in the order dated 31.7.2019 has been elaborately explained by the applicant in the present Original Application. This Tribunal has recorded a conclusion hereinabove that it was impermissible for respondent no. 3 to impose such conditions. In the circumstances, no blame can be attributed on part of the applicant, if he was prevented from discharging his duties in the intervening period.

15. The learned Presenting Officer sought to contend that the applicant could have resumed the duties by executing the bond as was required in the order dated 31.7.2019 under protest. The submission so made by the learned Presenting Officer is apparently unacceptable. To resume duties under protest means reserving right to challenge the legality of the conditions imposed in the impugned order dated 31.7.2019. Having regard to the nature of conditions so imposed, I am afraid, the

respondents would have allowed the applicant to resume the duties under protest. However, the fact remains that in the entire intervening period the applicant did not discharge the duties of the post. In such circumstances, it appears to me that ends of justice would be met if the respondents are directed to pay 50% of the wages and allowances of the intervening period i.e. from 9.8.2019 till the date he resumes the duties on the basis of the present order.

16. For the reasons elaborately discussed hereinabove the following order is passed :-

ORDER

(i) The declaration made in the order dated 31.7.2019 to the effect that “the period between 1.1.2015 till the applicant resumes the duties in pursuance of the said order is held to be dies-non (अकार्यदिन) for all the purposes” is quashed and set aside. Similarly out of 4 conditions mentioned below the said order dated 31.7.2019, condition No. 1 preventing the applicant from approaching any Court or Tribunal in respect of his break in service during the period from 1.1.2015 till resuming duties pursuant to the order dated 31.7.2019, is also quashed and set aside.

(ii) It is clarified that except for the purpose of continuity in service the applicant shall not be entitled for

any monetary benefit of the period between 1.1.2015 till 31.7.2019.

(iii) In view of the order dated 31.7.2019 (as modified by this Tribunal in the present order) the applicant shall resume the duties within 7 days from the date of uploading of this order on the official website of this Tribunal and the respondent no. 3 shall allow to join him.

(iv) The applicant is held entitled for 50% wages and allowances of the period from 9.8.2019 till the date he resumes the duties on the basis of the present order. The respondents shall pay the said arrears within 4 months from the date of this order.

(v) The Original Application stands allowed in the aforesaid terms. There shall be no order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 27th March, 2023

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