

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 588 OF 2017

DIST. : BEED

Dr. Balasaheb Raghunathrao Yadav,)
Age. 52 years, Occ. Medical Superintendent,)
R/o Yadav Hospital Housing Society,)
Ambajogai, Dist. Beed.)--

APPLICANT

VERSUS

1. The State of Maharashtra,)
Through the Principle Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 32.)

2. The Director,)
Public Health Department,)
Home, Saint George Hospitals)
Compound, Mumbai.)

3. The Deputy Director and Health)
Services, Latur, Arogya Sankul,)
Barsi Road, Latur,)
Tq. & Dist. Latur.)

4. The Civil Surgeon, Dist. Beed.)--

RESPONDENTS

APPEARANCE :- Shri D.T. Devne, learned Advocate for the
applicant.
: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)

DATE : 27.2.2019

JUDGMENT

[Per : Atul Raj Chadha, Member (A)]

1. Heard Shri D.T. Devne, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. By filing present Original Application, the applicant is claiming following reliefs :-

“(B) The impugned order dated 28.7.2017 issued by the respondent No. 1 along with communication dated 1.8.2017 issued by the Respondent No. 4 may kindly be quashed and set aside.

(C) By appropriate order or directions it be declared that the applicant stood retired voluntarily on 1.8.2017 under rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 on completion of qualifying service of 20 years from the post of Medical Superintendent.

(D) By appropriate order of directions the respondents may kindly be directed to grant the consequential pensionary benefits to the applicant as per the provisions of law for which he is entitled.”

(quoted from paper book page 15 of O.A.)

3. According to the applicant he was appointed as a Medical Officer by order dated 12.7.1990 in the office of the respondents on temporary basis and thereafter in the year 1995 he was selected through the Maharashtra Public Service Commission in the cadre of Maharashtra Medical and Health Officers Class-II vide order dated 20.7.1995. Again on recommendations of M.P.S.C. the applicant was brought in the cadre of Civil Surgeons in the pay scale of Rs. 15,600 – 39,100 + Grade Pay Rs. 6600 vide order dated 3.3.2011. Thus, the present applicant completed total 27 years of service in the Department from 12.7.1990 to 1.8.2017 including ad-hoc appointment.

4. However, as the applicant was having some personal difficulties and domestic problems, he tendered his application / notice for voluntary retirement under rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 to the respondents vide his application dated 2.5.2017 along with prescribed documents. It is further contended by the applicant that notice period of three months' was to be expired on 1.8.2017 and he never received any communication from the respondent authorities either rejecting or accepting his request for voluntary retirement till 1.8.2017. Thus, according to the applicant, by way of deeming provision, he stood retired on 1.8.2017 itself from the service of the respondent

authorities. Accordingly, the applicant submitted an application for relieving himself to the District Civil Surgeon, Civil Hospital, Beed on 1.8.2017 and got himself relieved and retired from the service.

5. It is further contended by the applicant that on 2.8.2017 he received a letter dtd. 28.7.2017 issued by the res. no. 3 informing him that his request for voluntary retirement was rejected on the ground that there is exigency or scarcity in the Department. Thus, the applicant has filed the present O.A. before this Tribunal for challenging the rejection of his request for voluntary retirement on the ground mentioned therein.

6. It is alleged by the applicant that his request for voluntary retirement was mala-fidely turned down by the respondent authorities when the request of some similarly situated other Medical Officers was accepted.

7. Res. nos. 1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. The respondents have supported their decision and prayed to reject the O.A.

8. It is stated by the respondents that there is necessity of Medical Officers for smooth running of Public Health Services of the Government. Various posts of Civil Surgeons cadre in Grade –

A are vacant and there is shortage of officers of Group – A cadre in the Public Health Department. Therefore, the decision was taken by the respondents to reject the request of the applicant for voluntary retirement.

9. On perusal of affidavit in reply filed by the respondent authorities, it reveals that the respondents have nowhere disclosed that on which date the alleged decision of rejection of request of the applicant regarding voluntary retirement, was served or communicated to the present applicant. The receipt of three months' notice / application of the applicant for voluntary retirement is not denied by the respondents. There are no other grounds for rejection of notice of the applicant for voluntary retirement.

10. Applicant has filed on record copies of orders issued by the respondents accepting the request for voluntary retirement made by the following Medical Officers of Group – A (paper book pages 40, 42, 44, 46, 48, 50, 76 & 77) :-

Sr. no.	Name of Medical Officer	Date of order accepting request for voluntary retirement
1.	<i>Dr. Sanjaykumar Raghunathrao Bagade</i>	4.9.2017
2.	<i>Dr. Dattatraya Nanarao Kale</i>	13.9.2017
3.	<i>Dr. Vanmala Balu Tonpe</i>	11.10.2017

4.	<i>Dr. Suhas Yashwantrao Patil</i>	<i>11.10.2017</i>
5.	<i>Dr. Sambhaji Laxmanrao Kokane</i>	<i>30.10.2017</i>
6.	<i>Dr. Rupali Vishwanath Utikar</i>	<i>13.11.2017</i>
7.	<i>Dr. Bharat Natthuji Sarode</i>	<i>11.8.2017</i>
8.	<i>Dr. S.T. Mehatre</i>	<i>26.7.2018</i>

(quoted from paper book pages 40, 42, 44, 46, 48, 50, 76 & 77)

11. The respondents failed to explain as to why such rigid approach towards the applicant was shown, when various other Medical Officers as mentioned above were permitted to retire voluntarily by the respondents. This shows the discriminatory and arbitrary treatment towards the present applicant on the part of the respondents.

12. Thus, we are of the view that the applicant, who does not want to serve for the Department for his personal reasons, and when he himself has stood retired on 1.8.2017. It is worth noting that copy of the rejection of voluntary retirement was served on Applicant on 2nd August, 2017 (page 29 of Paper Book). Hence, his request should be deemed to be accepted by the respondent authorities. Hence, we pass the following order :-

ORDER

- (i) The Original Application is allowed in terms of prayer clauses (B), (C) and (D) as quoted above.

- (ii) It is hereby declared that the applicant stood retired voluntarily on 1.8.2017 under deeming provisions of rule 66 of M.C.S. (Pension) Rules, 1982. Accordingly, the applicant is entitled for consequential retiral benefits. Appropriate exercise in this regard be completed by the concerned respondents within a period of three months from the date of this order.

There shall be no order as to costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad

Date : 27.2.2019