

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 78 OF 2021

DISTRICT: - AHMEDNAGAR

Shubhangi Yashwant Pawale,
Age- 57 years, Occu. : Nil,
R/o 203, Santkrupa Apartment,
Pipeline Road, Ahmednagar.

.. **APPLICANT**

VERSUS

**1. The Commissioner for Persons
with Disability,**
Maharashtra State,
3 Church Road, Pune – 01.

2. District Social Welfare Officer,
Zilla Parishad, Aurangabad.

.. **RESPONDENTS.**

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Counsel for the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent no. 1.
: Shri C.D. Biradar, learned Counsel for
respondent no. 2.

CORAM : Hon'ble Shri Justice P.R. Bora, Member (J)
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 10.03.2022

ORDER**(Per : Shri Justice P.R. Bora, Member (J))**

1. Heard Shri Avinash S. Deshmukh, learned Counsel for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for the respondent no. 1 and Shri C.D. Biradar, learned Counsel for respondent no. 2.

2. The applicant was appointed as a Counseling Assistant on 23.1.1992. In the year 2010 the applicant was promoted to the post of Medical Social Worker. On 21.9.2020, the applicant made an application to the respondent No. 1 through the respondent No. 2 with a request that she may be permitted to voluntarily retire w.e.f. 21.12.2020 on account of illness of her husband. The respondent No. 1 rejected her said application invoking the provisions under Rule 3.21(1) of the Departmental Enquiry Manual, 1991.

3. Shri Avinash Deshmukh, learned counsel appearing for the applicant submitted that in view of proviso to sub-rule 2 of rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 (for short "the Pension Rules, 1982"), the notice of voluntary retirement given by the applicant on 21.9.2020 had become effective w.e.f. 21.12.2020 since the appointing authority did not refuse to grant permission before expiry of the said period. The learned counsel relied on two

judgments of Hon'ble Bombay High Court in support of his said contention, first in the case of **Nilkanth Ramji Akarte Vs. State of Maharashtra and Others, 2006 (5) Mh.L.J. 132**, and the another in the case of **Narayan Keshaorao Puranik (Dr.) Vs. State of Maharashtra and another, 2007 (4) Mh.L.J. 384**. The learned counsel further submitted that till date the departmental enquiry proceedings have not been initiated against the applicant. He further submitted that till 21.12.2020 and even thereafter nothing was indicated by the respondents that any departmental enquiry was likely to be initiated against the applicant. The learned counsel in the circumstances prayed for allowing the application.

4. Shri V.R. Bhumkar, learned Presenting Officer opposed the submissions advanced on behalf of the applicant. He submitted that refusal was communicated to the applicant within the stipulated period and, as such, no case is made out for causing any interference in the order impugned in the present O.A. He further submitted that since the applicant did not forward the copy of her application dated 21.9.2020 to the appointing authority and submitted it to the respondent No. 2 some time was consumed in forwarding her said application to the appointing authority. He further submitted that after the application dated

21.9.2020 was placed before the appointing authority, after making due enquiry, the appointing authority has refused to accept the said request of voluntary retirement and accordingly said decision was communicated to the applicant within the stipulated period. He further submitted that the period of 90 days' was liable to be computed from the date when said application was brought to the knowledge of respondent No. 1 i.e. appointing authority. He, therefore, prayed for rejecting the original application being devoid of any merit.

5. We have carefully considered the submissions advanced by the learned counsel appearing for the parties. We have also gone through the documents filed on record. It is not in dispute that the applicant has completed 20 years of qualifying service. The applicant was, therefore, entitled to opt for voluntary retirement by giving notice of 3 months in writing to the appointing authority. Rule 66 of Pension Rules, 1982 pertains to retirement on completion of 20 years of qualifying service. Clauses 1 & 2 thereof are only relevant in the context of the present O.A., which read thus,-

“66. Retirement on completion of 20 years qualifying service.

(1) At any time after a Government servant completed twenty years qualifying service, he may,

by giving notice of [-----] three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

6. It is not in dispute that notice under rule 66 of Pension Rules, 1982 was given by the applicant on 21.9.2020. It is also not in dispute that the said notice / letter though was addressed to the respondent No. 1 was routed through the respondent No. 2. According to the applicant, if at all the respondents were not inclined to accept the request made by her for voluntary retirement, such refusal was liable to be communicated to the applicant before expiry of the date of voluntary retirement i.e. 21.12.2020. It is the further contention of the applicant that since the respondents did not refuse the request of voluntary retirement before expiry of the period specified in the notice of voluntary retirement, the notice of voluntary retirement given by

the applicant had become effective from the said period i.e. 21.12.2020.

7. As against the submission made on behalf of the applicant, it has been argued on behalf of the respondents that when the rule 66 (1) of the Pension Rules, 1982 requires that application is to be submitted in writing to the appointing authority, the applicant did not forward the said application to the appointing authority but preferred to forward the said application through the respondent No. 2. Learned P.O. further submitted that the applicant was also under obligation to send advance copy of her said notice of voluntary retirement to the appointing authority, but the applicant did not discharge the said obligation. The learned P.O. further submitted that disciplinary action was proposed against the applicant alleging that while working on the post of Medical Social Worker at Zilla Parishad, Ahmednagar, several irregular acts were committed by the applicant. More particularly it was alleged that despite having the knowledge of the fact that the posts of the employees in the old schools for special children and workshops of the said children were not sanctioned, the administrative approval was accorded to the recruitments made in the said schools by the concerned organizations by the applicant and huge financial burden was

therefore put on the State Exchequer. According to the learned P.O., in the circumstances, the departmental enquiry was proposed against the applicant. The learned P.O. further submitted that in the aforesaid circumstances, having regard to rule 3.21 (1) of the Departmental Enquiry Manual, 1991, the respondent No. 1 has rightly refused the request of voluntary retirement made by the applicant.

8. Sub-rule (2) of Rule 66 of the Pension Rules, 1982 unambiguously provides that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. The contention as has been raised by the learned Presenting Officer that the period of 90 days has to be counted from the date on which the appointing authority gets the knowledge of the request so made or in other words the date on which said application is placed before the said authority for its consideration, is liable to be rejected in view of the observations made and findings recorded by the Division Bench of Hon'ble Bombay High Court in the case of **Narayan Kesharao Puranik (Dr.) Vs. State of Maharashtra and another** (supra). In the said matter also similar objections were raised and were turned down by the Hon'ble Division Bench.

Para nos. 10 and 11 of the said judgment are material in the present context, which read thus :-

“(10) We have gone through these judgments, and we are unable to subscribe to the interpretation reached by the Tribunal. The Tribunal has tried to read into Rule 66, the word clear 3 months notice to the appointing authority, which is not the scheme of the said rule. Inclusion of such text and importing said interpretation would amount to infusing or adding words presence whereof cannot be felt by adverting to the scheme i.e. surrounding rules. We find that absence of words clear 90 days notice (3 months) to appointing authority is in a legislative act of omission done with all legislative wisdom, which is liable to be classified as conscious omission, and should be respected.

(11) We hold that the construction of provisions for reading the strictness of clear 90 days notice as done by the Tribunal is, therefore, reading in the provision of law, a non existing text, and such reading is not a necessity for advancement of the cause and objects underlying provisions. Had it been the intent of the rule making authority, omission which is now sought to be filled in the MAT, would not have been left in the said state. We, therefore, disapprove the interpretation reached by the MAT, and hold that the submission of the notice to the immediate superior officer though addressed to the appointing authority is sufficient compliance, and the period of 90 days shall be counted

from the date of submission of notice to immediate superior.”

9. In view of the observations made and the findings recorded as above by the Division Bench of the Hon'ble High Court, the objections raised by the respondents are completely negated. As has been clearly held by the Hon'ble Division Bench, the notice period of 90 days requires to be counted from the date of submission of the notice by the employee concerned to his immediate superior. In the present matter, the applicant undisputedly submitted notice of voluntary retirement to her immediate superior on 21.9.2020. As held by the Honble High Court in the case cited supra, the notice period had, thus, expired on 21.12.2020 and since the appointing authority did not refuse to grant the permission by said period, the said notice shall be deemed to have been accepted by the respondent no. 1 and the retirement shall be deemed to have become effective from the said date.

10. For the reasons stated above, the decision dated 13.1.2021 whereby the respondent no. 1 has rejected the request of the applicant to permit her to voluntarily retire, cannot be sustained and deserves to be set aside. In the result the following order is passed :-

ORDER

(i) The order passed by the respondent no. 1 rejecting the request of voluntary retirement made by the applicant and communicated to the applicant vide communication dated 13.1.2021 is quashed and set aside.

(ii) It is declared that the applicant stood retired w.e.f. 21.12.2020.

(iii) The respondents are directed to release the pension and retiral benefits to which the applicant is legally entitled within the period of 4 months.

(iv) Original Application stands allowed in the aforesaid terms without any order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

Place : Aurangabad

Date : 10.3.2022