

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 69 OF 2016

DIST. : NANDED.

Dr. Balaji S/o Ganpatrao Manoorker
Age: 53 years, Occ: retired
R/o Vasant Nagar, Nanded,
Tq. & Dist. Nanded.

--- APPLICANT.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Public Health Department,
Maharashtra State,
Mantralaya, Mumbai.
2. The Director,
Health Department,
Maharashtra State,
St. George's Hospital Campus
Mumbai.
3. The Deputy Director
Health Department
Latur Division, Latur.
4. The District Civil Surgeon,
Nanded Tq. & Dist. Nanded.
5. The Accountant General (A&E)
Maharashtra State-II
Civil Lines, Nagpur.

.. RESPONDENTS.

APPEARANCE :- Shri K.G. Salunke, learned Advocate
for the Applicant.

: Smt. R.S. Deshmukh, learned
Presenting Officer for the
Respondents.

**CORAM : HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

J U D G E M E N T

[Delivered on this 24th day of November, 2016]

The applicant viz. Dr. Balaji S/o Ganpatgrao Manoorker, has challenged the impugned order dated 29.12.2015 issued by respondent No. 5 thereby directing to recover the amount of Rs. 4,99,634/- from the pensionary benefits of the applicant. He is also requesting that the applicant's service from his initial appointment i.e. from 05.08.1995 to 16.10.2012 be considered and he be given pensionary benefits as per the Maharashtra Civil Services (Pension) Rules, 1982 [for short hereinafter referred to as "Pension Rules". The applicant was serving as a Medical Officer and after completion of 27 years' service he has rendered notice for voluntary retirement. The said notices however, were rejected on the ground that he has not completed qualifying service and was not entitled for voluntary retirement under Rule 66 (1) of the Pension Rules. The applicant thereafter filed an

application for voluntary retirement under Rule 10 (5) of the Pension Rules under duress and it was accepted. According to the applicant, rejection of his technical break in service was illegal and that he was entitled to claim voluntary retirement as per the provisions of Rules 66 (1) of the Pension Rules. He has not completed 55 years of age on the date of giving such notice, and therefore, the applicant has filed O.A. No. 830/2015 and has prayed that he shall be granted pensionary benefits on the basis of regular pension, as per the Rules 66 of the Pension Rules.

2. In the meantime, the respondents have issued the impugned order dated 29.12.2015, whereby it has been directed that the amount of Rs. 4,99,534/- be recovered from the applicant and the said recovery has been challenged in this Original Application. The respondent Nos. 1 to 4 & 5 have justified the recovery.

3. Heard Shri K.G. Salunke – learned Advocate for the applicant and Smt. R.S. Deshmukh – learned Presenting Officer for the respondents. I have also perused the

application, affidavit, affidavit in reply filed by the respondents and various documents filed on record by the respective Advocates for the respective parties.

4. So-called recovery of the applicant has been ordered after the applicant's retirement and that seems to be in view of the fixation of the pay as the applicant was allowed to retire under Rule 10 (5) of the Pension Rules. In O.A. No. 830/2015 rejection of application for voluntary retirement under Rule 66 (1) and acceptance of resignation for voluntary retirement under Rule 10 (5) have been quashed and set aside and the respondents have been directed to consider the applicant's claim as per Rule 66 (1) of the Pension Rules, by condoning technical break of one day in the service of the applicant.

5. In view thereof, it is necessary to quash the recovery against the applicant. Hence, I pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.
- (ii) The impugned order passed by respondent No. 5 on 29.12.2015 directing to recover an amount of Rs.

4,99,634/- from the pensionary benefits of the applicant is quashed and set aside.

- (ii) In the facts and circumstances of the present case, there shall be no order as to costs.

MEMBER (J)

O.A.NO. 69-2016(hdd)-2016