

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 830 OF 2015

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. .. 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, entered the service on 5.8.1985 as a bounded candidate and was given status of regular employee. His service book was also maintained and all the benefits of the permanent employees were granted to him. He worked as a bounded candidate from 5.8.1995 to 16.12.1994 and there was only one day's technical break given to the applicant. He has completed more than 26 years of service, and therefore, on 16.10.2012 he applied for voluntary retirement as per the Rule 66(1) of the Maharashtra Civil Services (Pension) Rules, 1982, (for short hereinafter referred to as Pension Rules), requesting that the technical break in his service be condoned and his service shall be treated as continuous service. A copy of the application submitted by the applicant for voluntary

retirement has been placed on record at annexure "**A-1**" page-12 of paper book.

2. The applicant filed representations on 26.2.2013, 9.3.2013 and 18.3.2013 and submitted that his application for voluntary retirement under Rule 66 (1) of the Pension Rules, be accepted. However, the Government has rejected the claim of the applicant in respect of voluntary retirement vide communication dated 6.4.2013 on the ground that he has not completed 20 years of regular qualifying service. The copy of the said communication is placed on record at annexure "**A-3**" page-18 of the paper book. It is material to note that applicant's case was recommended for condonation of technical break/s and for acceptance of his voluntary resignation under Rule 66 (1) of the Pension Rules by the appropriate authorities, but his claim was rejected. It is stated that in similar situation, the claim of one Dr. Parsuram Shinde was accepted.

3. After rejection of the application the applicant was constrained to file one application dated 30.4.2013, a copy

which has been placed on record at Annexure "A-35", page-20 of paper book, wherein he has contended that his application regarding voluntary retirement may be granted as per rule 10 (5) of the Pension Rules. Prior to that the Deputy Director of Health Services, Latur Division, Latur wrote a letter to the Director of Health Department, Mumbai on 15.4.2013, a copy of which is placed on record at Annexure "A-4", page-19 of the paper book, making it clear that the technical breaks in the case of the applicant can be condoned and it is necessary to accept his application for voluntary retirement by condoning technical break. The applicant was allowed to retire on voluntary ground vide letter/order dated 23rd December, 2013, as per the provisions of Rule 10 (5) of the Pension Rules. The said order has been challenged in this Original Application and it reads as under: -

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*16-10-2012 P; kvttlo; sn- 15-01-2013 ikl m fnysyhLoBvk
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4. The learned Advocate for the applicant submits that the request for voluntary retirement under Rule 10 (5) can be accepted only in case of employees, who have completed 55 years of age and, therefore, the very acceptance of service under Rule 10 (5) is not legal and the same should have been accepted as per the provisions of Rule 66 (1) of the Pension Rules by condoning the technical breaks.

5. The respondents have justified acceptance of resignation under Rule 10 (5). According to the respondents the service rendered either on ad hoc basis or as stop-gap arrangement cannot be held to be a regular service and appointment of an employee in accordance with Public Service Commission is treated as fresh

appointment. So ad hoc services rendered by the employee cannot be held to be regular service nor can it be tagged to later service for earning benefits. It is stated that the applicant himself applied for voluntary retirement, as per the provision of Rule 10 (5) of the Pension Rules vide letter dated 30.4.2013 and the said request was accepted by the competent authority.

6. Heard Shri K.G. Salunke – learned Advocate for the applicant and Smt. Resha S. Deshmukh – learned Presenting Officer for the respondents. I have also perused application, affidavit, affidavit in reply and various documents placed on record by the learned Advocates for the respective parties.

7. Only material point is to be considered as to whether the acceptance of applicant's voluntary resignation under Rule 10 (5) of Pension Rules is legal and proper or whether the resignation should have been accepted under Rule 66 (1) of the Pension Rules?.

8. According to the applicant, he was initially appointed as Medical Officer on 5.8.1985 for four months. He was also given increments in the year till his regular appointment and thereafter the service of the applicant continued till he was selected and appointed through Maharashtra Public Service Commission vide order dated 16.12.1994. It is stated that the applicant has put in 27 years continuous service and due to personal difficulties he tendered notice for voluntary retirement under Rule 66 (1) of the Pension Rules on 16.12.2012. The respondents have not made any comments in the contention of the application. On the contrary, they have stated that the contents of this para is a matter of record, and hence, no comments. Thus, it remains a fact that the applicant has served for about 27 years whether temporary, ad hoc or on regular basis.

9. In reply to para 6 (ii), it has been stated that the applicant was given only one day technical break on 5.9.1988, but actually he was on duty and salary has already been paid to him. The respondents have stated

that the applicant was appointed as a Medical Officer from 5.8.1985 to 15.12.1994 on ad hoc basis with a technical break of one day of 5.9.1988. The learned Advocate for the applicant pointed out one letter issued by the Under Secretary, Government of Maharashtra to the Director of Health Services, Mumbai dated 3rd September, 2015 (Annexure "A-9" page-34 of the paper book). Perusal of the said letter shows that there is no provision to consider temporary service by condoning the technical break, and therefore, the services of the applicant from 16.12.1994 cannot be treated as regular services. The text of the aforesaid letter dated 3rd September, 2015 reads as under:-

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2- eglykV^a ykdI ok vk; kxP; k I gertus MW chykth x.kirjlo eujidj] ; kps fn- 16-12-1994 ikl m I eloStu dj.; kr vkyk vlgS MW eujidj] ; kph 1/1n- 16-12-1994 i qph fn- 05-08-1985 rs 15-12-1994 1/2 I ok vLFk; hLo: i kph vlgS vU; idj.kh" vLFk; hLo: i krhy I ok t MW ns; kph rjrn e-uk

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*3- MWckyt h x.kirjko euiddj] gsfm- 15-01-2013 ikl u
LoBVsIs I oKuoRr >lys vlg- R; kefs R; kps I oKuoRrlosu
iyfcr u Bork R; kph fm- 16-12-1994 ikl uph fu; fer I ok
fopkjlr ?A u R; kpsl oKuoRrpsidj.kfudkyhdk.; kr ; los"*

10. The learned Advocate for the applicant invited my attention to Rule 66 (1) of the Pension Rules, which deals with retirement on completion of 20 years qualifying service. This rule says that, at any time after completing 24 years qualifying service, the Government servant may by giving notice of three months in writing to the appropriate authority, retire from service. He submitted that the notice was given as per Rule 66 (1) of the Pension Rules. The copy of the relevant notice has been placed on record at page-12 and it is dated 16.10.2012. In the said notice the applicant has mentioned that he has completed service of 27 years, 5 months and 8 days on 13.1.2013 and that he was in continuous service from 5.8.1985. It is also mentioned that there is only one day break in his service i.e. on 5.9.1988, and therefore, he has completed

about 24 years' continuous service. The respondents have also admitted the fact that there was only day's technical break in the service of the applicant i.e. on 5.9.1988, so even if for sake of argument, it is accepted that there is only one day's break in service i.e. for 5.9.1988 still, till the date of retirement, he seems to have completed almost 24 years continuous service.

11. The learned Advocate for the applicant has invited my attention to Rule 30 of the Pension Rules. The said rule is regarding commencement of qualifying service and reads as under: -

"30. Commencement of qualifying service.

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in

Government service or holds a suspended lien or certificate of permanency.

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years, or voluntary after the completion of 20 years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scale as admissible to permanent Government servant.”

12. If this aforesaid rule is considered then it will be clear that the qualifying service of the Government servant commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The learned Advocate for the applicant has also placed reliance on the judgment delivered by this Tribunal in **O.A. No. 761/2013 on 13TH OCTOBER, 2014** in the case of **Parsharam S/o Waloji**

Shinde Vs. the State of Maharashtra and others. In the said case also the applicant was initially appointed as Medical Officer by order dated 13.01.1987 as a bonded candidate on temporary basis. His initial appointment was for a period of 2 years with effect from 13.01.1987 and then he was again appointed on 14.01.1989 by giving break in service of one day i.e. on 13.01.1989 and later on he was appointed on regular basis on 16.12.1994 through Maharashtra Public Service Commission. In the said case this Tribunal has considered the provisions of Rule 66, Rule 33 and Rule 10 of the Pension Rules and the respondents were directed to take into account the period of past service of the applicant from 13.01.1987 to 16.12.1994 for granting pension and pensionary benefits.

13. In the present case also the applicant seems to have fulfilled all the requirements, and hence, rendered almost 27 years of service except a single day technical break in service. There was absolutely no reason as to why the technical break was not condoned. In my opinion, rejecting the condonation of break is nothing but

colourable exercise of the powers and the respondents ought to have condoned the break. As already stated even the competent authority from time to time recommended the Government to condone the break, but the same has not been condoned and for that no convincing reason has been given.

14. The learned Presenting Officer submits that the applicant himself has submitted an application that his case shall be considered under Rule 10 (5) of Pension Rules. It is true that vide application dated 30.4.2013 the applicant has requested that his case be considered under Rule 10 (2). It is however true that such application has also been given under Rule 66 (1) of the Pension Rules and that application was rejected. In paragraph 5 of the application the applicant has stated that though he has given such application under Rule 10 (5) of the Pension Rules, he had not completed 55 years of age as contemplated under Rule 10 (5) (a) (b). The learned Advocate for the applicant submits that in order to apply Rule 10 (5), it is necessary that the employee must have

completed 55 years of age. Rule 10 of Pension Rules, states about the age of retirement and Rule 10 (1) states that every Government Servant, other than a Class IV Servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. The relevant Rule 10 (5) is exceptional to Rule 10 (1) (2) and it states as under: -

“10. Age of retirement.

(5) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, any Government servant may, by giving *[notice of three months] in writing to the appropriate authority, retire,

- (a) in the case of a Government servant,-
 - (i) referred to in sub-rule (4) (a) (i), after he has attained the age of fifty years,
 - (ii) referred to in sub-rule (4)(a)(ii), after he has attained the age of fifty-five years;

- (b) in the case of a Government servant referred to in sub-rule (4) (b) and (c), after he has attained the age of fifty-five years;”

15. If the Rule 10 (5) is considered, it seems that in order to give a notice of voluntary retirement under Rule 10 (5), the employee must attain the age of 55 years on the date of notice and the notice shall be of three months. Admittedly, the applicant has not attained the age of 55 years on the date of giving of such notice or even on the date of acceptance of notice of voluntary retirement, since the applicant's age in the application is shown as 53 years. In such circumstances even for argument sake, it is accepted that the respondents have accepted applicant's voluntary resignation under Rule 10 (5), such acceptance cannot be said to be illegal.

16. From the discussion in foregoing paragraphs, it will be thus crystal clear that the acceptance of applicant's voluntary resignation w.e.f. 15.1.2013 by communication dated 23rd December, 2013 is illegal. Similarly, the rejection of the applicant's claim for voluntary retirement under Rule 66 (1) as per letter dated 6.4.2013 is also illegal. The respondents ought to have accepted the applicant's claim for voluntary resignation under Rule 66

(1) of the Pension Rules and ought to have accepted the voluntary resignation from 16.10.2012 under Rule 66 (1) of Pension Rules. In view of the discussion in foregoing paragraphs, I pass the following order: -

ORDER

- (i) The present Original Application is allowed.
- (ii) The impugned communications dated 6.4.2013 and 23.12.2013 are quashed and set aside.
- (iii) The respondent authorities are directed to take into account the period of past service of the applicant by condoning the technical break for grant of pension and pensionary benefits to the applicant. The application for voluntary resignation be accepted, as per the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 and the respondents shall release all the pensionary benefits and regular pension to the applicant as per his application for voluntary retirement dated 16.10.2012.
- (iv) In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (J)