

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 90 OF 2020

With

MISC APPLICATION NO 725 OF 2022

IN

ORIGINAL APPLICATION NO 90 OF 2020

DISTRICT : MUMBAI

Mr Vilas Dattatraya Kulkarni,)
Occ – Retd from service,)
R/at : Sameer Apartment, Room No. 20)
Opp. Durga Mata Temple, Kolsewadi,)
Kalyan [E], Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Director General of Police,)
Head Quarter, Colaba, Mumbai.)
3. The Commissioner of Police,)
State Intelligence Department,)
Mumbai.)
4. The Special I.G.P,)
Special Protection Unit, Dadar,)
Mumbai.)...**Respondents**

Smt Vaishali Jagdale, learned advocate for the Applicant.

Smt K.S Gaikwad, learned resenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 27.01.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the impugned Memorandum dated 24.10.2019 issued by Respondent no. 3 be quashed and set aside and declare that the applicant be deemed to be retired from service as per Rule 10(5)(a)(ii) of Maharashtra Civil Services (Pension) Rules, 1982. The present Misc Application is filed by the applicant praying to stay the impugned communication dated 5.9.2022.

2. Learned counsel for the applicant submits that the applicant joined service on 23.1.1989 as Junior Clerk in Police Department. Thereafter, he was promoted as Senior Clerk and as Head Clerk in June, 2013. The applicant was on leave for the following period, details of which are given below:-

1. 30.05.2017 to 02.07.2017 - 34 days Extra ordinary leave
 2. 05.07.2017 to 31.07.2017 - 27 days Extra ordinary leave
 3. 18.08.2017 to 30.11.2017 - 105 days Extra ordinary leave
- Total.... 166 days

Learned counsel for the applicant submits that by order dated 9.3.2018 the whole period of 166 days was treated as extra ordinary leave without pay. Learned counsel submits that again the applicant was absent for four days in March, 2018 and two days in April, 2018. The said 6 days was treated as extra ordinary leave by order dated 6.4.2018. Learned counsel submits that total 172 days of leave is mentioned in the charge sheet.

3. Learned counsel for the applicant submits that the applicant applied for voluntary retirement on 9.7.2019. Learned counsel submits that no decision was taken on the application of voluntary retirement of the applicant that he wants to avail of voluntary retirement from 8.8.2019, i.e., after completion of one month from the date of notice. Learned counsel for the applicant submits that

after a period of 90 days, if the notice of voluntary retirement is not accepted, it is deemed to be accepted. Learned counsel for the applicant submits that immediately thereafter charge sheet was issued on 24.10.2019, that is after he is deemed to have been retired. In the said charge sheet the period of absence of 172 days which was considered as extra ordinary leave was considered as absenteeism without permission.

4. Learned counsel for the applicant relies on the affidavit in reply dated 27.10.2020 filed by Respondent no. 2, through Nitin R. Dhonge, Desk Office and holding additional charge of Deputy Assistant (Departmental Enquiries) to D.G.P. He also relied on another affidavit in reply dated 29.10.2020, filed on behalf of Respondents no 3 & 4 through Rupali A. Ambure, Superintendent of Police (Administration) in the office of Spl I.G.P, Mumbai. Learned counsel for the applicant relied on para 16 of the said affidavit. She submitted that Respondents no. 3 & 4 have stated that the decision of rejecting the application of the applicant for voluntary retirement was taken on 28.8.2019 and it was sent to the Kolsewadi Police Station, Kalyan East for serving on the applicant vide letter no. 5289 dated 1.10.2019. But it appears that it remained to be served on the applicant.

5. Learned P.O pointed out to the affidavit in reply of Respondents no 3 & 4, wherein in para 16 it is stated that Memo No. 5278 dated 30.9.2019 was sent by Respondent no. 4 along with letter No. 5289 dated 1.10.2019 and it was served on the applicant on 8.10.2019 by Kolsewadi Police Station, Kalyan East. Learned P.O further submits that in the charge sheet the period from 19.9.2017 to 3.11.2017 was treated as absenteeism. Learned P.O further submits that the decision of rejecting his V.R.S application was taken immediately within one month's time.

However, it was not served on the applicant, but he was directed to remain present by order dated 30.9.2019.

6. We have perused the record, documents placed before us and the charge sheet. The applicant has given one month's notice for his voluntary retirement and considering his date of joining his service, he has completed 30 years of service on the date when he gave his application for voluntary retirement. Perused Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. There is a requirement of three months' notice. In this case, the notice of voluntary retirement was given by the applicant on 9.7.2019 and therefore the period of 90 days was over on 9.10.2019. We presume that the decision of refusal was taken by the Respondents on 28.8.2019. However, it was not communicated to the applicant. We may accept the statement of the learned P.O that the decision was taken and therefore it is to be considered as refusal. This could have been accepted by us as one leg of argument. However, the issue does not end there. The challenge is given by the applicant on one more ground and that is though his absenteeism of 172 days was sanctioned and it was treated as extraordinary leave without pay, the departmental enquiry was initiated on the same charge of absence of 172 days. Once the Government has sanctioned the leave as extraordinary leave, then for the same reason of absenteeism, no departmental enquiry can be initiated and no charges can be levelled against any Government servant. The Respondent-State ought to have considered this aspect before sanctioning the absenteeism as an extraordinary leave. The Respondent-State was earlier free to take any action against the applicant in respect of the said absenteeism. However, once it is condoned, the Government cannot go back and open the said page and start departmental enquiry for the said reason.

7. Again referring to the order of refusal of voluntary retirement notice by order dated 28.8.2019, the reason mentioned is that the Department has taken decision to initiate departmental enquiry against the applicant for his absenteeism. Such reason is not legal. Moreover, the charge sheet was served on the applicant and the departmental enquiry was initiated on 24.10.2019, after completion of 90 days from the date of application for voluntary retirement submitted by the applicant. Learned P.O has vehemently submitted, but we are unable to accept the case of the Respondents.

8. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned Memorandum dated 24.10.2019 issued by Respondent no. 3 is hereby quashed and set aside.
- (c) It is declared that the applicant be deemed to be retired from service from 9.10.2019 and he will be entitled to all consequential service benefits as per Maharashtra Civil Service Rules.
- (d) As the Original Application is allowed, Misc Application does not survive and stands disposed of.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 27.01.2023
Dictation taken by : A.K. Nair.