

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 427/2014

Javed S/o Abdul Qureshi,
Aged about 51 years, Occ. Service,
30, Bhure Bhawan, Baidhnath Chowk,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Education Department, Mantralaya,
Mumbai-32.
- 2) Director of Education
(Primary and Higher) Directorate,
State of Maharashtra,
Having Office at Pune.
- 3) Deputy Director of Education,
Nagpur Division, Nagpur.
- 4) Education Officer,
Continue Education, Zilla Parishad,
Gadchiroli.

Respondents

Shri S.P.Palshikar, N.S. Warulkar, Advocates for the applicant.

Shri A.P. Potnis, Id. P.O. for the respondent nos. 1 to 3.

None for respondent no.4.

**Coram :- CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A) &
Shri J.D Kulkarni (Vice-Chairman) (J)**

JUDGEMENT**PER : Vice-Chairman (J).****(Delivered on this 11th day of August,2017)**

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri A.P.Potnis, Id. P.O. for the respondent nos. 1 to 3. None for respondent no.4.

2. The applicant Shri Javed Abdul Kureshi entered in the Government service in 1998 as Administrative Officer. He was posted in the department of Education, Municipal Council, Mowad, Tq. Narkhed, Dist. Nagpur. Subsequently he has worked at various places. He was posted in the office of Education Officer, Zilla Parishad, Nagpur and thereafter was transferred at Gadchiroli as Project Officer in the month of January, 2014. He was transferred from Nagpur to Gadchiroli vide order dated 26/10/2010 against which the applicant has filed O.A.No. 771/2010. The said order was quashed and set aside. The applicant accordingly joined at Gadchiroli in June,2013.

3. On 22/1/2014 the applicant filed an application for grant of voluntary retirement. He was not feeling well at that time and was suffering from mental agony.

4. After recovering from the mental trauma, the applicant preferred an application on 11/4/2014 to the Dy. Director of Education, Nagpur, i.e., respondent no.3 and requested for withdrawal of his application for voluntary retirement. However instead of accepting his request for withdrawal of application for voluntary retirement, the Dy. Director of Education, i.e., respondent no.3 accepted the application for voluntary retirement on 21/4/2014. The Education Officer, Zilla Parishad, Gadchiroli, i.e., respondent no.4, vide communication dated 25/4/2014 also intimated to the applicant that his application for voluntary retirement has been accepted and that the applicant was being relieved w.e.f. 22/4/2014 before office hours. Being aggrieved by both these communications, i.e., dated 21/4/2014 issued by Dy. Director of Education, Nagpur and dated 25/4/2014 issued by Education Officer, Zilla Parishad, Gadchiroli, the applicant has preferred this O.A. The applicant has claimed that the communications dated 21/4/2014 and 25/4/2014 as referred above be quashed and set aside and the applicant be allowed to join and the respondents be directed to reinstate the applicant with all monetary consequential benefits.

5. The respondent no.3 filed reply-affidavit which has been sworn by one Shri Ravindra P.Kale, Senior Administrative Officer. The respondent no.4, Education Officer, Zilla Parishad, Gadchiroli

filed separate affidavit which has been sworn by Shri Nilesh Taranath Patil, Education Officer (C.E.).

6. According to the respondents the applicant himself opted for voluntary retirement w.e.f. 21/4/2014 as per his application dated 22/1/2014 and the said request was accepted. The application for cancellation of his voluntary retirement was rejected since his application for voluntary retirement was accepted.

7. From the admitted facts on record it is clear that the applicant has submitted an application for voluntary retirement on 22/1/2014 and requested that he may be allowed to retire voluntarily w.e.f. 21/4/2014 and this application has been accepted by the respondent Dy. Director of Education, Nagpur vide communication dated 16/4/2014 and by Education Officer, Gadchiroli vide communication dated 25/4/2014. The respondents have admitted the fact that on 11/4/2014 the applicant filed another application. The copy of which is on record at P.B. page no.23. Vide this letter the applicant submitted as under :-

^egln;] I fou; fourh ; k i ek.ks vkgs dh] eh fnukd 21@4@2014 ikl u
 LoBNkfuorRh ?ks; kdfjrk vtZ I knj dsyk gkrk- ijrwl /; k ek>h izdrh
 fc?kMY; keGs eh oSkdh; jtoj vl u eyk I /; krjh LoBNkfuorRh ?; ko; kph ukgh
 vkgs djhrk ek>k LoBNkfuorRhpk vtZjnn dj.; kr ; kok ghfourh**

8. The endorsement on the aforesaid application shows that the respondents received the said application on 11/4/2014 itself. Thus before expiry of notice period for voluntary retirement the applicant has withdrawn his application and requested that his application for voluntary retirement be treated as cancelled. However, vide impugned communications the application for voluntary retirement has been accepted. It is material to note that in the communication dated 21/4/2014 at P.B. page no.25, the Dy. Director of Education, Nagpur has made a reference to the applicant's application for withdrawal of application for voluntary retirement. It seems that the same has been rejected in view of the provisions of Rule 66 (5) of the Maharashtra Civil Services (Pension) Rules, 1982. The relevant communication reads as under :-

^ Jh-vCngy tkon djs'kh] I gk; d idYi vf/kdkjh] dk; kÿ;] f'k{k.kk/kdkjh %fujarj f'k{k.kk} xMfpjksyh ; kauh [kktxh dkj.kkLro LoBNk I dkfuorRrh eatij dj.; kph fourrh fnukad 22@1@2014 P; k vtKlo; sdsy'sh gkrh- I nj vtZl mfhkz i= dz2 vUo; s; k dk; kÿ; kl i ktr >kysyk gkrk- Jh-vCngy tkon djs'kh] I gk; d idYi vf/kdkjh ; kauh dsy's; k fourrhud kj R; kpk fnukad 22@1@2014 pk LoBNk I dkfuorRrhpk vtZlLod'r dj.; kr ; duu R; kauk fnukad 22@4@2014 e/; klgki dz i kl uu LoBNk I dkfuorRr gks; kl ; k dk; kÿ; kps vkns'k dzekad vLFFk@d@LoBNkI dkfuorRrh@4150@2014] fnukad 16@4@2014 vUo; s i jokuxh inku dj.; kr vkysyh vkgs

Jh-vCngy tkon djs'kh] I gk; d idYi vf/kdkjh ; kauh R; kpk vtZlfnukad 11@4@2014 vUo; sLoBNk I dkfuorRrhpk vtZljnn dj.; kph fourrh dsy'sh vkgs

egkj k'v'ukxjh I dk ½fuorRhosu½fu; e]1982 e/khy fu; e dekd 66 ¼5½e/; s
 ^T; k 'kkI dh; deþk&; kausl dkfuorRr gks; kph fuoM d#u fu; Þrh i kf/kdk&; kyk]
 r'kk vk'k; kph ukshl fnysyh vl sy R; k 'kkI dh; deþk&; kyk v'kk i kf/kdk&; kph
 Li "V ekU; rk vl Y; k[kjht v'kh ukshl ekxs?ks; kl i frcdk vl sy** v'kh rjrm
 vkgs I nj rjrmhuif kj Jh-vCny tkon djs kh] I gk; d i dYi vf/kdkjh ; kph
 fourh vekU; dj.; kr ; s vkgs rl s l af/krkl vki ys Lrjko#u dGokos o
 dsyY; k dk; bkgp k vgoky ; k dk; kÿ; kl I knj djkok-**

9. The learned counsel for the applicant has placed reliance on the Judgment delivered by the Hon'ble Bombay High Court in the case of **S. Ramchandra Rao Vs. Secretary, N.K.E. Society in 1997 (4) BomCR 487, equivalent to 1997 (3) Mh.L.J.,204.** The mid-question is raised in the said citation was as under :-

“Therefore, the moot question is whether after acceptance of the application of voluntary retirement made by the Petitioner, was it open to the Petitioner to withdraw the application for voluntary retirement before the intended date of voluntary retirement ? The two different facets of this question would be whether before intended date of voluntary retirement, the Respondent No. 1 could accept application for voluntary retirement made by the Petitioner and whether the Respondent No. 1 was bound to accede to the request made by the Petitioner for withdrawal of application of voluntary retirement made by the Petitioner before the intended date of his retirement.”

10. In para 13 of the Judgment the Hon'ble High Court observed as under :-

“In my view, therefore, the Petitioner ought to have been permitted withdrawal of the notice of voluntary retirement which he did make before the intended date of retirement i.e., 22nd June, 1992, and, there was no valid or justifiable reason for the Respondent No. 1 in not granting permission for withdrawal of notice of voluntary retirement and there was absolutely no justification for the management in not permitting the petitioner to resume his duties on 13th June, 1992 when the school reopened.”

11. The perusal of the Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 clearly shows that a Government servant can opt for voluntary retirement after he completes qualifying service of 20 years and the employee can give three months' notice opting for voluntary retirement. This notice can be withdrawn by the applicant provided such withdrawal request is made within stipulated period of three months. In the present case the applicant had applied for voluntary retirement on 22/1/2014. He requested that he may be permitted to retire after completion of three months, i.e., 21/4/2014. Before completion of that period of three months, he has given another notice on 11/4/2014 and requested the Competent Authority that his application for voluntary retirement be treated as cancelled. The Competent Authority has referred to Rule 66 (5) of the Maharashtra Civil Services (Pension) Rules, 1982 in the impugned communication dated 21/4/2014 and submitted that unless the

applicant is permitted to withdraw the notice, his request for withdrawal of notice of voluntary retirement cannot be accepted. However no reason has been given as to why the Competent Authority thought it proper not to grant permission to withdraw the notice of voluntary retirement. It is mentioned in the impugned communication dated 21/4/2014 that the applicant's request for voluntary retirement was accepted vide letter dated 16/4/2014. Admittedly, the application for withdrawal of the notice of voluntary retirement has been filed on 11/4/2014 itself and not after the expiry period of three months or not after retirement notice was accepted. The request for withdrawal therefore has been rejected without application of mind. In fact when an employee gives a notice for voluntary retirement, it is incumbent upon the Higher Authority to consider his difficulties and to see as to whether the employee was under any stress or mental pressure. In fact it is expected that the higher authority shall persuade the employee not to retire voluntarily as the experience gained by such employee will always help the administration. That seems to be the reason as to why there is a provision of three months notice for such retirement. It might be the only intention to see that the employee may change his mind by thinking thoroughly over the matter.

12. The applicant has claimed consequential financial benefits since his rejection of his application for withdrawal of notice for voluntary retirement is illegal. It is material to note that the entire episode has occurred because of the application submitted by the applicant for voluntary retirement without properly thinking over the matter and thereafter changing his mind. The respondent authority cannot be held solely responsible for the alleged agony faced by the applicant. On the contrary the applicant himself is responsible for such situation. The applicant has not worked from 21/4/2014 onwards and therefore in such situation grant of monetary consequential benefits to the applicant may burden the public exchequer. We are therefore of the opinion that the applicant will not be entitled to any financial benefits. He will however be entitled to continuity of the service as if he has not given application for voluntary retirement.

13. For the reasons stated in the forgoing paras, it will be thus crystal clear that the Appellate Authority has not considered the application for withdrawal of voluntary retirement with a proper perspective and has rejected the application for withdrawal of notice of voluntary retirement arbitrary and in haste. Both the impugned communications i.e. dated 21/4/2014 & 25/4/2014 passed by respondent no.3 and 4 respectively are therefore not legal and proper. Hence, we pass the following order :-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The impugned orders dated 21/4/2014 & 25/4/2014 passed by respondent no.3 and 4 respectively are quashed and set aside. The respondents are directed to reinstate the applicant in service so as to allow him to complete his tenure till he attains the age of superannuation. The order of reinstatement shall be issued within four weeks from the date of this order.
- (iii) The applicant shall however be entitled to continuity of the service for the purposes of pension and other retiral benefits. The applicant's claim for consequential monetary benefits from 21/4/2014 till the date he is reinstated is however rejected. No order as to costs.

(J.D Kulkarni)
Vice-Chairman (J).

(Rajiv Agarwal)
Vice-Chairman (A).

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