

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 444 of 2015 (S.B.)

Shri Dr. Arvind S/o Nilkanth Bhure,
Aged 57 years, Occ. Service (Medical Officer, Class-II)
R/o Jalaram Ward, Ghatanji,
Dist. Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
General Health Department,
Mantralaya, Mumbai-32.
- 2) Director of Health,
Arogya Bhawan, near Saint George Hospital,
Chatrapati Shivaji Terminus, Mumbai-32.
- 3) Dy. Director of Health Services, Circle Akola,
Tah. & Dist. Akola.

Respondents.

S/Shri M.M. & A.M. Sudame, Advocates for the applicant.
Shri V.A. Kulkarni, P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Dated :- 22/12/2021.

JUDGMENT

Heard Shri M.M. Sudame, learned counsel for applicant
and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. This O.A. was decided by this Tribunal by order dated
23/10/2018. The respondents / state challenged the said Judgment
before the Hon'ble Bombay High Court, Bench at Nagpur in Writ

Petition No. 1320/2021. The Hon'ble High Court observed in the Judgment that the service of applicant was continued with condition that his earlier service is fortuitous service. The Hon'ble High Court has observed that this Tribunal has not considered the definition of Rule 3 (f) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and therefore remanded the matter to consider the said Rule.

3. The case of the applicant in short is that he was working as a Medical Officer at Ghatanji. He was firstly appointed on 15/2/1984 till the candidate from MPSC is available. The Government could not get the MPSC candidate for regular posting as a Medical Officer, therefore, his service was continued from time to time. The entries in that regard are taken in his Service Book. Lastly by order dated 16/12/1994 the Government of Maharashtra has regularised the services of 194 Medical Officers by a common order. In the said order, it is specifically mentioned that the earlier services of the applicant and other Medical Officers shall be fortuitous service and he shall not claim said service for the purpose of his seniority.

4. The applicant has completed 20 years of service. He applied for voluntary retirement by notice dated 27/12/2004. It is specifically mentioned in the notice that this notice be treated from 1st January, 2005 and he shall be retired on 31st March, 2005. There was

no any communication by the respondents in respect of the notice dated 27/12/2004. On 11/4/2005, the applicant was informed that there was departmental enquiry pending against him, therefore, his notice was not accepted. The Director of Health Services, Mumbai issued one letter on 22/3/2005 to the Additional Chief Secretary, Public Health Department, Mumbai stating that the applicant shall be relieved on 28/3/2005. Applicant submitted representations dated 27/11/2006 and 29/4/2008. On 16/10/2006, the Government of Maharashtra dropped the departmental enquiry pending against the applicant.

5. On 11/4/2005 the applicant was informed that his notice of voluntary retirement is not accepted on the ground that departmental enquiry is pending. Again the applicant applied on 29/4/2008 stating that his notice of voluntary retirement be accepted and he shall be retired from 31/3/2005.

6. The respondents have filed reply and stated that the service of the applicant was temporary service. He was regularised by order dated 16/12/1994. It is submitted by the respondents' side that the applicant had not given fresh notice after dropping the departmental enquiry. The notice was not proper and therefore he cannot claim voluntary retirement after completion of three months from the date of notice.

7. All these issues are decided by this Tribunal by Judgment dated 23/10/2008. It was for the respondents to complete the departmental enquiry which was initiated on 17/8/2000, but till 2004 it was kept pending. It appears that there was no substance in the departmental enquiry, therefore, it was dropped without recording any evidence. The voluntary retirement notice was given by the applicant during pendency of the departmental enquiry. It was rejected after more than three months.

8. Heard learned counsel for the applicant. He has pointed out voluntary notice given by the applicant dated 27/12/2004. In the notice, it is specifically mentioned that three months shall be counted from 1st January, 2005 and he shall be retired from 31st March, 2005, but the said notice was neither accepted nor rejected before completion of three months from the date of notice. On 11/4/2005 it was informed to the applicant that notice was not accepted because of pendency of departmental enquiry. It is pertinent to note that as per Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "MCS (Pension) Rules"), it was duty of the employer / government to inform the employee within a period of three months in respect of acceptance or refusal of notice. If it is not accepted within three months, then it shall be deemed as accepted. The Rule 66 of the MCS (Pension) Rules, is reproduced as under –

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

(1) At any time after a Government servant has 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.” ----- ”

9. The respondents / department not informed the applicant within three months about acceptance or rejection of voluntary notice. The proviso of Rule 66 of the MCS (Pension) Rules is very clear itself that when it is not accepted or refused within three months, then it shall be deemed to be accepted. The notice of the applicant dated 27/12/2004 was not accepted or rejected before completion of three months and therefore as per proviso of Rule 66 of the MCS (Pension) Rules, it amounts to acceptance by the respondents.

10. The Hon'ble High Court has given direction to this Tribunal to consider Rule 3 (f) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as "MCS (Regulation of Seniority) Rules"). The Rule 3 (f) of the MCS (Regulation of Seniority) is reproduced as under –

“3 (f) “fortuitous appointment” means a temporary appointment made pending a regular appointment in accordance with the provisions of the relevant recruitment rules”.

11. The Rule 2 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 reads as under –

2. Commencement and application.—These rules shall come into force on 21st June, 1982 and seniority of Government servants in all posts, cadres and services under the rules making control of Government shall thereafter be regulated in accordance with the provisions of these rules :

Provided that, where any separate rules or orders are prescribed for regulating seniority in any particular posts, cadre or service, the seniority of holders of such posts or the members of such cadre or service shall be regulated in accordance with such separate rules or orders.

12. The intention of these rules is very clear. The title of the rules shows that it is applicable in respect of regulation of seniority of the employee in the department. The Rule 2 of the said Rules says that these rules are applicable to all government servants in all posts, cadres and services under the rules making control of government shall thereafter be regulated in accordance with the provisions of these rules. The definition of fortuitous service is given in Rule 3 (f) of the MCS (Regulation of Seniority) Rules. It means a temporary appointment made pending a regular appointment in accordance with the relevant recruitment rules. Therefore, this definition of Rule 3 (f) of the MCS (Regulation of Seniority) Rules which says that it is a temporary appointment shall not come in the way of Rule 30 of the

MCS (Pension) Rules. The Rule 30 of the MCS (Pension) Rules 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 :

13. As per the Rule 30 of the MCS (Pension) Rules, even a temporary employee who has completed 20 years / qualifying service, is entitled for pensionary benefits provided that he shall be permanent at the time of retirement.

14. The applicant was permanent when he had given notice of voluntary retirement. There was also no break in service of the applicant from the date of his initial posting. He was appointed temporarily till the government / department gets regular employee selected by the MPSC. There was no any candidate selected by the MPSC for the said post, therefore, his service was continued and the entries are recorded in his Service Book. There is no break in service of the applicant and therefore it is clear that he has completed 20 years service from the date of his initial appointment i.e. 15/2/1984. The applicant after completion of 20 years of service given notice of voluntary retirement, it was not accepted within three months, therefore, it is deemed to be accepted as per the proviso of Rule 66 of

the MCS (Pension) Rules. The definition of Rule 3 (f) of the MCS (Regulation of Seniority) Rules in respect of fortuitous service is applicable only in respect of seniority in the cadre. In this O.A. there is no question of deciding the seniority. As per definition of Rule 3 (f) of the MCS (Regulation of Seniority) Rules, it is a temporary service, but that temporary service does not mean that the applicant is not entitled for the pensionary benefits. The regularisation order dated 16/12/1994 says that his earlier service shall be fortuitous. The order itself says that the earlier service shall not be counted for the purpose of seniority. Therefore, the said service cannot be counted as a temporary service for the purpose of pensionary benefits. As per the Rule 30 of the MCS (Pension) Rules, it is clear that even a temporary employee who became permanent at the time of retirement, is entitled for pensionary benefits. The initial appointment of the applicant was temporary, but he was continued without any break. Therefore, his earlier service from the date of initial appointment, shall be taken into account while calculating the qualifying service for pensionary benefits.

15. The applicant has completed 20 years continuous service in February, 2004. He applied for V.Rs. on 27/12/2004. The said notice was not accepted or rejected before three months. Therefore, the applicant stopped to attend the duty as Medical Officer from

1/4/2005. As per the proviso of Rule 66 of the MCS (Pension) Rules, if the notice of V.Rs. is not accepted or rejected within a period of three months, then it shall be deemed as acceptance of the said notice.

16. In case of **Nilkanth S/o Ramji Akarte Vs. State of Maharashtra & Ors. 2006 (5) Mh.L.J.,132**, Hon'ble Bombay High Court, Bench at Nagpur has held as under -

Constitution of India, Arts. 16, 309 and Maharashtra Civil Services (Pension) Rules, 1982, R. 66(1) — Voluntary retirement notice by employee — Retirement to become effective from date of expiry of specified period if the appointing authority does not refuse to grant permission for retirement — In the absence of refusal to grant permission, the employee automatically stands retired voluntarily from service on the date of expiry of period of notice.

Though sub-rule (2) of Rule 66 of Maharashtra Civil Services (Pension) Rules stipulates that the notice of voluntary retirement given under sub-rule (1) shall require acceptance by the competent authority, however, proviso to Rule 66 makes it clear 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. It is, therefore, evident that in absence of refusal by the appointing authority on or before the expiry of the period of notice, the employee automatically stands retired voluntarily from service on the date such period of notice expires. Three months notice of voluntary retirement was given by the petitioner on 19-10-2005. The said period of three months expired on 18-1-2006 and it is admitted position that on or before 18-1-2006 there was no refusal about the request made by the petitioner for voluntary retirement by the appointment authority and in absence thereof, by virtue of proviso to Rule 66, the petitioner stood voluntarily retired from service w.e.f. 18-1-2006. (Paras 12 and 13) ↓

17. The notice of the applicant was not accepted or rejected before three months from the date of notice of V.Rs. and therefore the action of the respondents rejecting notice on 11/4/2005 is illegal. The respondents ought to have informed the applicant before completion of three months of notice. Hence, it is deemed to be accepted. The

Rule 3 (f) of the MCS (Regulation of Seniority) Rules, shall not come in way of pensionary benefits as per the Rule 30 of the MCS (Pension) Rules. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) It is declared that the applicant stood retire from the service w.e.f. 1/4/2005 and he is entitled for retirement benefits to which he was entitled as per the Rules. The respondents are directed to comply the direction within a period of three months from the date of this order.

(iii) No order as to costs.

Dated :- 22/12/2021.

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(Justice M.G. Giratkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 22/12/2021.

Uploaded on : 27/12/2021.