

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.757 of 2023 (S.B.)

Rajkumar Pandurangji Waghmare,
aged 56 years, Occ. Retired Govt. Servant,
R/o Samata Nagar, Wardha.

Applicant.

Versus

(1) State of Maharashtra, through its Secretary,
Department of Home, Mantralaya, Mumbai-32.

(2) Superintendent of Police, Wardha.

Respondents.

S/Shri R.V. & N.R. Shiralkar, A.M. Motlag, Advs. for the applicant.

Shri V.A. Kulkarni, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 30/01/2024.

JUDGMENT

Heard Shri R.V. Shiralkar, learned counsel for applicant
and Shri V.A. Kulkarni, learned P.O. for respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Police
Constable on 10/09/1993. Thereafter the applicant was promoted as
Naik and lastly as Head Constable in the year 2020. The applicant has
completed 30 years of qualifying service. The date of birth of applicant
is 05/03/1968 and his date of retirement is 31/03/2026. The applicant

is not keeping well and therefore he applied for voluntary retirement on 09/02/2023. The respondents have not accepted or rejected the said application within 90 days. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(A) Hold and declare that the applicant stood retired from service on 15.5.2023 on the post of Head Constable, in view of his application for voluntary retirement dated 9.2.2023 and consequently;

(B) Direct the respondent no. 2 to process pension case of the applicant and pay pensionary benefits to the applicant within stipulated period.

(C) Quash and set aside communication dated 31.5.2023 issued by the respondent no. 2 being illegal and contrary to Rule 66 of Maharashtra Civil Service (Pension) Rules, 1979.

(D) Allow the application with costs.”

3. The O.A. is strongly opposed by the respondent no.2. It appears from the reply that the applicant had not submitted the Medical Certificates, therefore, his application was not considered.

4. Heard Shri R.V. Shiralkar, learned counsel for applicant. He has pointed out the decision of the Hon'ble Bombay High Court, Bench at Nagpur in the case of ***Nilkanth S/o Ramji Akarte Vs. State of Maharashtra and Others, 2006 (5) Mh.L.J.,132*** and submitted that the Rule 66 (2) of the Maharashtra Civil Services (Pension) Rules, 1982 is a mandatory provision. As per this provision, if the voluntary retirement application is not accepted or refused within 90 days, then

it is deemed to be accepted. The Hon'ble Bombay High Court, Bench at Nagpur has held as under –

“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.”

5. The learned P.O. submits that the applicant had not submitted the Medical Certificates and therefore his application for voluntary retirement was not considered.

6. From the perusal of the Rule 66 (2) of the Maharashtra Civil Services (Pension) Rules, 1982, it appears that there is no any requirement to submit any document along with the voluntary retirement application. There is nothing on record to show that there

was any departmental enquiry or any criminal case is pending against the applicant. Only reason given by the respondents is that, the applicant has not submitted the Medical Certificates about his ill-health. The applicant applied for voluntary retirement knowing well that he is not able to do work/ duty, therefore, there should not be any doubt. The respondents should have accepted or rejected the application for voluntary retirement submitted by applicant on 09/02/2023. The Rule 66 (2) of the Maharashtra Civil Services (Pension) Rules, 1982 is reproduced below –

“66. Retirement on completion of 20 years qualifying 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.”

7. As per the Rule 66 (2) of the Maharashtra Civil Services (Pension) Rules, 1982, if the application for voluntary retirement is not decided within 90 days, then it is deemed to be accepted. Hence, the following order–

ORDER

(i) The O.A. is allowed.

- (ii) The application dated 09/02/2023 for voluntary retirement is deemed to be accepted as per the Rule 66 (2) of the Maharashtra Civil Services (Pension) Rules, 1982.
- (iii) It is hereby declared that the applicant stood retired from service w.e.f. 15/05/2023 on the post of Head Constable in view of his application for voluntary retirement dated 09/02/2023.
- (iv) The respondents are directed to pay the pension and pensionary benefits to the applicant as early as possible.
- (v) No order as to costs.

Dated :- 30/01/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 30/01/2024.