

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 949 of 2022 (DB)

Dr. Vitthal S/o Namdeorao Tidke,
Aged 47 years, Occ. Service (opted for VRS),
R/o D-73, Dnyaneshwar Nagar,
Near Dnyaneshwar Vidyalaya, Parbhani,
Tq. and Dist. Parbhani.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Public Health Department,
Having its Office G.T. Hospital Compound,
10th floor, New Mantralaya, Mumbai-32.
- 2) The Commissioner,
Public Health Services, Having its Office,
Argoia Bhavan, near CSMT, Mumbai.
- 3) The Deputy Director of Health Services,
Akola Division, Akola,
Having its Office Ratanalal Plot,
Dist. Women Hospital Area
(Lady Harding), Akola-444 001.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.
And
Hon'ble M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 2nd December, 2022.

Date of Pronouncement of Judgment : 6th December, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 6th day of December, 2022)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was working as Orthopaedic Surgeon (Class-I) in Saibai Mote General Hospital, Shegaon, Dist. Buldhana. On 14/06/2022 after serving for more than 20 years, he submitted an application (Annex-A-1) for voluntary retirement. The Medical Superintendent of the Hospital forwarded it to the Civil Surgeon, Buldhana with covering letter dated 15/06/2022 (Annex-A-2) to which papers submitted by the applicant were attached. Respondent no.3 further forwarded it to respondent no.2 with covering letter dated 22/07/2022 (Annex-A-3). By the impugned order dated 15/09/2022 (Annex-A-4) the application (Annex-A-1) was rejected by stating as follows –

“ सघस्थितीत राज्यात कोवीड-१९ या आजाराची पार्श्वभूमी लक्षात घेता, तसेच, आरोग्य सेवा ही अत्यावश्यक सेवा असल्याने विभागास वैद्यकीय अधिका-यांची नितांत गरज आहे. सदर बाब विचारात घेता आपली दिनांक १५/०६/२०२२ रोजीच्या पत्रान्वये केलेली स्वेच्छा सेवानिवृत्तीची विनंती लोकहितार्थ महाराष्ट्र नागरी सेवा (निवृत्तीवेतन)नियम,१९८२ मधील तरतुदीनुसार स्वीकृत करता येणार नाही.”

By letter dated 19/09/2022 (Annex-A-5) the impugned order was communicated to the applicant.

3. It is the contention of applicant that in view of the Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 he would be entitled to following reliefs -

(i) quash and set aside communication dated 15/09/2022 passed by respondent no.1 as illegal, bad in law;

(ii) further be pleased to hold and declare that the applicant is deemed to be retired as a Government servant w.e.f. 15/09/2022 and grant him all service benefits arising therefrom ;

4. Relevant portion of the Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 is 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 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.”

5. The applicant had applied for voluntary retirement on 15/06/2022. Letter at Annex-A-3 shows that the post retirement period of the applicant was to commence on 15/09/2022. The notice period of three months came to an end on 14/09/2022. On 15/09/2022 order of rejection of his application was passed. By this time period of three months from the date of application had elapsed i.e. on 14/09/2022. Before expiry of this period of three months order of rejection of the application could have been passed, but it was not passed. Consequently, the proviso to Rule 66 (2)

had come into play and the retirement of the applicant had automatically become effective from the date of expiry of the said period of three months. Under these circumstances subsequent communication of the impugned order on 19/09/2022 was of no consequence since the period of three months had expired on 14/09/2022. In support of this conclusion reached by us reliance may be placed on “ **Nilkanth S/o Ramji Akarte Vs. State of Maharashtra 2006 (5) Mh.L.J.,132** and **Ushabai Manohar Koche Vs. State Of Maharashtra and 2 others**, Judgment dated 09/09/2021 passed by the Hon’ble Bombay High Court in Writ Petition No.4821/2018”. Hence, the order –

ORDER

The O.A. is allowed in terms of prayer clause nos. (i) and (ii) with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated :- 06/12/2022.

dnk.

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 V.C. and Hon'ble Member (J).

Judgment signed on : 06/12/2022.

Uploaded on : 07/12/2022*