

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 444/2015

Dr. Arvind S/o Nilkanth Bhure,
Aged 57 yrs., Occ. Service (Medical Officer, Class-II),
R/o Jalaram Ward, Gantanji,
District-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 Service,
Circle Akola, Tah. & Dist. Akola.

Respondents

Shri N.B.Bargat, the Id. Advocate for the applicant.

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

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J).

Dated :- 23/10/2018.

ORDER

Heard Shri N.B.Bargat, the Id. counsel for the applicant and
Shri V.A.Kulkarni, the Id. P.O. for the Respondents.

2. In this O.A., the applicant was appointed by the respondent No. 1 as Medical Officer in February, 1984 and the applicant Joined duty on 15/02/1984 at Yavatmal. At that time, as per the Government Rules, it was mandatory that the Government employee shall be selected by Maharashtra Public Service Commission. The applicant appeared in examination held by M.P.S.C. in 1984, he was successful in the examination, therefore, service of the applicant was regularized from 1994.

3. On 27/12/2004, the applicant submitted application for voluntary retirement, he was informed that as the Departmental Enquiry was pending against the applicant, therefore, his application could not be considered. The Departmental Enquiry was closed by the Government on 16/10/2006.

4. The applicant made representation to the respondents to act upon his request of V.R.S. and he be relieved from service w.e.f. 01/05/2005 as the DE was closed. Various representations were made by the applicant but no heed was paid by the respondents. The applicant made correspondence to the respondents and requested for pension and other retirement benefits, but it was informed that as the applicant had not completed 20 years qualifying service, therefore, he was not entitled for the pensionary benefits.

5. In this application, it is submitted by the applicant that as no decision was taken by the respondents on his V.R.S. application within period of three months, consequently, he shall be deemed to have been retired w.e.f. 01/05/2005 as per the service Rules. It is submitted that the applicant's service was regularized in the year 1994, therefore, his service was continuous from 15/02/1984, therefore, the applicant had completed 20 years of qualifying service to get the pension and all retiral benefits. On the basis of this facts, it is submitted that the respondents action is contrary to law, therefore, directions be given to the respondent No. 1 to pass appropriate order retiring the applicant w.e.f. 01/04/2005. It is also prayed that, the respondent No. 1 be directed to release all consequential benefits w.e.f. 01/04/2005 after fixing applicants pay in the scale.

6. The application is opposed by the respondents on two grounds, the first ground of attack is that the applicant was regularized in service w.e.f. 16/12/1994, but in the order it was clearly mentioned that the service rendered by the applicant prior to his appointment by M.P.S.C. shall not be considered for seniority as well as for any service benefits. On the basis of this, it is submitted that qualified service on 20 years was not completed by the applicant, therefore, his V.R.S. proposal could not be accepted.

7. On the basis of the same contention, it is submitted that as per Maharashtra Civil Service Pension Rule 66, as applicant not completed the qualifying service of 20 years, therefore, the applicant is not entitled for any retirement benefits and the respondents have rightly turndown the request made by the applicant. It is contended that, the applicant remain absent from duty i.e. 01/04/2005. It is submitted that, there is no merit in the application and it is liable to be dismissed.

8. In the present matter the following substantial questions arise for determination :-

- A. Whether the applicant had completed 20 yrs. of qualifying service.
- B. Whether he was entitled for V.R.S.

I have heard submission on behalf of the applicant and on behalf of the respondents. There is no dispute about the fact that application for requesting VRS was made by the applicant on 27/12/2004 vide (Annexure-A-2). In the application it was mentioned that 20 yrs continuous service was completed by the applicant and therefore, therefore, he permitted to retire from the service after the afternoon of 31/03/2005. This application for V.R.S. was received by the respondents, after receiving this application for V.R.S., it was informed to the applicant that 20 yrs. qualifying service was not completed by him, therefore, he was not entitled for V.R.S.. It was also informed to the applicant that as Departmental Enquiry was pending against him his

application for V.R.S. could not be considered. The Id. counsel for the applicant has invited my attention to (Annexure-A-4) by which the respondent no.1 dropped the enquiry against the applicant (Annexure-A-4) dated 16/10/2006.

9. For examining the question, whether 20 yrs. qualifying service was completed by the applicant it is necessary to see (Annexure-R-5) it is dated 16/12/1994. On the basis of this document, it is contented that though the service of the applicant was regularized, but it is specifically mentioned in the order that his previous service prior to the order should not be considered for seniority as well as for any service benefits. On perusal of Annexure-R-1 which is at P.B., Pg. No. 33, it seems that it is mentioned in the order that prior services of the applicant shall not be used to claim seniority benefits. It is nowhere mentioned in Annexure-R-5 that the applicant was not entitled to claim any other service benefits. These words are not specifically used in Annexure-R-5 which is produced on record by the respondents. On perusal of Annexure-R-3 which is at P.B., Pg. No. – 37, it seems that the Director of Health Services, Mumbai informed the Additional Chief Secretary, Public Health Department, Mumbai that services of the applicant since 15/02/1984 till his voluntary retirement was continuous and it was to be considered for granting retiral benefits. The document Annexure-R-3 produced by the respondents is itself sufficient to destroy

their contention that the applicant was not entitled to tag his previous services since 15/02/1984 till 16/12/1994 to claim the retirement benefits. No explanation is given by the respondents why the Director, Health Services (who is respondent no. 2 in the present matter) informed the Additional Chief Secretary, Public Health Department that for the pensionary benefits, the services of the applicant from 15/02/1984 to 16/12/1994 could be considered. Thus, it seems that the respondents were blowing hot and cold, at one place, they contended that the service of the applicant from 15-2-1984 till 16-12-1994 could not be considered for determining the qualifying service for granting him pensionary benefits, therefore, the applicant had not completed the qualifying service, when he submitted the application for V.R.S.. The letter written by the Director, Health Services, Mumbai destroy this earlier contention, therefore, it appears to me that the approach of the respondents that qualifying services was not completed by the applicant for claiming V.R.S. was itself wrong and consequently their action rejecting the application for VRS was also wrong.

10. It is the submission of the applicant that Rule 66 of Maharashtra Civil Services, Pension Rules says that if before expiry of the notice period of three months, it is not informed to the employee that his application for V.R.S. is rejected then it must be inferred that it is deemed

to have accepted and the employee shall be deemed to be retired after the expiry of notice period. Rule 66 is as under:-

Retirement on completion of 20 yrs. 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.

Provided that the total qualifying service after allowing the increase under this sub-rule shall not exceed the qualifying service which the Government servant would have had, if he had retired voluntarily at the lowest age limit for voluntary retirement prescribed under sub-rule (5) of rule 10.

The first proviso of Rule 66 (2) says that where the appointing authority does not refuse the permission for VRS before the

expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. Annexure-3 is filed by the applicant, it is copy of the letter dt/ 22-3-2005 written to Additional Chief Secretary Public Health Department Mumbai, along with it the application for VRS was forwarded. Vide Annexure-6 dated 15/04/2011, it was informed that as qualifying service of 20 years was not completed by the applicant, therefore, he was not entitled for V.R.S.. It is not the case of the respondents that before expiry of the notice period which was to expire on 31/03/2005 any information was given to the applicant that permission was not granted to him for V.R.S.

11. In case of **Nilkant Ramji Akarte Vs. State of Maharashtra & Ors., 2006 (5), Mh.L.J. 132**, the Division Bench of Bombay High Court held that:-

11. The plain reading of the above referred Rule makes it implicitly clear that the person who is entitled to opt for voluntary retirement has to fulfil the following conditions:-

(1) On the date of issuance of notice of voluntary retirement, such employee must have completed 20 yrs. of qualifying service;

(2) The notice must be in writing; and

(3) Period of notice is three months.

12. *Similarly, though sub-rule (2) 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."*

In view of the law laid down in case of **Nilkant Ramji Akarte Vs. State of Maharashtra & Ors., 2006 (5), Mh.L.J. 132** as the applicant had completed 20 yrs. qualifying service, when he submitted the application for retirement it was mandatory for the respondents to inform him that his application for V.R.S. was rejected, but it was not done before the expiry of notice period i.e. 31-3-2005, therefore, after expiry of the notice period, the applicant automatically stands retired voluntarily from the service.

12. In present case after submitting the application for V.R.S. and before the expiry of the notice period, refusal was not informed to the applicant, therefore, the applicant remain absent from the duty from 1-4-2005.

13. For the sake of arguments, if it is held that D.E. was pending against the applicant, therefore, it was not possible to consider his request for V.R.S. then also it was mandatory for the respondents to inform the applicant that permission was refused and it should have been done before the expiry of the notice period. In present matter, it seems that the applicant had completed the qualifying service of 20 years, therefore, he submitted the proposal for his retirement dt/ 27-12-2004, as the applicant was not informed that permission was not granted to him for the retirement, therefore, as per Rule 66(2) Proviso, the applicant stood automatically retired after office hours of 31/03/2005. In view of the matter, I am compelled to say that, the action of the respondents in this regard was contrary to law and the applicant is entitled for the reliefs claimed. Hence, the following order:-

ORDER

1. The application is allowed.
2. It is declare that the applicant stood retire from the service w.e.f. 01/04/2005 and the applicant is entitled for the retirement benefits to which he was entitled as per the rule. The respondents are directed to comply these directions **within three months** from the date of this order.

3. No order as to costs.

Dated :- 23/10/2018.

**(A.D. Karanjkar)
Member (J).**

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