

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.215 OF 2020**

**DISTRICT: PUNE  
SUBJECT: PENSIONARY BENEFITS**

Smt. Varsha Nitin Dixit )  
Age – 51 years, Retired as Statistical Assistant, )  
R/at. Kumar Prince Town, A-1, 704, )  
NIBM-Undri Road, Pune -411060. ) **....Applicant**

**Versus**

1. State of Maharashtra, )  
Through Principal Secretary, Public Health )  
Department, (Sewa-5), 10<sup>th</sup> floor, G.T. )  
Hospital Premises, Mantralaya, Mumbai 32. )
2. Director of Health Services (Maharashtra), )  
'Arogya Bhavan', St. George Hospital Campus )  
P.D'Mello Road, Mumbai 400 001. )
3. Deputy Director of Health Services )  
(Vital Statistics), Naidu Hospital Campus, )  
Behind Pune Railway Station, Kenedy Road, )  
Pune – 411 001. )
4. Additional Director of Health Services, Family )  
Welfare, MCH & SH, Pune. )
5. Assistant Director, Health Services (Leprosy), )  
Civil Hospital Compound, Chandrapur – 442402. )
6. Accountant General, (Accounts & Entitlement)-II,) )  
Maharashtra, Pension Wing, Post Box )  
No.114, GPO, Civil Lines, Nagpur-440001. ) **...Respondents.**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 01.09.2021.

### **JUDGMENT**

1. In this O.A. the Applicant has sought direction to the Respondents to release her retiral benefits in view of her Voluntary Retirement, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. At the very outset it needs to be stated that facts of the present case are quite unusual, since the Applicant is deprived of her retiral benefits though her notice of Voluntary Retirement was accepted by the Respondent No.3 – Deputy Director of Health Services but later it remained pending for five years and the Applicant is deprived of her legal entitlement which was due on her Voluntary Retirement.

3. The Applicant joined as Statistical Assistant (Class III) on 24.12.1990, she had submitted notice of Voluntary Retirement dated 16.07.2011 to Respondent No.3 - Deputy Director of Health Services through Respondent No.5 – Assistant Director of Health Services (Leprosy), Chandrapur. In notice of Voluntary Retirement she has stated to have completed 20 years and 6 ½ months service and opted for Voluntary Retirement for personal reasons. She claimed Voluntary Retirement w.e.f. 17.10.2011 i.e. after the period of three months from the date of notice of Voluntary Retirement. Admittedly her notice of Voluntary Retirement was accepted by

Respondent No.3 – Deputy Director of Health Service by order dated 17.09.2011 stating that he being competent authority accepted the notice of Voluntary Retirement in terms of Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982. As such, in view of acceptance of Voluntary Retirement her retiral benefits were required to be released. However when the matter was processed it was noticed that in 2002 to 2003 the Applicant was absent from duties for 243 days i.e. from 01.08.2002 to 31.03.2003. Indeed this aspect ought to have been verified by the Respondent No.3 before acceptance of the notice of Voluntary Retirement since it was revealed that in view of the Extra Ordinary Leave period of 240 days pensionable service comes less than 20 years qualifying service required for Voluntary Retirement.

4. Office of Account General (2), Nagpur returned the papers to Respondent No.5 – Assistant Director stating that it needs Government approval since after deducting leave period of 243 days the qualifying service rendered by the Applicant on the date of giving notice of Voluntary Retirement comes to 19 years, 10 months & 21 days only.

5. In Reply filed by Respondent No.6, he states in Para. 48 that Respondent No.2 i.e. Director of Health Services, Maharashtra has already forwarded proposal to the Respondent No.1 as submitted by Respondent No.3 - Deputy Director of Health Services. Thus it appears that the proposal, in view of letter of Accountant General dated 19.12.2019 is already forwarded to the Government but it is still pending.

6. Indeed, when the O.A. was taken up for admission that time itself Tribunal has observed that if the period by which qualifying service fall short (One month and Five days) is condoned then the Applicant will get her legitimate retiral benefits.

7. The Applicant is deprived of her legitimate retiral dues though initially her notice of Voluntary Retirement was accepted by Respondent No.3 albeit without verifying complete record particularly effect of the absenteeism of 243 days. Be that as it may, admittedly the said period of 243 days has been treated as Extra Ordinary Leave stating that it will not be considered for pension purposes as per order dated 01.09.2003. Since, the said period of 243 days is not counted for qualifying service the Applicant had not completed Twenty years complete service on the date of notice of Voluntary Retirement i.e. 16.07.2011.

8. Smt. Punam Mahajan, learned Advocate for the Applicant has pointed out that the Applicant had completed 20 years, 6 months and 15 days service on 16.07.2011 i.e. the date on which notice of Voluntary Retirement was given. According to her if period of 243 days (Extra Ordinary Leave) is excluded, then the services of the Applicant till the date of notice of Voluntary Retirement comes to Nineteen years, Ten months and Twenty Three days and as such, it is short by one month and Seven days. However, she submits that notice of Voluntary Retirement was accepted by Respondent No.3 on 17.10.2011 and if her services are calculated upto 17.10.2011 then it comes more than Twenty years qualifying services which is required for Voluntary Retirement.

9. Indeed, the Government servant is required to render 20 years complete service on the date of notice of Voluntary Retirement. In present case the Applicant's notice for Voluntary Retirement was accepted without taking note that 243 days absence (01.08.2002 to 31.03.2003) was to be treated non-pensionable service.

10. As of now, the position now has become irreversible since notice of Voluntary Retirement had been accepted w.e.f. 07.10.2011 and thereafter the issue of Extra Ordinary Leave of 243 days and less service of One month and Seven days for Pensionary services on the date of notice of Voluntary Retirement has surfaced. Not it is not possible to ask the Applicant to join and to complete the remaining period of service and then again to apply for Voluntary Retirement afresh.

11. Smt. Punam Mahajan, learned Advocate for the Applicant has pointed out that Rule 4 of Maharashtra Civil Services (Pension) Rules, 1982 empowers the Government to relax operation in all these Rules which is likely to cause undue hardship to the Government servant. She therefore submits that Government be directed to consider the proposal already forwarded by Respondent No.2 to Respondent No.1 as referred in Affidavit-in-Reply so that matter is taken to the logical conclusion by passing appropriate order and the Applicant could get her dues entitled in law. She further submits that liberty be granted to the Applicant to make detailed representation under Rule 4 of Maharashtra Civil Services (Pension) Rules, 1982 to the Government and matter be disposed of with direction to decide the same within stipulated period.

12. Learned P.O. fairly concedes to this proposition.

13. In view of above, O.A. deserves to be disposed of since power of relaxation rests with the Government and hopefully having regard to the peculiar facts and circumstances of this O.A. the Government will consider it in appropriate manner.

14. O.A. is accordingly disposed with direction to the Applicant to make detailed representation in reference to Rule 4 of Maharashtra Civil Services (Pension) Rules, 1982 to the Government within two weeks from today and if any such representation is made, Respondent No.1 – Government of Maharashtra shall decide the same within six weeks from the date of receipt of representation and shall communicate the decision to the Applicant, as the case may be, within a week thereafter.

15. If Applicant felt aggrieved, she may avail further legal cause of action as may be permissible in law.

16. If Respondent No.1 accepts the representation, in that event retiral benefits be released within Six weeks thereafter, as per entitlement of the Applicant.

17. No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date: 01.09.2021

Dictation taken by: N.M. Naik.