

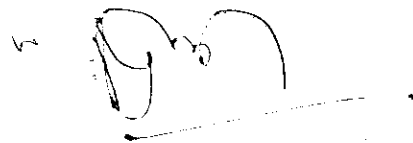
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1228 OF 2013**

DISTRICT : SOLAPUR

Shri Ramchandra Hanmantu Bere,)
Age 59 years, occ. Retired,)
R/o 40, Sony Nagar, Mahatma Gandhi)
National Park, Vijapur Road, Solapur)
Address for notice:)
Shri N.P. Dalvi, Advocate, High Court,)
Office No.9, Second Floor, Shetty House,)
11, M.G. Road, Near Kandeel Hotel,)
Fort, Mumbai)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Vocational & Technical Education,)
Mantralaya, Mumbai)
2. Director of Vocational Education &)
Training, 3, Mahapalika Marg, Mumbai)



3. Deputy Director.)
Vocational Education & Training,)
Regional Office, Ghole Road, Pune-5)..Respondents

Shri N.P. Dalvi – Advocate for the Applicant

Shri N.K. Rajpurohit – Chief Presenting Officer for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)


DATE : 3rd March, 2016

PER : R.B. Malik, Member (J)

J U D G M E N T

1. The applicant an Ex Senior Clerk in Industrial Training Institute (ITI), Kolhapur having been removed from service on the ground of actionable absence from duty vide the order dated 31.7.2009 Exhibit A page 12 of the paper book is up before us calling into question the said impugned order.

2. We have perused the record and proceedings and heard Shri N.P. Dalvi, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.



3. The fact that the applicant was working as a Senior Clerk in the office above referred to as on the crucial date relevant hereto is not in dispute. He having taken up the Government job on 4.3.1986 had in fact completed more than 20 years of service as in the year 2008. It is again not open to question that the applicant remained absent from duty. This fact as a fact was very fairly not disputed by Shri Dalvi, learned Advocate for the Applicant. There is material to show that the wife of the applicant was ailing and that according to the applicant because of his absence. A show cause notice came to be issued to the applicant on 26.12.2005 (Exhibit 'C' Collectively page 14). Thereafter an enquiry was initiated and the enquiry officer Shri S.M. Panse by his order of 9.4.2009 found that the respondents failed to prove that the applicant remained absent unauthorizedly for a period of 240 days while working at Barshi. The second issue raised before him was as to his absence for a total period of 1252 days spread over 94 occasions during 14.5.1998 to 4.7.2007. The answer was that for a number of periods it was so (बराचसा कालावधी विनापरवानगी गैरहजर राहिले). He found as proved the issue as to whether the applicant was relieved on 4.7.2007 from Mandup and reported at Kolhapur on 5.12.2007 and the intervening period was on authorized absence. It was also held proved that the applicant had applied for a leave of 3 days and he ought to have reported



for work on 29.12.2007. But he did not do so. He held that it was a case of serious misconduct.

4. A perusal of the report of the enquiry officer would show that in Para 12 there is a clear reference to the fact that the applicant reported for work on 18.3.2008 but did not sign the muster. He submitted an application for voluntary retirement which was Exhibit 44 in that enquiry. He did not work for the whole day. This fact was intimated by the Principal to his superior and this is very significant as would become clear with the progress of this discussion hereinafter.

5. Now there are two aspects of the matter which require our consideration and determination of the facts at issue. The first one is as to whether on the application of principle in this field of law laid down by the Hon'ble Supreme Court in a number of judgments cited by the Ld. CPO a case is made out for intervention or interference by this Tribunal. The second aspect is as to whether the treatment given to the proposal for voluntary retirement by the applicant by the Principal of the institution and his superior can be said to accord with the relevant rules and is legally sustainable.

6. We shall take up the second aspect first and we shall be pointing out that in the present set of facts a decision

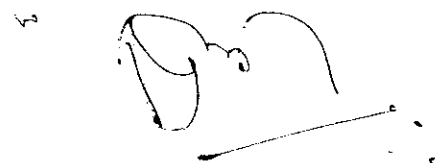
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thereon would really not make it necessary for us to enter any finding on the first aspect.

7. It is not at all in dispute that on 18.3.2008 the applicant responded to an earlier memo (in Marathi) a copy whereof is at Exhibit E page 27 of the paper book. The body thereof needs to be reproduced herein below:

“वरील संदर्भाधीन विषयानुसार आपणांस विनंतीपूर्वक कळवू इच्छीतो की, मी दि.०५/१२/ २००७ रोजी म. पू. या संस्थेत रुजू झालो तदनंतर दि.२४ पासून ते २८.१२.२००७ रोजी रजेचा अर्ज सादर करुन मुख्यालय सोडलेले होते. परंतु माझ्या पत्नीच्या असाध्य अशा आजारपणामुळे मी दि.१७.३.२००८ पर्यंत हजर राहू शकलो नाही, कारण माझ्या पत्नीचे प्रातःविधीपासून ते जेवणखाण येथपर्यंतची सर्व सेवासुश्रुषा मलाच करावे लागते. त्यास्तव मला कार्यालयात हजर होणे शक्य झाले नाही. त्याबद्दल क्षमा करावी ही विनंती. यापुढे मी स्वेच्छा सेवा निवृत्तीचा अर्ज सादर केलेला आहे. तो कृपया योग्य त्या पुढील कार्यवाहीसाठी पाठवावा व मला आज दि.१८.३.२००८ रोजी रुजू करुन उपकृत करावे, ही पुनश्च नम्र विनंती करीत आहे.”

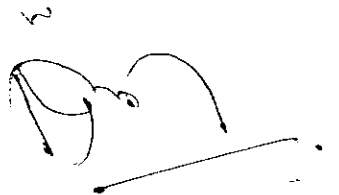
8. In the affidavit in reply filed by Shri Chandraprakash Vasantao Edake, Assistant Director in the office of the Joint



Director, Vocational Education and Training, Pune, Para 9 is pertinent and, therefore, is fully reproduced hereinbelow:

“With reference to Para 6.6, I say and submit that the respondent no.3 issued notice to the applicant for his long absenteeism of dated 20.2.2008 and the crystal clear notice dated 31.3.2008 the applicant say has been rejected. The applicant has not attached the V.R.S application in Exhibit E, because it is also not submitted to respondent no.3 through proper channel, so question of VRS does not arise. The applicant has submitted for his VRS application only to the Principal of the ITI Kolhapur who is not the competent appointing authority and the said VRS application has been submitted during his absence period.”

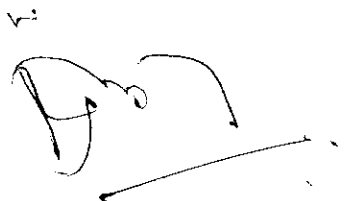
9. Overleaf the application of 18.3.2008 reproduced above a lengthy endorsement was made in effect mentioning that the applicant submitted the proposal for voluntary retirement but he did not do so in the prescribed format and, therefore, necessary action could not be taken in the matter. In the order dated 29.3.2008 issued by the Principal of the said institution an adverse view was taken of the conduct of the applicant.

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10. It is, therefore, very clear that the fact that by some kind of a common response to the memo-cum-proposal for voluntary retirement the applicant made it clear that he in the first place had some answer to his absence which for the reasons already set out above and those that will be further set out it is not necessary for us to closely examine and secondly he was so minded as to tender his proposal for voluntary retirement. Be it noted that going by the relevant provisions of Rule 66 of MCS (Pension) Rules, 1982 having put in more than 20 years of service if the employee heard nothing from the Government for a period of 3 months after submission of VRS application then his voluntary retirement notice would become effective from the date of its submission.

11. Therefore, the issue that gets boiled down to is as to whether in the present context and set of facts it could be held that the applicant had submitted such a proposal for voluntary retirement. The Ld. CPO strongly contended and which has also been pleaded and mentioned in a few documents of contemporaneous vintage that the notice was not in the prescribed format and the Principal being not the competent authority it was not preferred to a competent authority.

12. As to the above aspect of respondents' case we find that at best of times this is an argument of technicality. The applicant was in the clerical cadre and he was functioning

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directly under the Principal. Whatever correspondence he had to enter into with the higher ups he could only have done it through the departmental head viz. the Principal. May be the better course of action would have been to address the communication to the competent authority but even then he would have been required to route it through none other but the Principal. If that be so and if the said proposal was addressed to the Principal there seems to be no reason why the Principal could not have forwarded it to the competent authority. It is no doubt true that the said proposal was contained in a hand written communication and not in the prescribed proforma.

13. Shri N.P. Dalvi, learned Advocate for the applicant referred us to **PRINCIPAL, MEHAR CHAND POLYTECHNIC AND ANOTHER VERSUS ANU LAMBA AND OTHERS, 2006 SCC (L&S) 1580**. The facts there may not have been similar to the present one. But the essence of the mandate was that the State as a model employer must act within the constitutional and the legal norms.

14. That being the state of affairs in our opinion the approach of the respondents in this matter was not quite appropriate and they could have resorted to a better and more pertinent way to deal with the issue of voluntary retirement. In our opinion if the rule above referred to prescribes the course of



action which in the manner of speaking gives a certain right to an employee then the approach should be adopted which would further the object underlying the same and this incidentally will have to be studied in the context of the reasons for which absence from duty was becaused. The basic idea behind the whole exercise apparently is that if VRS was accepted the applicant would be entitled to pensionary benefits etc.

15. The upshot is that even now the clock may have to be set back and the matter will have to be remitted back to the competent authority being Dy. Director, Vocational Education and Training to comply herewith and consider the move for voluntary retirement of the applicant. An outer time limit will be laid down for the same. That being the state of affairs as already mentioned above it will not be necessary for us to examine the first aspect of the matter. Shri N.K. Rajpurohit, the Ld. CPO relied upon a number of judgments of the Hon'ble Supreme Court including **B.C. CHATURVEDI VERSUS UNION OF INDIA AND OTHERS, (1995) 6 SCC 749** and other judgments in which *B.C. Chaturvedi* has also been referred to. In order to serve as guidance he invited reference to the said judgment of *B.C. Chaturvedi* and others which provide the cantors of the jurisdiction of a judicial or quasi judicial forum exercising the jurisdiction of judicial review of administration action both in the matter of scrutinizing the process of guilt determination as well as quantum of punishment. The Ld. CPO



relied upon **STATE OF RAJASTHAN AND ANOTHER VERSUS MOHD. AYUB NAZ, (2006 1 SCC 589** (Para 9) in which it has been laid down that in public services absence from duty should be sternly viewed.

16. As far as the last quoted authority is concerned it must have become very clear that in the present set of facts the decision rests on the approach of the authorities in dealing with the application for voluntary retirement. A proper treatment to such an application is an independent right of an employee which was not the issue in *Mohd. Ayub Naz's* case supra. And as far as the other judgments are concerned as already mentioned above we have left undecided the first aspect of the matter in view of our findings on the second aspect. We must, however, make it clear that even in future and depending upon the manner in which the authorities act on our directions, if need be, liberty is reserved for the applicant to re-agitate that aspect also in which event this Tribunal will have to consider and apply the principles emanating from the above referred case law cited by the Ld. CPO.

17. The order herein impugned is quashed and set aside. The matter stands remanded to the respondent no.3 Dy. Director, Vocational Education and Training, Regional Office, Ghole Road, Pune for appropriate decision in the light of the above discussion. The applicant is directed to appear before

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the said authority on 21.3.2016 on which date the applicant shall be guided with regard to the course of action to be adopted including the application being made in a proper format. The applicant shall then submit an application in a proper format within one week thereafter and the concerned respondents shall take an appropriate decision within four weeks and if the applicant's move meets with the requirements of voluntary retirement accept and convey the same to the applicant within one week. The OA is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
3.3.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
3.3.2016

Date : 3rd March, 2016

Dictation taken by: S.G. Jawalkar.

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