

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.356 OF 2012
(SUBJECT : REPATRIATION OF POLICE CONSTABLE)**

DISTRICT: NASHIK

Shri Yogesh Vijaykumar Papal,)
R/o. Row House No.B-36, Lokmangal,)
Konark Nagar, Adgaon, Nashik 422 003.) **.. Applicant**

Versus

1) The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 32.)

2) Superintendent of Police,)
Nashik (Gramin), Head Quarter, Adgaon,)
Mumbai – Agra Road, Nashik.) **..Respondents**

Shri A.S. Gaikwad, the learned Advocate for the Applicant.

Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN
SHRI P.N. DIXIT, MEMBER(A)

RESERVED ON : 11.01.2019.

PRONOUNCED ON : 22.01.2019.

PER : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

J U D G M E N T

1. Heard Shri A.S. Gaikwad, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

2. Heard both sides. Perused the record.

3. Facts of the case can be briefly referred as follows :-

- (a) Applicant was serving as Constable in Police force on 02.11.2007 in the employment of Respondent No.2.
- (b) While in service, Applicant had applied for appointment as Clerk in the Civil Court.
- (c) Applicant's application for appointment was forwarded through proper channel. After selection as a Clerk, Applicant resigned his employment in the establishment of Respondent No.2.
- (d) After serving for about three months in Civil Court, Applicant submitted application to Respondent No.2 and requested that he may be permitted to withdraw his designation and resume duties as a Police Constable.
- (e) Applicant's request for withdrawal of resignation is rejected by the impugned communication dated 06.03.2012.
- (f) Applicant has approached this Tribunal challenging order dated 06.03.2012.

4. In the present O.A. Applicant has averred the ground of challenge and has placed emphatic reliance on Rule 46(5) of Maharashtra Civil Services (Pension) Rules, 1982 is totally erroneous.

5. According to Applicant, Respondent No.2 would get an experienced hand, if applicant's request is acceded and he is restored in employment as Police Constable.

6. The Respondents-State has opposed the O.A. relying on Rule 46(1) of the Maharashtra Civil Services (Pension) Rules, 1982 urging that Applicant has lost lean having resigned and part service get forfeited upon resignation.

7. In present case, according to the applicant, the circumstances which propelled applicant to resign were that applicant got employment of his choice. Admittedly, applicant continued on the said appointment for three months. All that applicant has stated as ground for retraction is that he is suffering monetary loss of Rs.3,000/- to 4,000/- per month which he had not visualized earlier.

8. Crucial provision of withdrawal of resignation preventing of loss of forfeiture service is governed in Rule 46(4)(a) & (b) of the Maharashtra Civil Services (Pension) Rules, 1982 which reads as follows :-

“46. Forfeiture of service on resignation.

(1) to (3)

(4) The appointing authority may consider the request of a person who had earlier resigned his post under Government, to take him back in service in the public interest on the following conditions, namely :-

- (a) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;*
- (b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;”*

(Quoted from page 33 & 34 of MCS (Pension) Rules, 1982)

9. If Applicant wanted to withdraw his resignation within 90 days he ought to have shown that the “circumstances” which propelled at the time of his resignation have ceased to exist.

10. Rule 46(4)(a) lays down two conditions :-

- (a) Resignation ought to have been a consequence of compelling circumstances not involving any reflection on his integrity, efficiency or conduct.
- (b) Request for withdrawal of resignation has been made as a result of material change in the circumstances which originally compelled him to tender resignation.

11. In the present case, first condition quoted in foregoing paragraph has no application or relevance.

12. Applicant’s case is governed by 2nd condition namely material change in the circumstances.

13. Perusal of O.A. reveals that only circumstances advanced by Applicant as a ground for withdrawal of resignation is monetary loss and this is not change in circumstances much less compelling change in circumstances which originally compelled to tender resignation. Moreover any evidence of exact monetary loss has not been produced and applicant wants his vague version to be trusted as gospel.

14. In view that applicant has failed to address the pivotal jurisdictional issue namely what were the circumstances which existed and have compelled the Applicant to resign and whether those circumstances have ceased to exist.

15. Hence, applicant has failed to make out case for grant of relief whatsoever.

16. It is only on the 2nd thought that applicant repents for having secured job in the court, he still finds that his services in the Police was more attractive and lucrative. The Applicant has to repent for his own decision, and no relief whatsoever can be granted since there is no illegality in the impugned order.

17. Original Application has no merits and is dismissed. Applicant shall bear own costs.

Sd/-

(P.N. Dixit)
Member(A)

Sd/-

(A.H. Joshi, J.)
Chairman

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