

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR, BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.480 OF 2016
(Subject : Challenging cancellation of V.R.S.)**

DISTRICT : NAGPUR

Pramod Wasudeorao Salve,)
R/o. Manisha Apartments, Nandanvan Chowk,)
Nandanvan, Nagpur.)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Medical Education and Drugs Department,)
Mantralaya, Mumbai 32.)
2. Director AYUSH,)
3rd Floor, St. George Hospital,)
Mumbai.)
3. Dean Government Ayurveda College,)
Sakkardara Chowk, Sakkardara Umrer Road,)
Nagpur.)

....RESPONDENTS.

Shri S.P. Palshikar, learned Advocate for the Applicant.

Shri M.I. Khan, learned Presenting Officer for the Respondents

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)
SHRI J.D. KULKARNI, VICE-CHAIRMAN (J)

DATE : 11.8.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

J U D G M E N T

1. Heard Shri S.P. Palshikar, learned Advocate for the Applicant and Shri M.I. Khan, learned Presenting Officer for the Respondents.
2. This Original Application is filed by the Applicant challenging communication from the Respondent No.3 dated 24.05.2016 as bad in law and seeking a declaration that he stood retired voluntarily from Government service with effect from 01.05.2016.
3. Learned Counsel for the Applicant argued that the Applicant was working as Lecturer in Government Aurvedic College, Nagpur when he gave a notice of voluntary to the Respondent No.1 through the Respondent No.3 on 01.02.2016. The Applicant had completed 26 years of service and his notice was given as per Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. The notice of voluntary retirement is deemed to be accepted after expiry of 90 days, if no decision is taken within that period. The Applicant was informed on 24.05.2016 by the Respondent No.3 that his

request for voluntary retired was rejected. However, period of 90 days expired on 30.04.2016 and the Applicant was deemed to have retired from service after that date. The letter dated 24.05.2016 is without authority of law and it needs to be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that a notice of voluntary retirement can be rejected, even after expiry of 90 days period, if it was contemplated to start a D.E. against the concerned Government employee. The Applicant was placed under suspension from 07.12.2005 to 06.12.2013 and a number of disciplinary enquiries were pending against him. The aforementioned period of suspension was regularized except for pensionary benefits. In this background, the notice of voluntary retirement of the Applicant was rejected by the Respondent No.1 by letter dated 23.05.2016 and the same was communicated to the Applicant on 24.05.2016 by the Respondent No.3. Learned P.O. relied upon the judgment of Hon'ble Supreme Court in the case of **Dr. Baljit Singh Versus State of Haryana : (1997) 1 SCC 754**, wherein Hon'ble Supreme Court has held that when serious offences are pending trial, it is open for the Government to decide whether or not the delinquent should be permitted to retire voluntarily. Unless the acceptance or rejection of request for voluntary retirement is communicated to the employee, he is required to remain in office.

5. It is seen that the Respondents have admitted that Applicant had tendered notice of voluntary retirement on 01.02.2016 and it was rejected by the competent authority viz. the Respondent No.1 by letter dated 23.05.2016. The decision of the Respondent No.1 was communicated to the Applicant on 24.05.2016. The rejection was clearly beyond the period of three months, which expired on 01.05.2016. Proviso below Rule 66(2) of the Pension Rules, clearly stipulates that if the appointing authority does not refuse to grant the permission for retirement before the expiry of period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

6. The Applicant had given notice of voluntary retirement on 01.02.2016 and sought retirement from 02.05.2016. The decision was communicated to him on 24.05.2016 by the Respondent No.3 that it was contemplated a file a case against him in the Court of law. The Respondents have argued that the decision of the Respondent No.1 was dated 23.05.2016. It is seen that the language used in this communication is identical with that used in letter dated 24.05.2016 by the Respondent No.3. It reads :-

“विभागीय चौकशी नियमपुस्तिका १९९१ मधील नियम ४.११ नुसार संबंधित शासकीय कर्मचा-याविरुद्ध न्यायलयात खटला भरण्याचे योजिले असल्याची बाब विचारात घेऊन त्यांची स्वेच्छा सेवा निवृत्तीची नोटीस फोटाळण्यात येत आहेत.”

The decision was required to be taken as per Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 and not under the Departmental Enquiry Manual. The reason for rejecting the request of voluntary retirement is not pendency of a criminal case. In fact, no criminal case was actually filed or pending against the Applicant. Only, it was being contemplated that a criminal case may be filed against the Applicant in a Court of law. That is clearly not the subject matter of Departmental Enquiry manual.

7. In **Dr. Baljit Singh's** case (supra) Hon'ble Supreme Court has not held that in all cases, notice of voluntary retirement will not become effective unless accepted. It is mentioned in the judgment that :

"In this case, since serious offences are pending trial against him, the Government have rightly refused to permit him to retire voluntarily from service."

In present case, no criminal case, serious or otherwise, was pending against the Applicant on 24.05.2016, when the request of voluntary retirement of the Applicant was rejected. Hon'ble Supreme Court has held that "Each should be considered in its own backdrop of facts." In our considered opinion, the aforesaid judgment of Hon'ble Supreme Court is clearly distinguishable in the present case. The Respondents have rejected the request of voluntary retirement in contemplation of filing a criminal case. No case was actually

pending. The rejection is after statutory period of 3 months had expired. Therefore, the Applicant is deemed to have retired from Government service w.e.f. 02.05.2016 and the orders dated 23.05.2016 and 24.05.2016 are unsustainable and are hereby quashed and set aside.

8. Having regard to the aforesaid facts and circumstances of the case, this O.A. is allowed. The Applicant is deemed to have retired voluntarily w.e.f 02.05.2016. The Respondents are directed to pay his retirement dues within a period of 3 months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Place : Nagpur
Date : 11.8.2017
Typed by : PRK