

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.885 OF 2014

DISTRICT : SANGLI


Dr. (Smt.) Snehal Anil Trimbake.)
(Since before marriage – Smt. S.N. Tonape,))
Working as Medical Officer, Rural)
Hospital, Kadegaon, Dist : Sangli.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having Office at 9, “Ram-Krishna”,)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...Applicant

Versus

1. The District Health Officer.)
Zilla Parishad, Satara.)
2. The Dy. Director.)
Health Services, Kolhapur Circle,)
Kolhapur.)
3. The Civil Surgeon.)
Civil Hospital, Satara.)
4. The State of Maharashtra.)
Through the Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.



CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 26.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

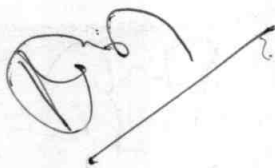
JUDGMENT

1. This Original Application (OA) is presented by a Medical Officer stung by the refusal to accept her notice dated 29.03.2013 for voluntary retirement under Rule 66 (1) of the Maharashtra Civil Service (Pension) Rules, 1982 (Pension Rules) by the said order. One earlier similar move failed when a similar application was rejected vide Exh. 'E' (Page 19 of the Paper Book (P.B.)).

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the Learned advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (P.O.) for the Respondents.

3. An application for retirement under Rule 66 (1) of the Pension Rules will be competent, if twenty years of qualifying service is completed. Its effectuation required acceptance by the Government.

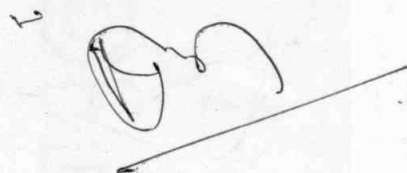
4. The 1st Respondent is the District Health Officer, Zilla Parishad, Satara, the 2nd Respondent is the Deputy



Director, Health Services, Kolhapur, the 3rd Respondent is the Civil Surgeon, Satara and the 4th Respondent is the State of Maharashtra in Public Health Department.

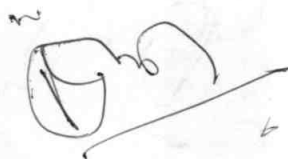
5. The Applicant came to be appointed as a Medical Officer on 16.09.1992 as a bonded candidate. She continued in the similar capacity with one more order of appointment on 07.06.1995. But she had been given a break on 28.09.1994. It is a common ground that the applicant took charge as a candidate duly recommended by the M.P.S.C. on 27.09.1995. The Respondents in their common Affidavit-in-Reply in Para 6 (Page 30 of P.B.) have averred that the qualifying service of the Applicant would commence w.e.f. 27.09.1995.

6. Relying on a Certificate dated 31.07.2014 (Exh. 'B', Page 13 P.B.) of District Health Officer, Satara, the Applicant sets up a case that even of the date of 28.09.1994, she was given the salary. The Applicant, therefore, seeks condonation of break. The net result would be that her service would then be counted without any break from 16.09.1992. She would then become eligible to seek voluntary retirement on and after 16.09.2012. It needs to be noted that the Hon'ble Supreme Court in **Md. Abdul Kadir- Vs - D.G. Police Assam (2009) 6 scc 611 has held** that the practice of giving artificial



breaks in service is contrary to service jurisprudence. Further, the Applicant relied upon an order in **O.A. 467 of 2007 (Dr. Smt. Pushpalata Pandurang Sonawale-Vs - The state of Maharashtra and 2 others 29.08.2008)**. In that OA, the issue was regarding Assured Career Progression Scheme and the date from which the service should be counted as continuous for the period of 12 years. The break was condoned. Mr. Bandiwadekar, the learned Advocate for the Applicant also relied upon a common order is a fasciculus of **O.As and one R.A. (Review Application) being O.A. 242/09 and others (Dr. Mahesh Atmaram Patil Vs. The State of Maharashtra and two others and other O.As, dated 02.05.2016 decided by us speaking through one of us (Shri Rajeev Agarwal, Vice-Chairman)**. In that order also break was condoned. In support of his argument that the Applicant is entitled to the benefit of rule of similarly placed person, he relied upon **Maharaj Krishan Bhatt Vs. State of Jammu and Kashmir and other (2008) 2 scc 783.**

7. The Applicant in our view has got an acceptable case. In view of she having been given the salary of that one day either, there was no break or in any case, the break can be condoned *a'la* **Sonawale** (supra). If that course of action was adopted then her service would be counted form 16.09.1992. Her notice of seeking retirement



under Rule 66 (1) of the Pension Rules served in 2012 would be in order. In any case, her application Exh. 'F' (Page 21 of P.B, dated 29th March, 2013) would be quite valid. And on practical side of it, by a plain mathematical calculation, she assumed charge in a regular manner on 27.09.1995 (see the above discussion). Therefore, on and after 26.09.2015, her case is absolutely clear. There is no point in cribbing on technicalities, and therefore, necessary directions can quite safely be given to the respondents.

8. The Applicant having now completed 20 years of qualifying service her notice of seeking retirement under Rule 66 (1) of the Maharashtra Civil Services (Pension) Rules be reconsidered, processed and in the absence of any valid objection accepted within the time limit prescribed thereby.

9. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
26.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
26.08.2016

Mumbai

Date : 26.08.2016

Dictation taken by :

S.K. Wamanse.

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