

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.887 OF 2019

DISTRICT : NASHIK

Sub.:- Voluntary Retirement

Shri Balasaheb Pandharinath Karwal.)
Age : 55 Yrs, Occu.: Circle Officer in the)
Office of Tahasildar, Nandgaon,)
District : Nashik and residing at)
Laxmanrekha Apartment, Laxman Nagar,)
Canada Corner, Nashik.)...**Applicant**

Versus

1. The District Collector,)
Nashik, having office at Old C.B.S,)
Nashik – 2.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 400 032.)
3. The Tahasildar, Tal.: Nandgaon,)
Having Office at Nandgaon,)
District : Nashik.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.02.2023

JUDGMENT

1. The Applicant has challenged the impugned communication dated 02.07.2019 whereby Respondent No.1 – Collector, Nashik accepted notice of voluntary retirement and also challenged the communication dated 31.07.2019 whereby his notice of withdrawal of voluntary retirement dated 18.07.2019 is rejected.

2. Shortly stated facts giving rise to this application are as under :-

While Applicant was serving as Circle Officer in Tahasil Office, Nandgaon, District Nashik, he submitted notice of voluntary retirement on health ground on 01.04.2019 with request to Collector to retire him on 30.06.2019 (on expiry of 3 months' notice period). However, before expiration of 3 months' period, he gave letter dated 13.06.2019 and raised grievance that because of some ailment, he had earlier requested for his transfer from Nandgaon to Nashik, but it was not considered, and therefore, he had tendered notice of voluntary retirement on 01.04.2019. In letter, he requested to consider his request for transfer to Nashik. However, it was not responded. Later, Collector by communication dated 02.07.2019 informed the Applicant that his notice of voluntary retirement dated 01.04.2019 has been accepted in terms of Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) and he stands retired w.e.f. 30.06.2019 after office hours. Thereafter, Applicant again made an application on 18.07.2019 stating that though earlier he had requested for voluntary retirement on personal ground and it came to be accepted by the Department, he had 3 years' service left, and therefore, requested not to accept voluntary retirement and he be posted in the Office of Divisional Commissioner, Nashik. The Collector by communication dated 31.07.2019, however, rejected his applications stating that his voluntary retirement notice is already accepted by communication dated 02.07.2019.

3. On the above background, the Applicant has challenged the communication dated 02.07.2019 as well as 31.07.2019 in the present O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communications and made two-fold submissions.

(i) Before expiration of period of notice, the Applicant by letter dated 13.06.2019 (Page No.22 of Paper Book) sought to withdraw notice of voluntary retirement and it ought to have accepted as withdrawal notice of retirement.

(ii) In alternative submission, he has pointed out that the communication of acceptance of notice of voluntary retirement was not served upon the Applicant till 28.08.2019. Consequently, Applicant deemed to have been in service till 28.08.2019. Thus, according to him, till 28.08.2019, the relationship of employer and employee were in subsistence. Therefore, Applicant's second letter dated 18.07.2019 whereby he requested not to accept his voluntary retirement ought to have been accepted by Collector.

5. To bolster the contention, the learned Advocate for the Applicant sought to draw support from the decision rendered by this Tribunal in **O.A.No.499/2017 (Pradipkumar Y. Bhurke Vs. The Chairman/Secretary, MPSC) decided on 13.02.2019** and **(1997) SCC 280 [Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia]**.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to stand taken in Affidavit-in-reply submits that in terms of notice of voluntary retirement dated 01.04.2019, he was to retire after 3 months' period w.e.f. 30.06.2019 and request for withdrawal of notice can be given only before intended dated of retirement and not thereafter.

Whereas in the present case, the letter for withdrawal of notice though given on 13.06.2019, it was not unconditional withdrawal of notice of retirement, but it was only for request for transfer from Nandgaon to Nashik as a conditional withdrawal of notice of voluntary retirement. Therefore, it could not be considered or acted upon as withdrawal of notice of voluntary retirement. After expiration of 3 months' period on 30.06.2019, the relationship of employer and employee come to an end. The Collector, therefore, by communication dated 02.07.2019 passed order of accepting notice of voluntary retirement w.e.f. 30.06.2019. The learned P.O. has further pointed out that on 02.07.2019, the Applicant has tendered Affidavit (Page No.51 of P.B.) stating that he had tendered the resignation notice voluntarily without any pressure and intend to take voluntary retirement w.e.f.30.06.2019 after office hours. However, later Applicant sent letter dated 18.06.2019 for not accepting his resignation with request to transfer him in the Office of Divisional Commissioner, Nashik. Since notice of voluntary retirement was already accepted, the Collector by his communication dated 31.07.2019 rejected his request. On this line of submission, learned P.O. submits that there was no withdrawal of voluntary retirement before the intended date of retirement, and therefore, challenge to the impugned communications holds no water. Reliance is placed on the decision of Hon'ble High Court (Aurangabad Bench) in ***Writ Petition No.2442 of 2019 [Gajanan S. Maitri Vs. Union of India & Ors.] decided on 26.04.2019.***

7. In view of pleadings and submissions, the issue posed for consideration is whether communication dated 13.06.2019 could be considered as a withdrawal of notice of voluntary retirement and secondly, whether Applicant could be said in employment on 18.07.2019 on which he made second request for not accepting his voluntary retirement notice.

8. Retirement on completion of qualifying service is governed by Rule 66(5) of 'Pension Rules of 1982'. The Government servant who desires to

take voluntary retirement is required to give 3 months' notice to the appointing authority. Here Rule 66(5) with proviso is material, which is as under :-

“**66(5)** A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority :

Provided that the request for withdrawal shall be before the intended date of his retirement.”

9. Thus, Rule 66(5) expressly permits Government servant to withdraw notice of voluntary retirement provided request of withdrawal is made before the intended date of retirement and Government servant is precluded from withdrawing his notice except with specific approval of the authority.

10. Now, turning to the facts of the present case, notably, in notice of retirement dated 01.04.2019 (Page No.20 of P.B.), the Applicant has specifically mentioned the date of intended retirement as 30.06.2019. Thus, by operation of law and in view of his request, he was to retire on 30.06.2019. True, on 13.06.2019, he made one application, but it cannot be termed as withdrawal of retirement notice. The contents of letter dated 13.06.2019 are material, which are as under :-

“महोदय,

विनंती अर्ज करितो की मी सध्यस्थितीत पुरवठा अव्वल कारकून, तहसील कार्यालय, नांदगाव येथे दिनांक १/६/२०१८ पासून कार्यरत आहे. माझे हाताचे व पायाचे ऑपरेशन झालेले असून माझे कुटुंब नाशिक येथे स्थायिक आहे. मला इतक्या लांब नांदगाव येथे प्रवास करणे शक्य होत नाही म्हणून मी मागील वर्षी बदलीसाठी विनंती अर्ज केला होता परंतु माझे अर्जाचा विचार केला गेला नाही व माझी बदली झाली नाही म्हणून मी स्वेच्छा निवृत्ती घेण्याचा विचार करून तसा प्रस्ताव सादर केलेला आहे. तसेच मी आजपावेतो चांगल्या प्रकारे सेवा केलेली असून मी सध्या नायब तहसीलदार या पदासाठी पपदोन्नतीस पात्र आहे. माझी उर्वरित तीन वर्षे इतका इतका सेवा कालावधी शिल्लक आहे.

आदरणीय महोदयांना नम्र विनंती करितो की, मी याही वर्षी आपलेकडेस तसेच मा. विभाग आयुक्त सो यांचेकडेस बदलीसाठी विनंती अर्ज सादर केला आहे. परंतु माझी बदली झालेली नाही तसेच माझा बदलीसाठीचा अर्ज मा. विभागीय आयुक्त सो नाशिक यांचेकडेस शिफारस करून पाठविलेस माझी बदली होऊन माझी सोय होऊ शकेल तसेच मी स्वेच्छा सेवा निवृत्ती न घेता उर्वरित कार्यकाळ शासनाची सेवा चांगल्या प्रकारे करू शकेन.

सबब माझे अर्जाचा सहानुभूतीपूर्वक विचार करून माझे माझ्या आजारपणामुळे मला नाशिक येथे बदली अथवा सेवा वर्ग करण्यासाठी आपले स्तरावरून मा. विभागीय आयुक्त, नाशिक यांना योग्य ती शिफारस करावी ही नम्र विनंती.”

11. Curiously, not a single word about withdrawal of resignation notice is mentioned in the above letter. All that, it speaks about request for transfer to Nashik and nothing else. Even if it is construed liberally, the Applicant intended to put condition for posting at Nashik. Suffice to say, such letter cannot be termed withdrawal of notice of resignation. In any event, all that it could be termed conditional withdrawal of notice of retirement, if he was given posting at Nashik. Needless to mention, no such condition can be set out by employee for withdrawal of resignation. Thus, situation emerges that there was no such withdrawal of resignation letter till intended date of retirement. It is well settled that Government employees have locus to withdraw his request for voluntary retirement before the intended date of retirement and not thereafter. Once intended date of retirement is over, the relationship of employer and employee comes to an end. In this behalf, learned P.O. rightly referred the decision in **Gajanan Maitri's** case (cited supra) where in similar situation, in Para No.15, Hon'ble High Court summarized legal position as under :-

“15. The government employee will have locus poenitentiae to withdraw his request for voluntary retirement before the intended date of retirement and not thereafter. On the lapse of intended date of retirement the relationship of the employer and employee would come to an end.”

12. At this juncture, it would be apposite to refer the decision in **2001(3) SCC 290 [Tek Chand Vs. Dile Ram]** wherein Hon'ble Supreme Court observed as under :-

“Thus, from the aforesaid three decisions, it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant Rules and there is not provision in the Rules to withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelats case and as in Sayed Muzaffar Mirs case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz, in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to

retire and must also communicate the same to the employee as stated in B.J. Shelats case and in Sayed Muzaffar Mirs case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employees nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permissions.”

13. Thus, it is no more *res-integra* that notice of voluntary retirement can be withdrawn before the intended date of retirement only and not thereafter. In the present case, there being no such withdrawal of conditional voluntary retirement notice, it is a matter of fact accomplished once intended the date of retirement is over.

14. Despite the aforesaid position, the Applicant later again made an application on 18.07.2019, which is after intended date of retirement and the contents of the letter are also quite interesting, which are as under :-

“महोदय,

विनंती अर्ज करितो की मी दिनांक १/०४/२०१९ रोजी स्वेच्छा निवृत्तीचा अर्ज सादर केला होता. त्यानुसार माझी स्वेच्छा निवृत्ती मंजूर करण्यात आलेली असल्याचे समजते.

तथापि मी दि.१३/६/२०१९ रोजी आपलेकडे विनंती अर्ज सादर करून त्यात स्पष्ट नमूद केले होते की माझा अपघात (अॅक्सीडेंट) होऊन शस्त्रक्रिया झालेली असून माझे कुटुंब नाशिक येथे स्थायिक आहे. मला नांदगाव येथे प्रवास करणे शक्य होत नाही म्हणून मी वर्षापासून बदलीसाठी अर्ज केला होता परंतु माझ्या अर्जाचा विचार केला गेला नाही व माझी बदली झाली नाही म्हणून मी स्वेच्छा निवृत्ती घेण्याचा विचार करून मी तसा प्रस्ताव सादर केला होता.

तसेच मी आज पावेतो चांगल्या प्रकारे शासन सेवेत सेवा केलेली आहे. मी सध्या नायब तहसीलदार या पदासाठी पदोन्नतीस पात्र आहे. माझा उर्वरित ३ वर्षे इतका सेवा कालावधी शिल्लक आहे. म्हणून मी मा. विभागीय आयुक्त सो. नाशिक यांचेकडेस बदलीसाठी अर्ज सादर केला होता आणि माझी बदली होण्यासाठी आपले स्तरावरून शिफारस होणेकामी विनंती केली होती. तसेच माझ्या आजारपणामुळे मला बदली अथवा सेवा वर्ग करण्यासाठी आपलेकडेस तसेच मा. विभागीय आयुक्त सो नाशिक यांचेकडेस विनंती अर्ज सादर केलेला आहे.

परंतु माझ्या अर्जाचा कुठल्याही प्रकारे सहानुभूतीपूर्वक विचार न करता प्रथम माझी स्वेच्छा निवृत्ती मंजूर करण्यात आल्याचे समजले आहे.

सबब माझी नम्र विनंती आहे की, माझी स्वेच्छा निवृत्ती नामंजूर करण्यात येऊन मला आपल्या कार्यालयात अथवा मा. विभागीय आयुक्त कार्यालय, नाशिक येथे बदली अथवा सेवा वर्ग करणेत यावी ही विनंती.”

15. In first place, in this letter also, Applicant admits that he got the knowledge that his notice of voluntary retirement is already accepted. Secondly, he again reiterated his request for transfer to Nashik. Thus, all that, in letter dated 18.07.2019, he again requested for posting at Nashik and reinstatement by rejecting his voluntary retirement notice. Indeed, after expiration of 3 months' period as well as the dates

specifically mentioned by him, he stands retired on 30.06.2019. Therefore, the question of withdrawal of resignation notice after it has taken effect does not survive.

16. Despite the aforesaid situation and legal position, the learned Advocate for the Applicant tried to contend that since order of acceptance of voluntary retirement passed by Collector on 02.07.2019 was served upon the Applicant quite belatedly on 28.08.2019, till then, jurial relationship of employer and employee were subsisting, and therefore, application made by Government servant on 18.07.2019 ought to have been accepted as a withdrawal of notice of voluntary retirement. For this purpose, he has pointed out that as per extract of Outward Register (Page No.25 of P.B.), the order of Collector dated 02.07.2019 about acceptance of voluntary retirement notice was dispatched to the Applicant on 27.07.2019. True, it appears that the order of Collector dated 02.07.2019 was dispatched quite belatedly on 27.07.2019. However, there is no denying that Applicant himself has given intended date of retirement 30.06.2019 (3 months' notice) and there was no such withdrawal of voluntary retirement before the deadline i.e. upto 30.06.2019. This being the position, the relationship of employer and employer comes to an end on 30.06.2019 itself. Thus, even if order was communicated to the Applicant somewhat late, it cannot be said that relationship of employer and employee were in existence after 30.06.2019. Indeed, in letter dated 18.07.2019, the Applicant himself clarified that he had knowledge that his notice of voluntary retirement is already accepted. Thus, even assuming for a moment that the order of Collector dated 02.07.2019 was served upon the Applicant belatedly that *ipso-facto* would not revive the relationship of employer and employee, which had already terminated on 30.06.2019 as a legal consequence.

17. Indeed, notably, Applicant himself submitted an Affidavit on 02.07.2019 clearly stating that he had tendered notice of voluntary retirement on personal grounds without any pressure. The said Affidavit

run counter to his contention that subsequently he intended to withdraw the resignation. The contents of Affidavit (Page No.51 P.B.) are as under:-

“प्र ति ज्ञा प त्र

मा. कार्यकारी दंडाधिकारी, नाशिक यांचे समोर

मी बाळासाहेब पंढरीनाथ कारवाळ, वय ५५, धंदा-नोकरी, राहणार ७, लक्ष्मण रेखा अपार्ट, कॅनडा कॉर्नर, नाशिक कारणे सत्य प्रतिज्ञावर कथन करतो की,

मी महसूल खात्यामध्ये दि.१६/८/१९९१ रोजी तलाठी पदावर मौजे कुंभाळे, ता. पेठ, जि. नाशिक येथे हजर झालो होतो. आज रोजी मी पुरवठा विभागात अव्वल कारकून म्हणून तहसील कार्यालयात नांदगाव येथे कार्यरत आहे. दि. १६/८/१९९१ पासून आजअखेर माजी सलग सेवा २७ वर्षे १० महिने १५ दिवस झालेली आहे. माझे स्वतःचे वैद्यकीय कारणास्तव व कौटुंबिक कारणास्तव मी शासन सेवेतून दि.३०/६/२०१९ (कार्यालयीन वेळेनंतर) पासून स्वेच्छा सेवानिवृत्ती घेऊ इच्छितो. सदर स्वेच्छा निवृत्तीचा निर्णय मी राजीखुशीने घेतलेला असून मला स्वेच्छा निवृत्ती घेणेबाबत कोणत्याही प्रकारचा दबाव नाही. माझी जन्म ता.१/६/१९६४ अशी खरी व बरोबर आहे याचे सत्यतेकामी मी सदरचे प्रमाणपत्र लिहून देत आहे.”

18. Reliance placed on the decision in Power Finance Corporation' case (cited supra) is totally misplaced. In that case, employee had applied for voluntary retirement pursuant to Scheme framed by Power Finance Corporation to relieve surplus staff. Initially, Corporation by order dated 20.12.1994 accepted employees' voluntary retirement w.e.f. 31.12.1994 subject to his clearance of outstanding dues. It is in that context, Hon'ble Supreme Court held that the order of acceptance of voluntary retirement order dated 31.12.1994 was conditional order and it did not come effective until dues were paid. Hon'ble Supreme Court, therefore, observed that the employee rightly understood that unless he was relieved of the duties of the post after payment of outstanding dues, the order accepting his voluntary retirement did not become effective. It is in that context and in fact situation, Hon'ble Supreme Court held that "It is now settled legal position that unless employee is relieved of the duty after acceptance of offer of voluntary retirement, the jurial relationship of employer and employee does not come to an end". This statement cannot be read in isolation, since it was in the context that the order of

acceptance of voluntary retirement itself was conditional one. Whereas in the present case, it is not so. Suffice to say, the decision is hardly of any assistance to the Applicant in the present case.

19. Learned Advocate for the Applicant also placed reliance on the decision of **O.A.No.499/2017 in Pradip Kumar Bhurke's** matter (cited supra) in which Government servant gave voluntary retirement notice on 09.12.2016 with request to accept his voluntary retirement notice of 31.03.2017. The Government accepted the resignation notice on 24.03.2017 which was to be effective on 31.03.2017. However, before 31.03.2017, Applicant made representation dated 24.03.2017 to revoke the request of voluntary retirement, but it came to be rejected by communication dated 31.03.2017. It is in that context, O.A. was allowed with the finding that Government servant had legal right to withdraw notice voluntary retirement before actual intended date of retirement. Whereas in the present case, Applicant himself requested to retire him on 30.06.2019 at the end of 3 months' notice period and there was no such unconditional withdrawal of resignation. Therefore, the decision rendered by the Tribunal in O.A.No.499/2017 is of no help to the Applicant in the facts and circumstances of the present case.

20. During the course of hearing when specific query was raised by the Tribunal about the grant of retiral benefits, the learned Advocate for the Applicant stated that recently in the month of January, gratuity and pension has been sanctioned. Thus, it is a case of *fait-accomplie*.

21. The cumulative effect of aforesaid discussion leads me to sum-up that the challenge to the orders dated 02.07.2019 and 31.07.2019 is devoid of merit and O.A. is liable to be dismissed. Hence, the order.

ORDER

The Original Application is dismissed. Parties to bear their own cost.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 03.02.2023
Dictation taken by :
S.K. Wamanse.

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