

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.92 OF 2017

DISTRICT : PUNE

Sub.- Voluntary Retirement

Dr. Milind Shivram Bhadke.)
Age : 58 Yrs, Retired as Medical Officer,)
Residing at E/2, Soba Optima, Manikbagh,))
Sinhagad Road, Pune – 411 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai – 400 032.)
2. The Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)
3. The Director.)
Public Health Services, M.S,)
7th Floor, Neat CST, Arogya Bhavan,)
Mumbai – 400 010.)
4. The Deputy Director.)
Health Services, Pune Circle, Pune,)
New Administrative Building,)
3rd Floor, Opp. Council Hall,)
Near Pune Station, Pune – 411 001.)
5. District Health Officer.)
Pune Zilla Parishad, Pune,)
Yashwantrao Chavan Bhavan,)
1, Wellesley Road, Camp,)
Health Department, Pune – 1.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

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

CORAM : **A.P. KURHEKAR, MEMBER-J**
DATE : **21.04.2023**

JUDGMENT

1. The Applicant has challenged the Government order dated 01.02.2016 and communication dated 08.02.2016 whereby his notice of voluntary retirement dated 30.05.2015 was accepted w.e.f. 01.08.2015 *inter-alia* contending that there could be no such retrospective operation to voluntary retirement notice and it is bad in law. He, therefore, claimed pay and allowances upto 08.02.2016.

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

While Applicant was serving as Medical Officer, Primary Health Centre, Shankar Nagar, Tal. Malshiras, District Pune, he tendered notice of voluntary retirement dated 24.04.2015 to the Government through District Health Officer, Pune. Thereafter, there was internal correspondence between District Health Officer and Director, Health Services, Mumbai. Ultimately, Director, Health Services, Mumbai forwarded proposal to the Government on 26.11.2015. Consequently, Government issued formal order on 01.02.2016 accepting the notice of voluntary retirement tendered by the Applicant. The Applicant contends that since he was not communicated about notice of voluntary retirement within 3 months, he was continued in service and thereafter, proceeded on leave. Thus, the sum and substance of the contention of the Applicant since notice of voluntary retirement is accepted belatedly by order dated 01.02.2016, he be declared retired w.e.f.08.02.2016 that is the date of communication of Government order to him.

3. The Respondents opposed the O.A. by filing Affidavit-in-reply on behalf of Respondent No.2 – Government in Public Health Department *inter-alia* contending that once the period of 3 months' notice of voluntary retirement was over, the relations of employer and employee ceased and even if communication was made belatedly on 01.02.2016,

that would not revive the relationship of employer and employee. The Respondents denied that Applicant worked or continued in service after 01.08.2005.

4. All that, Smt. Mahajan, learned Advocate for the Applicant sought to contend that there should have been communication of acceptance or refusal of notice of Voluntary Retirement within stipulated period of 3 months and it being not done, the Applicant deemed to be continued in service till he received the communication from the Government. She has pointed out that Applicant has received the communication of acceptance of notice belatedly on 08.02.2016. On this line of submission, she tried to contend that Applicant was deemed to be in service till 08.02.2016. The learned Advocate for the Applicant further made feeble attempt to establish that Applicant had worked even after 01.08.2015 and tendered application for Earned Leave. On this line of submission, she contends that Applicant is entitled to declaration that he stands retired w.e.f. 08.02.2016 and entitled to service benefits upto 08.02.2016.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to Rule 66(2) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) submits that once period of 3 months is over, the relationship between employer and employee ceased and even if formal communication of acceptance of VRS was issued on 01.02.2016, that cannot be construed as if Applicant was continued in service.

6. At the very outset, it needs to be stated that this is an unusual case where despite acceptance of retiral benefits viz. gratuity, pension, etc., the Applicant later turn around and filed this O.A. on 31.01.2017 seeking declaration. Notably, he received Gratuity of Rs.7 lakh on 06.05.2016, Leave Encashment of Rs.9,56,181/- on 06.05.2016, GPF amount of Rs.2,74,256/- and GIS amount of Rs.1,90,740/- on 23.08.2016. Apart, he is also received regular pension w.e.f. 01.08.2015.

During the course of hearing, specific query was raised about the payment of retiral benefits to the learned Advocate for the Applicant and she fairly concedes that Applicant has received all the retiral benefits and is also getting pension w.e.f. 01.08.2015. This being so, the Applicant now cannot be allowed to turn around and to contend that his voluntary retirement notice was not accepted. Indeed, he already accepted all retiral benefits w.e.f. 01.08.2015, and therefore, estopped from raising any such grievance that he was deemed to be in service till 08.02.2016. The principle of estoppel is clearly attracted.

7. At this juncture, it would be apposite to reproduce Rule 66(2) of 'Pension Rules of 1982', which is as under :-

“(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule(1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

8. Thus, in terms of Rule 66(2) of 'Pension Rules of 1982', once the period of 3 months expired, the retirement shall become effective from the date of expiry of said period. In other words, on the expiration of period of 3 months' notice of voluntary retirement is deemed to be accepted and relations of employer and employee ceased to exist. It is only in a case where Government servant withdrew the notice before the stipulated period, in that event only, the situation would be different. However, in the present case, there being no such refusal to accept the notice or there being no withdrawal notice to the Applicant within the stipulated period, in law, the notice of voluntary retirement given by the Applicant on 24.04.2015 is deemed to have been accepted after expiration of 3 months' notice. The learned Advocate for the Applicant

could not point out any specific Rule or decision to the contrary to substantiate that where notice of voluntary is accepted belatedly, the relationship of employer and employee continues till the date of communication of acceptance of notice. Indeed, legal situation is well settled and crystal clear in view of Rule 66(2) of 'Pension Rules, 1982'.

9. Though learned Advocate for the Applicant made feeble attempt to contend that even after 01.08.2015, the Applicant was in service and applied for grant of leave, this is nothing but attempt to create some ground which is in fact totally devoid of any merit. The Respondents in Affidavit-in-reply specifically denied that the Applicant worked after 01.08.2015. There is no such evidence forthcoming to establish that Applicant had worked or his so called application for EL was granted by the Government. Indeed, the question of grant of EL or any kind of leave after 01.08.2015 did not survive.

10. The submission advanced by the learned Advocate for the Applicant that because of non-communication of decision on voluntary retirement notice within reasonable time, the Applicant could not apply for employment elsewhere and thereby suffered monetary loss is totally misconceived and fallacious. As stated above, in view of Rule 66(2) of 'Pension Rules of 1982', there is deeming provision that retirement shall become effective from the date of expiry of the period of notice of three months. This being so, the assumption of the Applicant that it requires acceptance order is totally unfounded. He seems to have been under wrong assumption. Be that as it may, after expiration of 3 months' period, the relations as employer and employee ceased to exist.

11. In this view of the matter, I have no hesitation to sum-up that the challenge to the impugned order is totally misconceived. O.A. is totally devoid of any substance and liable to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 21.04.2023

Dictation taken by :

S.K. Wamanse.

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