

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 138 OF 2016

DISTRICT : - LATUR.

**Dr. Shaikh Faiz Mohammad,
S/o Noor Mohammad,**

Aged : 55 years, Occu: Medical Officer,
At P.H.C. Para, R/o: House No. B-1-42,
Mohammddain Chowk, Church Road,
Udgir, Dist. Latur.

.. APPLICANT.

V E R S U S

01. The State of Maharashtra,

Through it's Addl. Chief Secretary
Public Health Department,
Mantralaya, Mumbai-32.

02. The Director,

Public Health Department,
Arogya Bhavan, Saint Jorge Hospital
Campound, Mumbai.

03. Dy. Director of Health

Latur Region, Latur,
Aryogya Sankul, Barshi Road,
Latur.

04. The District Health Officer,

Zilla Parishad, Osmanabad. .. RESPONDENTS.

APPEARANCE : Shri I.D. Maniyar, learned Advocate
for the applicant.

: Mrs. Priya R. Bharaswadkar, learned Presenting Officer for the respondents.

CORAM : **HON'BLE SHRI RAJIV AGARWAL,**
VICE CHAIRMAN (A).

AND

: **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **16TH FEBRUARY, 2017.**

ORAL ORDER

[Per : Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)]

1. This Original Application has been filed by the Applicant challenging rejection of his notice of voluntary retirement dated 19.10.2015 given under Rule 66 (1) of the Maharashtra Civil Services (Pension) Rules, 1982. The learned Advocate for the Applicant states that the applicant has completed 20 years' of service and was entitled to seek voluntary retirement under the said rule and accordingly had given this notice for voluntary retirement. As per Rule 66 (2) of M.C.S. (Pension) Rules, 1982, acceptance of notice of voluntary retirement is required, but if no rejection is received within a period of

three months (notice period) from the date of notice of voluntary retirement, the notice of voluntary retirement is deemed to have been accepted. The Applicant has addressed the notice of voluntary retirement to the Appointing Authority i.e. Secretary, Public Health Department, Government of Maharashtra and the copies were endorsed to the Director of Health Service, Deputy Director, Chief Executive Officer, Zilla Parishad, District Health Officer, Osmanabad. The applicant received a letter from District Health Officer, Osmanabad on 9.12.2015 asking him to file an application in prescribed pro-forma. Learned Advocate for the Applicant stated that the M.C.S. (Pension) Rules, do not prescribe any pro-forma for giving application for voluntary retirement. The information sought by the District Health Officer was available with the respondents themselves and it was, therefore, not necessary for the applicant to submit such information along with the notice of voluntary retirement. The Applicant received a letter from District Health Officer, Osmanabad, on 27.1.2016 stating that his notice of voluntary retirement has been rejected.

2. Learned Advocate for the Applicant stated that on expiry of three months from the date of notice of voluntary retirement i.e. 18.1.2016 the Applicant was legally retired voluntarily from the service of the Government as no proper rejection from the Appointing Authority was received by him. The District Health Officer has no authority under the law to reject the notice of voluntary retirement of the Applicant. Learned Advocate for the Applicant states that in any case an order of District Health Officer is dated 27.1.2016, which is after expiry of three months' period and even if it is accepted for the sake of argument that District Health Officer is Competent Authority, the letter of rejection was issued after expiry of three months period from the date of notice of voluntary retirement, and it has no validity.

3. Learned Presenting Officer stated that the Applicant did not file the voluntary retirement application in the prescribed pro-forma. However, it is admitted that so-called pro-forma has been prescribed by the Director of

Health Services and not by the competent authority under the Maharashtra Civil Services (Pension) Rules. She also stated that a Departmental Enquiry is contemplated against the applicant. Under these circumstances, the applicant's voluntary retirement notice has been rejected.

4. We are not impressed by the arguments of the learned Presenting Officer; firstly the District Health Officer has no authority to reject the notice of voluntary retirement; and secondly even then the rejection letter has issued after the period of three months', the Government servant is deemed to have retired voluntarily after expiry of period of three months, if notice is not rejected within that period. On that count also the letter dated 27.1.2016 lacks legal validity. If the Appointing Authority wanted certain information from the Applicant or wanted notice in a particular format, the Applicant's notice should have been rejected by the Competent Authority giving cogent reasons. However, no order at all has been passed by the competent authority.

5. Considering all these facts, the prayer of the Applicant that impugned order dated 27.1.2016 passed by the respondent No. 4 may be quashed and set aside, is granted. The impugned order dated 27.1.2016 is quashed and set aside. The Applicant is deemed to have retired voluntarily from the Government service on expiry of three months from the date of notice of voluntary retirement i.e. 3 months' after 19.10.2015. The respondents are directed to take further action to grant him pensionary benefits as per the law. This exercise shall be done by the respondents within a period of three months.

6. Accordingly, the present Original Application stands disposed of with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)