

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.217 OF 2021

DISTRICT:- AURANGABAD

Sunil s/o. Trimbak Apte,
Age : 62 years, Occ. Service,
presently working as Associate
Professor (Pathology),
Government Medical College,
Jalgaon, District Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralya, Mumbai.
2. The Director of Medical Education and Research,
Maharashtra State, Mumbai,
Saint George Hospital, PDML, Fort,
Mumbai-400 001.
3. The Dean,
Government Medical College and Hospital,
Jalgaon.

... RESPONDENTS

APPEARANCE : Shri S. R. Barlinge, Advocate for the
Applicant.
: Shri B.S.Deokar, Presenting Officer
for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, MEMBER (J)
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Decided on : 01-12-2021

ORDER

1. Heard Shri S.R.Barlinge learned Advocate for the Applicant and Shri B.S.Deokar learned Presenting Officer for the respondents.

2. Aggrieved by the decision of respondent authorities in not accepting the request of voluntary retirement of the applicant, he has preferred the present Original Application.

3. Applicant entered into the Government service with effect from 04-07-1985 as an Assistant Professor in Pathology. Subsequently, he was promoted to the post of Associate Professor on 09-09-1992. In the year 2021, after having completed more than 35 years of service, having regard to his health problems, the applicant made a request for voluntary retirement vide his application dated 05-01-2021. According to the applicant since he had undergone bypass surgery and was suffering from hypertension and other co-morbidities, he was required to take a decision to take voluntary retirement and had accordingly preferred the said application seeking voluntary retirement.

4. The Director of Medical Education and research recommended for accepting request of voluntary retirement made by the applicant vide communication dated 28-01-2021. The State, however, refused to concede the said request and communicated its said decision to the applicant through the Director, Medical Education and Research. The State has refused the request on the ground that when the epidemic of corona has spread over throughout the State if the applicant is permitted to voluntarily retire, there may be shortage of medical officer and it may be against the public interest. Aggrieved by the same, applicant has preferred the present Original Application.

5. Shri S.R.Barlinge learned Advocate appearing for the applicant submitted that the services of the applicant are governed by the Maharashtra Civil Services Rules ("MCS Rules" for short) and under Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982, the Government servant who has completed 30 years of qualifying service may at any time retire from service or he may be required by the appointing authority to retire in the public interest. Proviso to said Rule 65 prescribes that a Government

servant shall give a notice in writing to the appointing authority 3 months before the date on which he wishes to retire.

6. Learned Advocate for the applicant brought to our notice that only if the concerned Government servant is under suspension that the Government can withhold permission to such Government servant to retire under the said Rules. Learned Advocate submitted that, admittedly, the applicant is not under suspension nor any charges are against him or no departmental enquiry is pending or proposed against him. In the circumstances, according to the learned Advocate it was not within the authority of the respondents to refuse the permission to the applicant to take voluntary retirement. Learned Advocate placed reliance on the following two judgments of this Tribunal, (1) in O.A.No.547/2007 (Sudhir Sant V/s. State of Mah. & Ors.) delivered on 06-12-2007, and (2) in O.A.No.757/2015 (Vilas Jaltade V/s. State of Mah. & Ors.) delivered on 02-03-2016.

7. Learned P.O. has opposed the submissions made on behalf of the applicant and supported the impugned action. Learned P.O. submitted that having regard to the epidemic

situation all over the country and its serious spread over in the State of Maharashtra was the reason that the respondents refused to accept the request of the applicant. Learned P.O. further submitted that the provisions of the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 if are conjointly read, the Government is having authority to take all necessary measures for prevention and control of the epidemic situation. Learned P.O. further submitted that at the relevant time there was acute shortage of the medical officers and in the circumstances it could have been proved fatal to accept the request of the applicant to voluntarily retire. Learned P.O. submitted that in the circumstances no fault can be found with the decision of the respondent authorities in not accepting the request of the present applicant for grant of voluntary retirement.

8. We have considered the submissions advanced by the learned Advocate appearing for the applicant and learned P.O. appearing for the respondents. We have also perused the documents on record.

9. It is not in dispute that the applicant has completed 35 years of his service with the respondents. In the reply

filed by the respondents, there is no denial to the fact averred in the O.A. that the applicant has undergone bypass surgery and is suffering from hypertension etc. While deciding the present O.A., provisions under MCS Rules are of vital importance. The applicant applied for voluntary retirement invoking the provisions under Rule 65 of the MCS (Pension) Rules, 1982. Rule 65 reads as under:

“65. Retirement on completion of 30 years qualifying service.

(1) At any time after a Government servant has completed thirty years' qualifying service, he may retire from service, or he may be required by the Appointing Authority to retire in the public interest:

Provided that-

(a) A Government servant shall give a notice in writing to the Appointing Authority +(-) three months before the date on which he wishes to retire; or

*(b) the Appointing Authority shall give a notice in writing *(in form 32) to Government servant +(-) three months before the date on which he is required to retire in the public interest, or three months pay and allowances in lieu of such notice.*

(Provided further that where the Government servant who gives notice under clause (a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule:

Provided also that where a Government servant giving notice under clause (a) of the first proviso to this rule is placed under suspension after he has given notice of retirement as above, it shall be open to the Appointing Authority to withdraw permission, if already granted or, as the case may be, to withhold permission to such Government servant to retire voluntarily under this rule.)”

10. The plain reading of the aforesaid Rule reveals that after the Government servant completes 30 years of qualifying service, a right is accrued in his favour to retire from service by taking voluntary retirement. Similarly, it is also open for the Government or the appointing authority to retire such Government servant in public interest. The only requirement for invoking the provisions under the said section is that the Government servant who intends to take voluntary retirement shall give notice in writing to the appointing authority three months before the date on which he wishes to retire. Vice-versa, if the appointing authority

intends to retire a Government servant in public interest it has also to give a notice in writing 3 months before the date on which the said Government servant is required to retire in the public interest or to pay him 3 months' pay and allowances in lieu of such notice. The Government or the appointing authority, however, can refuse to accept the request of voluntary retirement if the said Government servant who has given notice under clause (a) of the 1st proviso to Section 65 is under suspension. In the present matter, admittedly, the applicant was never under suspension. In the circumstances, the action of the Government of rejecting the said request apparently appears unsustainable.

11. In the judgment relied upon by the applicant, delivered by this Tribunal, in the case of Sudhir Sant and Dr. Vilas Jaltade, this Tribunal has elaborately dealt with the rights of the Government servants as well as the appointing authority under section 65 of the MCS (Pension) Rules, 1982 in paragraph 9 of the judgment delivered by this Tribunal in the case of Sudhir Sant, it has been observed thus:

“9. Having carefully considered the provisions of Rule 65 of the Rules, no discretion is left with the

Government to reject the application or refuse the permission of a Government servant for voluntary retirement. The only condition i.e. laid down in the Rules that if a Government servant if under suspension gives a notice then such notice not to be accepted. It is accepted by the learned counsels that the applicant was not under suspension at any time, thus, having regard to this fact on the back drop of the provision of Rule 65 of the Rules, the action of the Respondent Authorities cannot be called as legal and proper. It was incumbent on the Respondent-Authorities to accept the notice of the applicant and should have granted permission to the applicant to retire from the date mentioned in the notice dated 31-11-2006. In our view, the Rule is made in absolute term and it does not give any discretion to the State Government or authorities to reject such request made by the Government servant except the exception that is carved out by the Rule itself.”

12. In the case of Dr. Vilas Jaltade (cited supra), his request for voluntary retirement was turned down on the ground of shortage of Lecturers etc. The Tribunal, however, did not accept contentions raised on behalf of the appointing authority and directed the appointing authority to accept the applicant's notice of voluntary retirement and permit him to retire voluntarily from the relevant date.

13. In so far as Rule 65 of the MCS (Pension) Rules, 1982 is concerned, as has been held by the Tribunal in the aforesaid matters, no discretion is left with the Government to reject the application or to refuse the permission to a Government servant for voluntary retirement. As such, respondent authorities must have accepted the notice of the applicant and should have granted him permission to retire from the date mentioned in his notice. However, in the present matter, appointing authority has declined request of the applicant on the ground that in the epidemic situation existing at the relevant time, it was not feasible for the Government to accept the request of any "in service medical officer" to allow him to voluntarily retire before his scheduled date of superannuation. On the contrary, as it was submitted by the learned P.O. at that time the Government was required to give a call to the retired medical officers to make available their services to face the epidemic situation. Though in the impugned order there is no reference of the provisions of the Epidemic Diseases Act, 1897 or of the Disaster Management Act, 2005, it is discernible that the request of the applicant was refused by impliedly invoking provisions under the said Acts.

14. Having regard to the fact that the refusal was emanating from an extraordinary situation, it cannot be said that in refusing the request of the applicant to allow him to voluntarily retire, the appointing authority has arbitrarily exercised the powers vested in it.

15. We are conscious of the principle that public interest would prevail upon the individual interest and that is the reason that we have not held the impugned refusal to be unjust and arbitrary. But when today we have heard the O.A., the situation has substantially improved. The nation has successfully faced the epidemic and now the things are getting normalized. In the circumstances, there may not be any difficulty for the authorities to reconsider the request of the applicant and he can very well be permitted to take voluntary retirement.

16. The applicant himself is a heart patient and has undergone bypass surgery. It is obvious that the applicant may not be able to discharge his duties with the same efficiency as in the past. Balance has to be struck between the rights of individual and the rights of Public at large. When permission was refused to the applicant public interest prevailed over the individual right/interest; now in

the changed circumstance individual right accrued in favour of the applicant because of the statutory provisions should prevail.

17. For the reasons recorded above, we direct the respondents to reconsider the request of the applicant without insisting for any fresh application and having regard to the observations made by us in the body of the order shall permit the applicant to take voluntary retirement in view of Rule 65 of the MCS (Pension) Rules, 1982.

18. O.A. stands allowed accordingly with no order as to costs.

**(BIJAY KUMAR)
MEMBER (A)**

**(P.R.BORA)
MEMBER (J)**

**Place : Aurangabad
Date : 01-12-2021.**