

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**NAGPUR BENCH, NAGPUR****ORIGINAL APPLICATION NO.584/2007.****(D.B.)**

Omprakash Janbaji Patil,
Aged about 52 years,
Occ.Service,
R/o Hans Apartment, Near Mahavir Nagar,
Lohara Road, Yavatmal.

Applicant.**-Versus-**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Works (Roads),
Mantralaya, Mumbai-400 032.
- 2) The Superintending Engineer,
Public Works Circle, Amravati.
- 3) The Executive Engineer,
Special Project (PWD) No.II,
Daryapur, District-Amravati.

Respondents

Shri V.G. Wankhede, the learned counsel for the applicant.
Shri P.N. Warjekar, the learned P.O. for the respondents.

Coram:-Shri Shree Bhagwan, Vice-Chairman
and
Shri A.D. Karanjkar, Member (J)

Judgment is reserved on 29th July 2019.

Judgment is pronounced on 02nd August 2019.

JUDGMENT**Per: Vice-Chairman**

(Passed on this 02nd day of August 2019)

1. Heard Shri V.G. Wankhede, the Ld. counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. In this application, the applicant has challenged the order dated 27.6.2007 (Annexure-III, Page 10) issued by respondent No.2. The applicant, aggrieved by this order has sought following reliefs:-

“(a) Direct the respondents to allow the applicant to join the service and work, as treated in service till the date of superannuation age by setting aside the order date 27.6.2007.

(b) Grant any other or further relief including costs as may be deemed fit in the circumstances of the case and also in the interest of justice.”

3. Facts of the case are stated below:-

The applicant was appointed as Senior Clerk on 13.2.1984 (A-1, P.8), he was promoted to the post of First Clerk on 9.10.2006 and was transferred to Daryapur, District Amravati at Special Project, P. W. Division No.2. The applicant was working under the control and supervision of respondent No.3, he was in service of the respondents for a period of 23 years. As the applicant

had completed 20 years of service, he was entitled to take voluntary retirement, as per the provisions under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules'). The applicant wrote a letter dated 29.3.2007 (A.2, P.9) to the respondent No.2 requesting the respondent No.2 to allow the applicant to take voluntary retirement. In response to it, letter was addressed to the respondent No.3.

The respondent No.2 submitted reply and opposed the application mainly on the ground that the notice for the voluntary retirement dated 29-3-2007 was received by the respondent No.2. After issuing the notice, the applicant proceeded on medical leave and he came to resume the duty on 28-6-2007 and moved application to for withdrawal of the notice dt/29-3-2007, but by that time the retirement was effectuated as the respondent No.2 had acted upon the notice and issued order dt/ 27-6-2007. It was contended that the order dt/ 27-6-2007 was specific as per that order the applicant stood retired on 27-6-2007. It is submitted that as the proposal was accepted by the appointing authority the applicant had no locus standi to withdraw the notice for voluntary retirement. The respondent No.2 also raised contention that for withdrawal of the notice approval of the competent authority was must. In view of this it

was contended that there was no substance in the original application.

The original application was heard and decided by this bench vide order dt/ 26-2-2008, the application was allowed by this bench. that order was challenged by the respondents in W.P. No. 3225/2008 and Hon'ble High Court allowed the writ petition vide order dt/ 11-6-2019 and remanded the original application for fresh consideration as per law.

4. We have perused the Maharashtra Civil Services (Pension) Rules, 1982. Section 66 reads as follows:-

“66. Retirement on completion of 20 years qualifying service.

- (1) At any time after a Govt. 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.”

5. The respondent No.2 accepted the letter of the applicant for voluntary retirement dated 29.3.2007 and issued a letter accepting his voluntary retirement vide letter dated 27.6.2007 (A-3, P.10), in which it was mentioned that three months notice period would expire on 28.6.2007 afternoon and the applicant would stand retire as per Rule 66 (2) of the Pension Rules, 1982, on 28.6.2007 afternoon.

However, it seems that the applicant vide his letter dated 28.6.2007 (A-IV, P.11) addressed to respondent No.3, submitted joining report and the medical certificate in the office. The applicant on the same day submitted letter dt/28-6-2007 before the respondent No.3 and requested to cancel the proposal for voluntary retirement. This letter (Anx. Vi) bears acknowledgement of the office of the respondent No.3 and at the bottom there is note that copy was forwarded to the respondent No.2. Thus it appears that on 28-6-2007 before noon Anx.Vi was received by the respondent No.3 and it was before the retirement came in force. In view of these facts the learned counsel for the applicant has placed reliance on the judgment in case of Balaram Gupta v Union of India 1987 (supp) Supreme Court Cases 228.

In the case of Balram Gupta the facts were, vide letter dt/ 24-12-1980 request was made for retirement w.e.f. 31-3-1981, by treating the notice period from 1-1-1981. The Government vide its letter dt/ 20-1-1981 allowed the applicant to do so. Thereafter on 31-3-1981 the appellant submitted letter and submitted that due requests made by his friends he had changed his mind and he be permitted to withdraw the notice for voluntary retirement.

In para 13 it is observed by the Hon'ble Apex Court

“in the modern and uncertain age it is very difficult to arrange one’s future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardise government of administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been avoided by such graceful attitude. The court cannot but condemn circuitous ways “to ease out” uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.”

In present case it not shown what prejudice would have caused to the government had permission granted to the applicant to withdraw the notice for retirement as retirement was not given effect when such request was made. In the same situation the Hon'ble Apex Court has held that notice of retirement can be withdrawn at any time before retirement becomes effective notwithstanding any rule providing for obtaining of specific approval of the concerned authority as a condition precedent and the authority not entitled to refuse to grant approval for withdrawal in absence of any reason showing disturbance in administrative set up or arrangement as a result of such withdrawal.

7. We have gone through the Maharashtra Civil Services (Pension) Rules, 1982 and Rule 66, in which three months' period is mentioned, but number of days are not mentioned.

8. As submitted by the learned counsel for the applicant, though the applicant was relieved as per order of respondent No.2 dated 27.6.2007 (A-3, P.10) after the decision of this Tribunal in O.A. No. 584/2007 on 26.2.2008, the applicant was allowed to rejoin the service on 24.2.2009 and finally the applicant was retired on superannuation on 31.5.2013 (P.24 & 25). After perusing Rule 66 of the Pension Rules, 1982, we find that as per

application of voluntary retirement dated 29.3.2007, the applicant was to retire on 28.6.2007 after office hours. But as the applicant had resumed duty on 28.6.2007 and submitted his withdrawal application, the respondent No.2 should have permitted the applicant to withdraw the notice of retirement and continued him in service. The approach of the respondent No.3 was contrary to the law, hence, we proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed in terms of prayer clause 7 (a).
- (ii) No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

Dtd. 02nd August 2019
pdg

