

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.525/2023 (S.B.)**

Dr. Sanobar Ismatulla Shaikh,
Aged about 59 years,
Occ. Presently working as Professor/ Head of Department,
Anatomy, Vasantrya Naik,
Government Medical College,
Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
Through it's Secretary,
Department of Medical Education & Research,
9th Floor, G.T. Hospital,
Lokmanya Tilak Marg,
Navin Mantralaya,
Mumbai- 01.
- 2) Commissioner,
Department of Medical Education and Research,
Government Dental College and Hospital Building,
4th Floor, P.Demello Road, Fort,
Mumbai - 01.
- 3) Director,
Directorate Medical Education and Research Mumbai,
Government Dental College and Hospital Building,
4th Floor, P.Demello Road,
Fort, Mumbai-01.
- 4) Dean,
Vasantrya Naik Government Medical College,
Yavatmal.

Respondents

Shri S.A.Marathe, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 02nd Nov., 2023.

Judgment is pronounced on 07th Nov., 2023.

Heard Shri S.A.Marathe, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant is working as Professor of Anatomy in Vasant Rao Naik, Government Medical College, Yavatmal. After completing service of 30 years she submitted application dated 01.02.2020 (A-3) for voluntary retirement. By letter dated 05.03.2020 (A-4) it was informed that she was not to be relieved. Consequently, she continued to work. Her applications dated 05.04.2021 (A-5) and 17.02.2022 (A-6) for transfer to Aurangabad were not considered. Her husband retired in December, 2021 as Civil Surgeon, District Hospital, Aurangabad. He was diagnosed with ischemic heart disease with hyper tension. He has undergone Angioplasty (A-2). Mother-in-law of the applicant is 85 years old and she is bed-ridden.

Both sons of the applicant are serving at Bengaluru. Except the applicant there is no one to look after her husband and mother-in-law. Considering all these circumstances the applicant again submitted application dated 14.02.2023 (A-7) for voluntary retirement. It was rejected by the impugned order dated 09.05.2023 (A-1) on untenable grounds. By communication dated 10.05.2023 the applicant was informed about it. Hence, this Original Application.

3. Though ample opportunity was given to the respondents to file reply, reply was not filed.

4. Here, it may be mentioned that at the time of final hearing submission of Id. counsel for the applicant Shri Marathe was confined to the impugned order dated 09.05.2023. Another issue relating to medical leave of the applicant from 23.03.2020 to 30.09.2020 was not agitated.

5. It was submitted by Advocate Shri Marathe that the impugned order is contrary to Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982 and hence it deserves to be quashed and set aside.

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 year's 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 a Government servant three months before the date on which he is required to retire in the public interest, on 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.]

[2(a) A Government servant referred to in clause (a) of the proviso to sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) on receipt of a request under clause (a), the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government servant shall not apply, for commutation of a part of his pension before the expiry of the period of notice of three months.]

(3) 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.

Admittedly, contingency provided in either of the provisos to Rule 65 (1) (b) had not arisen in this case.

6. In the impugned order it was stated:-

डॉ सनोबर ईस्मतुल्ल शेख हे प्राध्यापक, शरीररचनाशास्त्र पदावर श्री. वसंतराव नाईक शासकीय वैद्यकीय महाविद्यालय, यवतमाळ येथे कार्यरत आहे. त्यांनी सेवानिवृत्ती स्वीकारल्यास विद्यार्थी व रुग्णहिताच्या दृष्टीने संस्थेत अडथळा निर्माण होण्याची शक्यता नाकारता येत नाही. सदर प्रशासकीय निकड विचारात घेता, डॉ. सनोबर ईस्मतुल्ल शेख, प्राध्यापक, शरीररचनाशास्त्र यांचा स्वेच्छा सेवानिवृत्तीचा प्रस्ताव अमान्य करण्यात येत आहे. सदर बाब डॉ सनोबर ईस्मतुल्ल शेख यांच्या निदर्शनास तात्काळ आणून देण्यात यावी, ही विनंती.

7. It was submitted by Advocate Shri Marathe that by order dated 10.08.2023 (at P. 94) the applicant was transferred to Government Medical College, Akola. It was further submitted that against order dated 10.08.2023 the applicant has filed O.A. No. 941/2023 before this Bench and effect and implementation of said order has been stayed. Correctness of these submissions is not in dispute.

8. Order of transfer of the applicant dated 10.08.2023 cannot be reconciled with aforequoted contents of the impugned order. While passing the impugned order it was stated that if post held by the applicant were to fall vacant studies of students and treatment of patients was likely to suffer. Thereafter, within three months from

observing so the authorities transferred the applicant to Government Medical College, Akola by order dated 10.08.2023. Thus, it is apparent that the impugned order was tried to be supported on untenable grounds. From tenor of Rule 65 also it can be concluded that application for voluntary retirement dated 14.02.2023 ought to have been accepted. Pleading of the applicant regarding physical condition of her retired husband and aged mother-in-law has not been traversed. **For all these reasons the O.A. deserves to be allowed.** Hence, the order:-

O R D E R

The Original Application is allowed in the following terms. The impugned order dated 09.05.2023 (A-1) is quashed and set aside. The applicant is held entitled to voluntary retirement as per her application dated 14.02.2023 (A-7). **Respondents are directed to pass consequential orders within two weeks from today.** Issue regarding leave of the applicant is kept open. No order as to costs.

Member (J)

Dated :- 07/11/2023

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 07/11/2023
and pronounced on

Uploaded on : 08/11/2023