

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 700/2020(D.B.)

Rambhau s/o Supada Junare,
a/a 52 years, occ. Retired,
r/o Menghe Nagar, Ring Road,
Kaulkhed, Akola,
Tq. And District Akola.

Applicant.

Versus

- 1) State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32.
- 2) Collector, Akola,
Tq. & District Akola.
- 3) Sub-divisional Officer,
Murtizapur, Tq. Murtizapur,
District Akola.
- 4) Tahsildar, Murtizapur
Tq. Murtizapur, District Akola.

Respondents

Shri C.A.Joshi, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 18th January 2023.

JUDGMENT**Per :Member (J).****Judgment is reserved on 11th January, 2023.****Judgment is pronounced on 18th January, 2023.**

Heard Shri C.A.Joshi, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. It may be mentioned at the outset that by filing pursis dated 09.01.2023 the applicant has restricted his claim to prayer i] and consequential reliefs. He has given up prayers ii] to vi]. Prayer i reads as under –

i] grant declaration, in favour of applicant, against respondents, that he stood voluntarily retired with effect from 11.05.2020, in view of the notice of voluntary retirement Annexure A-1, dated 29.01.2020.

3. Case of the applicant, so far as it relates to prayer i] is as follows. The applicant, an Ex-serviceman, was appointed as Talathi on 24.11.1999. Between 15.12.2017 to 13.06.2018 and 18.03.2019 to 26.08.2019 he was placed under suspension. To avoid further harassment he submitted application dated 29.01.2020 (Annexure A-1)

along with notice (Annexure A-2) for voluntary retirement. He applied for medical leave from 29.01.2020 to 07.02.2020. Respondents 3 and 4 received these documents on or about 10.02.2020. From them no communication was received by the applicant before expiry of notice period. Thus, under the first proviso to Rule 66(2) of the M.C.S. (Pension) Rules, 1982 the retirement of the applicant became effective from the date of expiry of notice period. By letter dated 18.03.2020 (Annexure A-3) respondent no.4 sought guidance from respondent no.3 about further action on the application for voluntary retirement submitted by the applicant as according to respondent no.4, the applicant had not furnished necessary details and application was not in the prescribed proforma.

4. So far as prayer i] made by the applicant is concerned, respondents 3 and 4 have resisted it only on the grounds that the application for voluntary retirement was not in conformity with Rule 66 of the M.C.S. (Pension) Rules, 1982, and no notice of voluntary retirement was given by the applicant.

5. Relevant part of Rule 66 of the M.C.S. (Pension) Rules, 1982 reads as under –

66. Retirement on completion of 20 years qualifying service

(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.

(3) to (7) [X X X X X]

6. It was submitted by Shri Joshi, learned Advocate for the applicant that notice of voluntary retirement was not required to be in any particular proforma and copy of the same (Annexure A-1 at page 58) will show that it was valid and in conformity with Rule 66.

7. Advocate Shri Joshi further relied on Annexure A-3 which is a reference made by respondent no.4 to respondent no.3, to contend that respondent no.4 had duly received application for voluntary retirement submitted by the applicant. Annexure A-3 reads as under –

उपरोक्त संदर्भीय विषयाचे अनुषंगाने सविनय सादर करण्यात येते की, वि. तहसिलदार बारिशटाकळी यांचे कार्यालयाचे पत्र क्रमांक तलाठी आस्थापना /अका/कावी-३८२/२०२० दिनांक -०९/०३/२०२० प्राप्त दिनांक १८/०३/२०२० नुसार सेवापुस्तक या कार्यालयात प्राप्त झाले असून अर्जदार -श्री.आर.एस.जुनारे तलाठी बपोरी यांनी स्वेच्छा निवृत्ती वेतन मिळणे बाबत अर्ज सादर केला परंतु सदर अर्ज अध्यावत माहितीसह व विहित नमुन्यात नसल्यामुळे या अर्जावर काय कार्यवाही करावी या बाबत पुढील आदेशार्थ सविनय सादर.

8. Advocate Shri Joshi further relied on the following contents of Annexure A-20 (at page 93) to contend that from these contents it becomes manifest that the applicant had clearly intended to take voluntary retirement-

मला व्हि आर एस घ्यायचा असल्याने मंजूर होण्याआधी माझ्या विभागीय चौकशी निकाली काढने तसेच सातवे वेतन आयोगानुसार वेतन निश्चित करून कालबद्ध पदोन्नती देण्यात यावी हि विनंती.

9. In support of grant of prayer i] the applicant has submitted following written argument-

So far as, prayer for declaration that applicant stood voluntarily retired, is concerned, the documents to be perused start from page 58 which is the notice of voluntary retirement, dated 29.1.2020; given by the applicant. In this notice/ letter, applicant has requested the sub-divisional officer — respondent no. 3 that his application for payment of retirement salary be accepted and he may be

paid retirement salary. This application was given on 29.1.2020, by registered post A.D. to respondents 3 and 4, postal acknowledgements are not with the applicant as the same are lost, not traceable, therefore, already pleading is made that within a period of 3 to 4 days, registered envelope must have been received by the respondents 3 and 4, which contention is not denied by the respondents 3 and 4 and applicant has further contended that maximum, on 10.2.2020, the notice / letter, at page no. 58 must have been received by the respondents 3 and 4, therefore, a period of 90 days, ends on 10.5.2020 and w.e.f. 11.5.2020, applicant stood voluntarily retired. These contentions are not denied by the respondents 3 and 4. On the contrary, at page 61, a letter, dated 18.3.2020, addressed by Tahsildar — respondent 4 to sub-divisional officer-respondent no. 3, is produced by applicant, in which it is clear that the notice of voluntary retirement at page 58 was received by the authority /respondent no. 4, but, it is not stated, on what date it is received by the Tahsildar / respondent no. 4. In this regard, contention of respondents 3 and 4, that vide this letter, dated 18.3.2020, Annexure A-3, page 61, it was informed to applicant that his application for voluntary retirement was not in format and vide this letter, Tahsildar

requested Sub-divisional Officer, to inform as to what action should be taken on this letter. Thus, it is submitted that, the said letter, dated 18.03.2020 is not the letter of refusal to accept voluntary retirement application at page 58, dated 29.01.2020. Furthermore fact is that, this letter, dated 18.03.2020 was received by applicant, on 27.06.2020. To prove this contention that, on 27.06.2020 applicant received this letter, dated 18.03.2020, at page 66, the envelope that was received by the applicant is produced which was received on 27.06.2020, by applicant, in this original application, but, the same are not denied specifically by non-applicants/respondents 3 and 4, they have not asserted anything as to on which date, applicant has received this letter, dated 18.03.2020 and other documents. In this envelope page 66, applicant received the letter, dated 18.03.2020, page 61; order, dated 3.03.2020, page 62, show cause notice, dated 23.01.2020 page 64, show cause notice, dated 17.01.2020, page 65. It is thus clear that, on the notice of voluntary retirement at page 58, no order was passed by respondent no.3 – the Sub-divisional Officer.

10. Further written argument advanced on behalf of the applicant is as follows-

So far as stand of respondents nos.3 and 4 is concerned that notice of voluntary retirement, dated 29.01.2020, page 58 is not in format, the applicant submits that, there is no format prescribed under rule 66 to of MCSR pension rules, 1982, furthermore, no format is also produced by respondents, on record, this notice is not vague at all, because from 11.05.2020, applicant never attended his office, he also reiterated his stand often to grant him voluntary retirement by considering his application, dated 29.01.2020, for this purpose kindly see application, dated 02.03.2020, in which he has reiterated his stand of voluntary retirement. In view of the aforesaid contention of applicant, it is proved that, he stood voluntarily retired, w.e.f. 11.05.2020 and declaration to that effect needs to be granted in his favour, as claimed in prayer clause no.i. Applicant relies upon the authorities of Hon'ble High Court, reported in Nilkanth Versus State of Maharashtra, 2006 (5) Mh.L.J. 132 and Narayan Versus State of Maharashtra, reported in 2007 (4) Mh.L.J. 384, these two rulings lay down that if the appointing authority does not refuse to grant permission for retirement, before the expiry of the period of 90 days, the notice becomes effective from the date of expiry of the said period, which is obviously 90 days. In the case of applicant, that period expired, on 10.05.2020 and therefore, on 11.05.2020 applicant stood voluntarily retired.

11. The applicant has relied on *“Dr.Narayan Keshao Rao Puranik Vs. State of Maharashtra 2007 (4) Bom CR 251”* wherein it is held-

(We) hold that the submission of the notice to the immediate superior officer though addressed to the appointing authority is sufficient compliance, and the period of 90 days shall be counted from the date of submission of notice to immediate superior.

Bracketed portion supplied.

12. So far as prayer i] of the applicant is concerned, the only ground raised by the respondents is that the application for voluntary retirement was not in the prescribed proforma. There is no merit in this submission.

13. In the circumstances discussed hereinabove we have come to the conclusion that the O.A. deserves to be allowed in terms of prayer i] and reliefs which are consequential thereto. It is, however, made clear that such consequential reliefs shall not include reliefs ii] to vi] which are not presently claimed by the applicant by filing pursis dated 09.01.2023. The applicant would be at liberty to claim these reliefs, if he so desires, by

filing appropriate proceeding. The O.A. is allowed in these terms with no order as to costs. C.A. is disposed of.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 18/01/2023

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 18/01/2023.
and pronounced on