

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1118 OF 2017**

DISTRICT : MUMBAI

Smt. Sadhana Ramesh Thorat,)
(Sadhana B. Deokule, old name),)
Age 49 years, Medical Officer, Civil Hospital, Thane)
Address: 301, RMO Quarters, Tembhi Naka,)
Thane (West) 400601)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400032)

2. Civil Surgeon, Civil Hospital,)
Tembhi Naka, Thane (West) 400601)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 27th March, 2019

PRONOUNCED ON : 4th April, 2019

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Miss S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Facts in brief:

2. The Applicant working as Specialist in Radiology has sought voluntary retirement on completion of 20 years mandatory period as per Rule 66 of MCS (Pension) Rules, 1982. The husband of the Applicant is also a Medical Officer in the State Government. While husband is working at Osmanabad, Applicant was in Thane, Alibag area and away from the family. According to the Applicant, after she applied for voluntary retirement by representation dated 2.5.2017, the rejection by letter dated 1.8.2017 (Exhibit A-1 page 9 of OA) was communicated to her on the last day of the notice period of three months.

3. The grounds mentioned by the Applicant in support of her claim are summarized as under:

- (i) The reason furnished by the Respondents that there is shortage of Medical Officers is arbitrary.
- (ii) The rejection of her request was communicated on the last day of the notice period.
- (iii) There is discrimination against the Applicant, as in the case of Dr. Kiran Suresh Sonave, Group A officer, who is also Radiologist his request was accepted. In another instance Dr.

S.T. Mehetre, Radiologist was allowed to seek voluntary retirement.

4. The Applicant has, therefore, prayed in para 9(a) to quash and set aside the impugned order and in 9(b) to accept the request made by the Applicant for voluntary retirement.

5. In support of the same, the learned advocate for the Applicant has relied on the following judgments:

(i) Smt. Mercy K. Varghese v. State of Rajasthan Through the Principal Secretary, Medical & Health Services & Ors. S.B. Civil Writ Petition No.8091 of 2017 decided on 13.11.2017 by Hon'ble High Court of Judicature for Rajasthan at Jodhpur. Relevant portion reads as under:

"4., learned Additional Government Counsel submitted that as per sub-rule (2) of Rule 50, the notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority and thus, in absence of the acceptance of the notice by the appointing authority, the petitioner cannot claim to treat him as retired from service from the date of expiry of the period of notice. It is submitted that the application of the petitioner seeking voluntary retirement has rightly been rejected by the State Government keeping in view the larger public interest due to the scarcity/paucity of technical/nursing staffs. However, it is not disputed by the learned Additional Government Counsel that the controversy involved in this case is covered by the decision of this Court in Dr. Kalpana Singh's case (supra).

6. In Dr. Kalpana Singh's case (supra), this Court while considering identical issue held;

"However, there is merit in the second argument of learned counsel for the petitioner that the application for voluntary retirement could be rejected only on limited grounds as spelled out in Rule 50 of the

Rules of 1996. There was no hindrance in accepting the petitioner's application for voluntary retirement. The application of the petitioner was rejected on the ground of shortage of doctors. The State has placed on reliance on the judgment rendered by this Court in the case of Dr. Mahaveer Prasad Sharma Vs. State of Rajasthan & Ors. (supra) to contend that the same was a valid ground for rejection of the VRS application. On the other hand, learned counsel for the petitioner has relied on the judgment rendered by the learned Single Judge of this Court in the case of Dr. Duresh Narayan Mathur Vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition No.4121/2012), decided on 11.09.2012, wherein, in similar circumstance, the petitioner who was a lady, was allowed to voluntary retire in spite of the similar objection of the non-availability of Medical Officers. Normally, this Court may have referred the matter to a Division Bench but it appears that the first judgment dated 11.09.2012 passed in S.B.Civil Writ Petition No.4121/2012 (Dr.Duresh Narayan Mathur Vs State of Rajasthan & Ors.) was not brought to the notice of the learned Single Judge dealing with the case of Dr. Mahaveer Prasad Sharma (supra). The case of Dr. Duresh Narayan Mathur was given at a prior point of time."

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"In the present case, the petitioner is entitled to voluntary retirement under Rule 50 of the Rajasthan Civil Services (Pension Rules), 1996. The said rules are statutory rules. Moreover, the Rule 50 of the Rules of 1996 contemplates "a notice to retire" and not "a request seeking permission to retire". The request contemplated in Rule 50 of the Rules of 1996 is only in case an employee is seeking waiver of the notice period. The petitioner who is a government servant, is governed by the terms and conditions of service framed by the State Government. They leave no scope with the State to withhold the permission except on the three grounds mentioned therein i.e. in case, the petitioner is under suspension; disciplinary proceedings are pending or contemplated for the imposition of major penalty; or whose prosecution is contemplated or launched in a Court of Law. The Statute must be read in its entirety for the purpose of finding out the intention and object thereof."

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"Thus, the rule in the present case is absolute except for the three exceptions mentioned above. There was nothing to stop the government from including the clause "public interest or "any other reason", in case, they had any intention or object behind refusing the voluntary retirement either in the interest of the public or otherwise."

Thus, the petitioner was not suffering from any of the disqualification incorporated in the Rule 50 of the Rules of 1996 making her ineligible from seeking voluntary retirement. No such provision or exception in the Rules has been brought to the notice of this Court, which may enable this Court to come to the conclusion that the State could reject the application on any other reasons except as mentioned in the rules. In the absence of any such provision permitting the State to refuse voluntary retirement on the ground of public interest or any other valid reason, the Government is equally bound by the rules and other terms and condition of the service binding the parties."

(ii) Dr. Gopinath Maji Vs. State of West Bengal & Ors., O.A. No.293 of 2013 decided on 8.8.2013 by CAT, Bench at Kolkatta.

(iii) Smt. Sadhana R. Thorat & Ors. Vs. The State of Maharashtra & Ors. OA No.1118 of 2017 decided on 30.11.2017 by this Tribunal (Interim order).

(iv) Dr. Mukund Mahadeo Sadigale Vs. The State of Maharashtra, OA No.626 of 2018 decided on 5.10.2018 by this Tribunal.

(v) Shri Pradipkumar Yeshawant Bhurke Vs. The Chairman/Secretary, MPSC, OA No.499 of 2017 decided on 13.2.2019 by this Tribunal.

6. The Applicant has also filed rejoinder. The relevant portion of the same is as under:

"1.1 With reference to para no.11 and 15 I say that the reason now sought to be advance that, I am holding the post of Radiologist and there is shortages of doctors in the cadre of specialist. I say and submit that, this reason is not supported by any record like office note etc. I say that, in the impugned order it is only stated that, there is shortages of medical officers, Group A. Therefore, the Respondents are improving their case by stating reasons which were not stated in the impugned order.

1.3 I say and submit that, I have placed various orders by which the Respondents accepted the request of various medical officers who were working in Group A, e.g. the order at page no.13, 15, 17, 19, 21, 23 etc. Those requests were accepted even after issuing of impugned order dated 1.8.2017 e.g. the order at page no.23, 25 are dated 22.11.2017 the order at page no.19 is stated 24.11.2017. The order on page no.21 is dated 20.11.2017. Therefore the reason advanced by the Respondents that, there is shortages of medical officer is camouflage and not real reason. The request came to be rejected for some oblique reasons. Mere having higher G.P. would not make any difference in duties and responsibilities. After performing certain number of years or service GP is sanctioned.

1.4 I further say that, the order at page no.27 in respect of Dr. Kiran Suresh Sonave, I say and submit that Shri Sonave is himself Radiologist. Therefore the reason advanced by the Respondents is totally false.”

(Quoted from page 38-39 of OA)

7. The Respondents no.1 to 4 have filed their reply in the form of affidavit. The relevant portion of the same reads as under:

“11. With reference to contents of Paragraph No.6.8, I say and submit that Applicant has given application for voluntary retirement on 2.5.2017. Applicant is working as Radiologist, Group A in the pay scale of Rs.15600-39100 plus Grade Pay 6600. In this cadre total sanctioned posts are 38 out of which only 16 posts has filled and 22 posts are vacant. Since there is shortage of doctors in cadre of Specialists under the hospitals of Public Health Department and the same is affecting badly the Public Health under the State. Therefore the department is in the need of services of the Applicant. Taking into consideration this important aspect, Applicant’s voluntary retirement notice has been rejected by the Respondent authorities and same has been communicated to the Applicant by the letter dated 1.8.2017.

18. With reference to contents of Paragraph No.6.11 B, I say and submit that in this para Applicant has mentioned that Respondent has accepted request of voluntary retirement in respect of 3 Medical Officers from 4.9.2017 to 11.10.2017. Therefore, it is contented that reasons advanced by the Respondent are totally baseless and Applicant has been discriminated. With respect to this it is submitted that as mentioned in reply to forgoing paras Applicant is working as a Radiologist Group A in the

pay scale of (Rs.15600-39100 plus Grade Pay 6600). In this cadre total sanctioned posts are 38, out of which 22 are vacant. Respondent has accepted voluntary retirement of the Medical Officers Group A in the scale of (Rs. 9300-34800 plus Grade pay 5400). In this cadre (Grade Pay 5400) total sanctioned post are 7252 and filled post are 6108 and vacant posts are 1144. Therefore, it would be incorrect to equate the post of Medical Officer Group A in the scale of [Rs. 9300-34800 plus Grade pay 5400) with that of Specialist in the scale of (Rs.15600-39100 plus Grade Pay 6600).

19. With reference to contents of Paragraph No 6.11 C, I say and submit that as per the Maharashtra Civil Service (Pension) Rules, 1982, Rule No.66 at any time a Government servant after completing 20 years qualifying service he may by giving notice of 3 months in writing to the Appointing Authority retire from service. Such notice of voluntary retirement given requires acceptance by the Appointing Authority and where the appointing authority does not refuse to grant the permission for retirement before expiry of the period specified in the said notice, the retirement becomes effective from the date of expiry of the said period. According to this rule Applicant's voluntary retirement request has been rejected by the Government, and the accordingly Applicant has been informed accordingly."

(Quoted from page 31-34 of OA)

8. During hearing learned CPO has produced medical reports of Dr. Mehetre. The Respondents in their noting regarding Dr. Mehetre have observed that he is suffering from various illnesses and thus unable to work. Hence, his request is conceded.

9. The Respondents have therefore pleaded that the OA is devoid of merit and the same may be dismissed.

10. Issues for consideration:

- (i) Whether rejection of representation of the Applicant is communicated within stipulated period?

- (ii) Whether there is discrimination against the Applicant and if so, whether it is based on reasonable grounds?
- (iii) Whether the orders rejecting the request by the Applicant are illegal?

Discussion and findings:

11. The Applicant had requested for voluntary retirement and given the representation on 2.5.2017 and the same is rejected admittedly on the last date of the notice period of three months namely 1.8.2017. Therefore, the rejection of the representation has been communicated in the stipulated period and no error is noticed in the same.

12. The Respondents have clarified that in the cases of said Dr. Kiran Suresh Sonave and Dr. S.T. Mehetre the grounds on which the request has been accepted are different and cannot be compared with that of the Applicant. While Dr. K.S. Sonave is a Medical Officer doing the job of Radiologist, but is not a Specialist. In case of Dr. S.T. Mehetre he was suffering from various illnesses which made him unable to perform his job. Thus, the Applicant fails to demonstrate similar circumstances attracting the charge of discrimination for arbitrary reasons.

13. The Respondents have given the reason of shortage of Specialists particularly in the field of Radiologists adversely affecting public health system as the cause for rejecting the request made by the Applicant.

14. Careful reading of Rule 66 of MCS (Pension) Rules, 1982 is imperative. For ready reference relevant portion from Rule 66 of MCS (Pension) Rules, 1982 is reproduced below:

“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.”

15. Perusal of the above rule confirms that the ground of public interest is not to be found as reason for rejection in this particular rule. The following observations of the Hon’ble High Court for Rajasthan at Jodhpur in Smt. Mercy K. Varghese v. State of Rajasthan (supra) in this regard are significant:

“
They leave no scope with the State to withhold the permission except on the three grounds mentioned therein i.e. in case, the petitioner is under suspension; disciplinary proceedings are pending or contemplated for the imposition of major penalty; or whose prosecution is contemplated or launched in a Court of Law.”

“Thus, the rule in the present case is absolute except for the three exceptions mentioned above. There was nothing to stop the government from including the clause "public interest or "any other reason", in case, they had any intention or object behind refusing the voluntary retirement either in the interest of the public or otherwise.”

16. In the present case the Respondents have not contended any of the grounds mentioned above such as departmental enquiry attracting major penalty against the Applicant.

17. The shortage of the Doctors has to be addressed by the Respondents alternatively and imaginatively including resorting to use of information technology in the field of Radiology. Rejection of the representations for voluntary retirement is giving rise to allegations of avoidable malpractices against the Respondents. The Respondents need to consider these on priority besides initiating the process of selecting competent doctors, regularly.

18. It is, therefore, noticed that the rejection of the representation is not on the basis of Rules and thus needs to be quashed.

19. Hence, we pass order as follows:

- (a) The Original Application, therefore, is allowed in terms of prayer clause 9(a) and 9(b).
- (b) The impugned order dated 1.8.2017 is quashed and set aside.
- (c) Applicant shall be deemed to have retired from 4.4.2019.
- (d) No order as to costs.

Sd/-

(P.N. Dixit)
Member (A)
4.4.2019

Sd/-

(A.H. Joshi, J.)
Chairman
4.4.2019

Dictation taken by: S.G. Jawalkar.