

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.350 OF 2022

DISTRICT : SANGLI

Dr. Rajiv Haribhau Pawar,)
Age 55 years, occ. Retired Medical Officer, Class-A,)
R/at Hariujjwal, Warnali Road, Vidya Nagar, Lane 3A,)
Vishrambag, Tal. Miraj, District Sangli 416 416)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400032)
2. The Additional Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400032)
3. The Director General of Health Services,)
'Arogya Bhavan', St. George Hospital Compound,))
P.D'Mello Road Mumbai 400001)
4. The Deputy Director of Health Services,)
Kolhapur Region, Kolhapur)
5. The District Civil Surgeon, Satara)
6. The Medical Superintendent,)
Sub District Hospital, Karad, Satara)

7. The Desk Officer, Public Health Department,)
G.T. Hospital, 10th Floor, A-Wing, Mumbai-1)
8. The Deputy Director of Health Services,)
Pune Circle Pune)..Respondents

Shri Prashant R. Suryawanshi holding for
Shri Gajanan M. Savagave – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)
RESERVED ON : 17th August, 2023
PRONOUNCED ON: 23rd August, 2023

J U D G M E N T

1. Heard Shri Prashant R. Suryawanshi holding for Shri Gajanan M. Savagave, learned Advocate for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.
2. The Applicant has challenged communication dated 19.11.2019 issued by the Respondent No.6 – The Medical Superintendent, Sub District Hospital Karad, Dist. Satara thereby rejecting his application for voluntary retirement on the ground that the Applicant is not fulfilling the criteria of qualifying service of 20 years, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
3. Learned Advocate for the Applicant states that by order dated 13.07.2022 passed by this Tribunal in MA No.235/2022 in OA No.350/20022, the delay was condoned.

4. The brief facts are as follows:

The Applicant was serving as Medical Officer, Class-II at Primary Health Centre, Manjarde, Tal. Tasgaon, Dist. Sangli from 02.08.1991 to 14.06.1995. On 14.06.1995, he was selected through MPSC as Medical Officer, Class-A. On 26.07.2017, the Applicant addressed an application to Respondent No.6 for granting him Voluntary Retirement w.e.f. 31.10.2017. On the same day i.e. 26.07.2017, the Applicant addressed another letter to Respondent No.6 and requested to convert the period of his absence from duty into extra ordinary leave without pay from 15.03.2010 to 09.03.2015. On 19.11.2019, the Respondent No.6 has informed to the Applicant that since he has not completed qualifying service of 20 years and, therefore, the voluntary retirement application cannot be considered and informed him to report on duty. It is on the above background, the Applicant has filed present O.A. for direction to quash and set aside the order dated 19.11.2019 passed by the Respondent No.6.

5. Shri Prashant Suryawanshi, learned Advocate for the Applicant sought to contend that in the impugned order dated 19.11.2019 it is stated that since the Applicant was appointed on promotion post in 1995, he had not completed 20 years. On 26.07.2017, the Applicant addressed the letter to Respondent No.6 about voluntary retirement from service. Learned Advocate states that period between 16.10.1998 and 30.05.2000 was regularized as a extra ordinary leave. It should not be counted as absence. He further stated that he was absent for five years from 21.03.2010 to 09.03.2015. He states that his services were counted from 08.08.1995. He however states that his earlier services of 4 years should

be counted for qualifying services for taking voluntary retirement as per Rule 30 of MCS (Pension) Rules, 1982.

6. Per contra, learned P.O. opposes the submission and states that if the period from 1991 to 1995 is to be counted as regular service, the question of delay would arise. The impugned order is very clear that these four years are ad-hoc and hence they cannot be counted for calculating service benefits. She further pointed out that there has been long absenteeism of more than 5 years as follows:

Period	Duration
16.10.1998 to 31.5.2000	1 year 7 months 16 days
21.3.2010 to 9.3.2015	4 years 11 months 17 days
9.5.1997 to 21.5.1997	13 days

In view of absence during these periods the applicant has rendered only 15 years 7 months and 8 days services. Therefore, as per Rule 30 of MCS (Pension) Rules, 1982 the applicant is not eligible for pensionary benefits. Replying to the contentions raised by the applicant that the competent authorities had treated his absence from 16.10.1998 to 31.5.2000 as unauthorized leave without pay, she stated that this was done because the Government had taken a policy decision to give an opportunity to absconding medical officers to rejoin Government service.

7. Learned P.O. further pointed out that taking into consideration absence period of applicant from 16.10.1998 to 31.05.2000 total 1 year, 7 month, 16 days; 21.03.2010 to 09.03.2015 total 4 years 11 months 17 days; and 09.05.1997 to 21.05.1997 total 13 days, till last date of voluntary retirement notice dated 31.10.2017, applicant has rendered 15 years 7 months 8 days service. Therefore, as per Rule 30 of MCS (Pension) Rules, the Applicant is not eligible for pensionary benefit. Hence, the

proposal of the applicant for voluntary retirement came to be rejected by the office of Deputy Director Health Services, Pune on 24.10.2019. Learned P.O. therefore, submits that application filed by the Applicant is devoid of merits and there is no substance in the matter. She also pointed out that as per Rule 30 of MCS (Pension) Rules, the Applicant has not rendered qualifying service to grant voluntary retirement and the same been communicated to him in the year 2019 and, therefore, this order is legal and there is no violation of MCS (Pension) Rules and prayed that O.A. may be dismissed.

8. Considered the submissions of both the sides. In this case it is seen that the applicant has had a long history of absenteeism from official duty. He has been absent during the below period:

Period	Duration
16.10.1998 to 31.5.2000	1 year 7 months 16 days
21.3.2010 to 9.3.2015	4 years 11 months 17 days
9.5.1997 to 21.5.1997	13 days

9. Therefore, as per Rule 30 of the MCS (Pension) Rules, 1982 the applicant is not eligible for pensionary benefits. Hence, this OA is devoid of merits and deserves to be dismissed.

10. Original Application is dismissed. No orders as to cost.

Sd/-
(Medha Gadgil)
Member (A)
23.8.2023

Dictation taken by: S.G. Jawalkar.