

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.561 OF 2020**

**DISTRICT : THANE**

Dr. Kranti Sunil Jawale, )  
[@ Kranti Sharad Honrao old name], )  
Age 53 years, Anesthetist, Class-I, Civil Hospital, )  
Ulhasnagar R/at B-704, Aricia Altis, )  
Near APMC Market, Kalyan (W) 421301 )..Applicant

Versus

1. The Principal Secretary, )  
Public Health Department, Mantralaya, )  
Mumbai 400032 )
2. The Director of Public Health, )  
Aarogya Bhavan, 5<sup>th</sup> Floor, St. Georges Hospital )  
Compound, P.D'Mello Road, Near CSMT, Fort, )  
Mumbai 400001 )
3. Civil Surgeon, Central Hospital, Ulhasnagar-3, )  
Thane )..Respondents

Shri A.D. Gugale– Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)

RESERVED ON : 18<sup>th</sup> October, 2023  
PRONOUNCED ON: 26<sup>th</sup> October, 2023  
PER : Smt. Medha Gadgil, Member (A)

### **J U D G M E N T**

1. Heard Shri A.D. Gugale, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Applicant who is working as Anesthetist, Class-I in Civil Hospital, Ulhasnagar challenges order dated 2.11.2018 thereby rejecting his application for voluntary retirement which was issued under Rule 66 of MCS (Pension) Rules, 1982.
3. Ld. Advocate for the applicant points out that applicant had completed more than 20 years of qualifying service and is eligible to apply for Voluntary Retirement as provided under Rule 66 of the MCS (Pension) Rules, 1982. Therefore, she has tendered a letter-cum-notice dated 2.8.2018 for retirement under Rule 66 to the Govt. He pointed out that applicant had certain medical issues including Vertigo and Pain in Left Arm and therefore could not concentrate on her job as an Anesthetist. As the notice period of three months was over on 2.11.2018 and there was no communication to her regarding acceptance/rejection of her notice for voluntary retirement, she has submitted her relieving report on 2.11.2018 to Civil Surgeon, Ulhasnagar. The impugned order dated 2.11.2018 rejecting her notice for voluntary retirement on the ground of 'public interest' was received on 6.11.2018 after she had relinquished her charge on 2.11.2018. He therefore contended that applicant stood retired on 2.11.2018. Ld. Advocate for the applicant states that the reason for rejection given as public interest is a stereotype one and is issued without application of mind.

4. Per contra, Ld. PO while opposing the OA states that voluntary retirement notice was rejected by respondent no.1 on the ground of 'public interest' and the said order dated 2.11.2018 was served to the applicant at her residential address which was received by her on 6.11.2018. She pointed out that assuming that as per voluntary retirement notice she has retired from Govt. service however without consent of any concerned authorities applicant has remained inactive w.e.f. 2.11.2018 to date. She further pointed out that no specific relieving order was issued by the respondents and after receiving order dated 6.11.2018 she was supposed to join the duties in the welfare of the patients. The rejection order also mentioned that the enquiry into the complaint made by Hon'ble MLA Shri Kumar Aaylani dated 15.3.2013 is still pending, stating that the applicant demanded money from the needy, poor and tribal patients. Ld. PO contended that a show cause notice is issued to the applicant for misconduct for demanding money. There are complaints against the applicant for demanding money from poor patients at the time of operation and notice accordingly was given on 16.3.2019.

5. We have considered the submissions of both the sides. It is a fact that applicant had submitted her voluntary retirement notice on 2.8.2018 as per Rule 66 of the MCS (Pension) Rules, 1982, which reads as under:

*"66. Retirement on completion of 20 years of 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.”*

6. It is a fact that applicant had put in 20 years of qualifying service and given her notice on 2.8.2018. The notice of voluntary retirement was rejected after expiry of 3 months. It is seen that period of 3 months lapsed on 2.11.2018 and the order was served on 6.11.2018 though issued on 2.11.2018. As per clause 66(2) the retirement becomes effective from the date of expiry of 3 months and in this case it is 2.11.2018, which is deemed to be accepted. In the order dated 2.11.2018 the rejection is based on two points. Firstly due to shortage of Medical Officers and secondly they have mentioned the complaint filed against the applicant that she used to demand money from poor and needy patients. The MLA has lodged a complaint against the applicant wherein it is stated that applicant demanded money from needy, poor and tribal patients. If they refused to give money they were asked to go to other hospital for treatment. Therefore, he recommended that the applicant should be transferred. The impugned order further mentions that the enquiry report on the said complaint has not been received. On both these grounds the application for voluntary retirement was rejected.

7. Ld. PO fairly submits that enquiry against the applicant was completed and she was exonerated from the said charge and enquiry officer has submitted his report dated 23.9.2013 to that effect. However, in the impugned order dated 2.11.2018 the authority relied on the facts that the applicant used to demand money from poor and needy patients as per complaint of the MLA dated 15.3.2013. Thus, authority gave weightage to this fact which was incorrect and not in existence. The respondents have not taken into account the fact that the respondents

have enquired into this complaint and the applicant was completely exonerated from this charge by report dated 23.9.2013. Thus, the basis of the rejection of the application for voluntary retirement was erroneous and illegal. Hence, we have no hesitation in passing the following order.

8. The Original Application is allowed and the impugned order dated 2.11.2018 issued by Respondent No.1 is hereby quashed and set aside. The Respondent No.2 is directed to accept the application-cum-notice of the applicant for voluntary retirement dated 2.8.2018 and declare that applicant stood retired from 1.11.2018. The Respondents are directed to give retirement and all consequential benefits to the applicant within a period of three months, as per rules. No order as to costs.

**Sd/-**

**(Medha Gadgil)**  
**Member (A)**  
**26.10.2023**

**Sd/-**

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**26.10.2023**

Dictation taken by: S.G. Jawalkar.