

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 703 OF 2018**

DIST. : BEED

Dr. Prithviraj s/o Kalyanrao Chavan,  
Age: 44 years, Occu. : Service as  
Medical Officer,  
Presently working as Medical Superintendent  
Class-I, Rural Hospital, Talkhed,  
Taluka Majalgaon, Dist. Beed.  
R/o. Presently Talkhed, Taluka Majalgaon,  
Dist. Beed.

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through the Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai 400 001.
- 2) The Director,  
Public Health Department,  
Arogya Bhavan, Saint George Hospital  
Compound, Mumbai 400 014.
- 3) The Deputy Director of Health Services,  
Latur Region, Latur, Arogya Sankul,  
Barshi Road, Latur,  
Taluka & Disrict Latur 413531.
- 4) The Civil Surgeon, Beed,  
District Beed 431122.

**.. RESPONDENTS**

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APPEARANCE :- Shri Shamsunder B. Patil, learned  
Advocate for the applicant.  
: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents.

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**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN**  
 (This matter is placed before the Single Bench  
 due to non-availability of Division Bench.)

**DATE** : **03.06.2019**  
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### **JUDGMENT**

1. Heard Shri Shamsunder B. Patil, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. By this Original Application the applicant has challenged the order dated 11.10.2018 issued by the respondent no. 1 thereby rejecting his request for voluntary retirement. The relevant text of impugned order reads as follows :-

“प्रति,  
 संचालक, आरोग्य सेवा,  
 आरोग्य सेवा संचालनालय,  
 आरोग्य भवन, मुंबई.

विषय :-स्वेच्छा सेवानिवृत्तीबाबत....  
 डॉ. पृथ्वीराज कल्याणराव चव्हाण, वैद्यकीय अधिक्षक,  
 ग्रामीण रुग्णालय, तालखेड, जि. बीड

संदर्भ :-आपले पत्र क्रं. संआसे/कक्ष-१/टे-१/डॉ. चव्हाण/वै.अ.  
 /स्वेसेनि/१८, दि. ११.७.२०१८

उपरोक्त विषयाबाबत आपल्या संदर्भाधीन पत्राच्या अनुषंगाने आपणास कळविण्यात येते की, सद्यस्थितीत विभागांतर्गत रुग्णालयामधील महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट-अ संवर्गात अधिका-याची कमतरता असल्यामुळे रुग्णसेवा पुरविण्यास अडचणी निर्माण होत आहेत. याचा परिणाम राज्याच्या आरोग्य सेवेवर होत आहे. तसेच डॉ. चव्हाण यांनी म.ना.से. (निवृत्तीवेतन) नियम, १९८२ मधील नियम १० मधील पोट नियम (५) अन्वये दिलेल्या नोटीशीच्या अनुषंगाने म.ना.से.

(निवृत्तीवेतन) नियम, १९८२ मधील तरतूदीनुसार त्यांची वयाची ५० वर्षे पूर्ण होत नाहीत. त्यानुसार डॉ. पृथ्वीराज चव्हाण, वैद्यकीय अधिक्षक यांनी म.ना.से. (निवृत्तीवेतन) नियम, १९८२ मधील तरतूदीनुसार दि. २.५.२०१८ च्या अर्जांन्वये दिलेली स्वेच्छासेवानिवृत्ती नोटीस प्रशासनाची निकड लक्षात घेउन लोकहितार्थ ..... ... करण्यात येत आहे.

उपरोक्त वस्तुस्थिती डॉ. पृथ्वीराज चव्हाण, वैद्यकीय अधिक्षक, ग्रामीण रुग्णालय, तालखेड, जि. बीड यांच्या तात्काळ निदर्शनास आणण्यात यावी.

सही/-

(वि.पुं. घोडके)

अवर सचिव, महाराष्ट्र शासन”

(Quoted from page 25-A of paper book of O.A.)

3. As facts emerge, reason assigned in impugned communication is that the applicant has not completed 50 years of age.

4. The ground referred to in the impugned order as it reveals from the text quoted in para 2 thereof is only one, namely that the applicant has not attained the 50 years of age. However, the ground which has been brought on record, later on, is that applicant did not complete 20 years of regular service.

5. In the aforesaid background the applicant has challenged the order of refusal with pleadings which are as follows :-

“(vi) The applicant says and submits that by Government Resolution dated 11 August 2008 the Government had condoned the technical breaks of dated 27.2.1999, 28.2.2000, 1.3.2001, 2.3.2002, 3.3.2002 and 4.3.2002 given in the appointment of the applicant and the services of the applicant were treated continuous for all purposes including pensionary benefits except for the purpose of seniority.

Hereto annexed and marked as Annexure 'A-4' is a copy of Government Resolution dated 11 August 2008.

(vii) The applicant says and submits that, in the year 2011 the applicant was brought in the cadre of Civil Surgeon in the pay scale of Rs. 15600-39100 Grade Pay Rs. 6600 by Government order dated 3.8.2011 and his pay was accordingly fixed.

(viii) The applicant says and submits that since the date of his first appointment on 27.2.1997 the applicant has completed the total service of 20 years and 3 months as on 2 May 2017 After Office Hours. The Applicant says and submits that as per Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, this total period of service is the qualifying service rendered by the applicant.

(xvii) The applicant says and submits that, after the notice of the applicant for voluntary retirement, the Government has accepted the notices of voluntarily retirement of several medical officers who are similarly situated like the applicant. The applicant is having Government orders of some of the medical officers as under :

Sr. No.	Government Resolution dated	Name of the Medical Officer
1.	8.11.2017	Dr. Ramdas Shamrao Kumbhare
2.	13.11.2017	Dr. Rupali Vishwanath Utikar
3.	10.04.2018	Dr. Vijay Janardhan Sawarkar
4.	10.04.2018	Dr. Prakash Vishwanath Choudhary
5.	07.07.2018	Dr. Ashok Pandurang Pawar
6.	26.07.2018	Dr. S.T. Mhetre

Thus there is clear discrimination made by the Government in the case of the applicant. Hereto annexed and marked as Annexure "A-7" collectively are the copies of the abovementioned Government Resolutions."

(Quoted from page Nos. 5, 6, 9 & 10 of paper book of O.A.)

6. Government's reply to the grounds referred herein above is as follows :-

"8(vi) With reference to Para 6(vi) of the application, I say and submit that by the Government Resolution dated 11.08.2008 Government had condoned the technical breaks

of the Applicant before the regular appointment. In the said Government Resolution it has clearly stated that though applicants' services from 27.2.1997 were treated continuous but services prior to appointment by Maharashtra State Commission will be fortuitous and will not be counted for seniority purpose.

(vii) With reference to Para No. 6 (vii), I say and submit that applicant was appointed in the Civil Surgeon Cadre as per order dated 3.8.2011.

(viii) With reference to Para No. 6 (viii), I say and submit that Applicant was initially appointed on temporary basis w.e.f. 27.12.1997. The Applicant subsequently appointed by nomination in the services on regular basis vide Government Resolution dated 3.4.2002. As such, the applicant contended that technical breaks condoned vide Government Resolution dated 27.2.1999, 28.2.2000, 1.3.2001, 2.3.2002, 3.3.2002 and 4.3.2002 are to be treated as continuous service for all purpose including pensionary benefits except for the basis of seniority. It is pertinent to note that the past temporary service continued further by condoning technical breaks is of fortuitous nature which cannot be computed or the purposes of completing twenty years' service for seeking V.R.S. It will be benefitted for the period computing for superannuation retirement and for monetary benefits only. The past annual increment was extended to the applicant in view of Hon'ble Tribunals Directive in O.A. No. 998/2004 from the date of initial appointment from year 1997.

(ix) With reference to Para No. 6 (ix) to 6 (xvi), I say and submit that as mentioned in reply to para no. 3, as per the Hon'ble Tribunal's direction applicant's application for voluntary retirement was considered. Further I say and submit that Applicant has submitted Voluntary Retirement Notice under the M.C.S. (Pension) Rules 10(5) and 66(1). With reference to this it is submitted that Applicant has not completed 50 years of age so he does not fall under Rule 10(5) of M.C.S. (Pension) Rules. Further I say and submit that since Applicant has not completed 20 years Regular Service so he does not fall under the Rule of 66(1) of M.C.S. (Pension) Rules. Further I say and submit that there is a shortage of doctors under the hospitals of Public Health Department under the state. Therefore, the Department is in need of the services of the applicant. Taking into consideration these aspects applicant's Voluntary Retirement notice has been rejected by the respondent authorities and same has been communicated to the Applicant vide Government Letter dated 11.10.2018.

(x) With reference to para no. 6 (xvii) I say and submit that applicant is not eligible for Voluntary Retirement as per Rules. Therefore, Voluntary Retirement Notice of the applicant rejected.

(xi) With reference to para no. 6 (xviii) (xix) (xx) I say and submit that as mentioned in foregoing paras applicant was initially appointed on temporary basis w.e.f. 27.02.1997. On the basis of recommendation made by Maharashtra Public Service Commission by an order dated 03.04.2002 applicant was appointed as Medical Officer on regular basis. Since applicant has not completed 20 years Regular Service so he does not fall under Rule of 66(1) of M.C.S.R. (Pension) Rules, 1982.”

(Quoted from pages 45 to 48 of paper book of OA)

7. It is considered appropriate to deal with the aspect of refusal of Government to consider the period of employment spent by applicant on temporary appointment. This aspect has been dealt with and ruled by the Hon'ble High Court of Judicature at Bombay while delivering the judgment in **Writ Petition No. 6928/2016 [Dr. Shailejkumar Kanku Mane Vs. the State of Maharashtra & Ors.]** dated 25.4.2018.

8. Hon'ble High Court also has laid down in W.P. No. 6928/2016 (supra) that the qualifying service would mean from the date of appointment in temporary capacity and not the date on which the petitioner was made permanent and also the other fact that there is nothing like absolute prerogative for the State to refuse the request of petitioner for voluntary retirement. The relevant text of the said judgment read as follows :-

“21] Here again, taking into consideration the clear provisions of rule 30 of the said Rules, we agree with the contention of Mr. Savagave that the qualifying service of the petitioner will have to be computed from the date of his first appointment in temporary capacity i.e. 2<sup>nd</sup> August 1991 and not the date on which the petitioner was made permanent i.e. 21<sup>st</sup> November 1995.

22] As noted earlier, rule 30 of the said rules is found in Chapter V of the said rules, which deals with the aspect of '*qualifying service*'. Rule 30 in particular, deals with the aspect of *commencement of qualifying service*. This rule provides that subject to the provisions of the rules, qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantially or in an officiating or *temporary* capacity provided that at the time of retirement he shall hold substantially a permanent post in the government service or holds a suspended lien or certificate of permanency.

23] Rule 30 of the said Rules makes it clear that qualifying service is to be computed from the date a government servant takes charge of the post to which he is first appointed even in a temporary capacity. In the present case, there is no dispute whatsoever that the petitioner has taken charge of the post of medical officer to which he was first appointed in a temporary capacity on 2<sup>nd</sup> August 1991. There is also no dispute that as on the date on which the petitioner proposed to proceed on voluntary retirement, the petitioner was holding substantially a permanent post in government service. Thus, as on 24<sup>th</sup> January 2013, i.e. the date of which, the petitioner gave notice for voluntary retirement, the petitioner, had completed 20 years of qualifying service. Therefore, contention of Mr. Walimbe to the contrary cannot be accepted.”

(quoted from para 21 to 23 of judgment of Hon'ble High Court in W.P. No. 6928/2016)

9. The relevant text of the judgment of Hon'ble High Court contained in para nos. 21 to 23 quoted in foregoing para governs the case of the present applicant for computation of service, as binding precedent.

10. Next question to be considered is as to reason of refusal impliedly argued namely public interest or non availability of adequate number of Officers is dealt with by the principal seat of this Tribunal at Mumbai while deciding **Original Application No. 1118/2017** filed by **Smt. Sadhana Ramesh Thorat [Sadhana B. Deokule, old name] Vs. The State of Maharashtra & Ors.** decided on 4.4.2019.

11. In O.A. no. 1118/2017 (supra) this Tribunal has recorded in relation to ground of public interest etc. in para nos. 13 to 17.

The relevant text of the said judgment reads as follows :-

“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.”

(quoted from para 13 to 17 of judgment in O.A. no. 1118/2017)

12. In the result, for same reasons as discussed in foregoing paras the present Original Application succeeds.

13. Hence order under challenge i.e. communication dtd. 11.10.2018 is quashed and set aside. Tribunal holds and declares that the applicant has completed qualifying service. The applicant will be deemed to have been retired voluntarily w.e.f. 31.7.2018.

14. In the circumstances, parties shall bear their own costs.

**(A.H. JOSHI)**  
**CHAIRMAN**

**Place : Aurangabad**  
**Date : 03.06.2019.**