

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 626 OF 2018**

DISTRICT : KOLHAPUR

Dr Mukund Mahadeo Sadigale)
Medical Officer, Class-II, Grade-A)
Rural Hospital, Malkapur, Tal-Shahuwadi)
Dist-Kolhapur, residing at 1940-B,)
Ring Road, Kagal, Dist-Kolhapur.)...**Applicant**

Versus

The State of Maharashtra)
Through Principal Secretary,)
Public Health Department, having office)
at G.T Hospital Compound, Fort,)
Mumbai.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**

RESERVED ON : **28.09.2018**

PRONOUNCED ON : **05.10.2018**

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. Applicant has approached this Tribunal with following relief:-

“15(a) This Hon’ble Tribunal be pleased to hold and declare that the impugned order dated 1.6.2018 issued by the Respondent is illegal and bad in law and the same be quashed and set aside with further directions to the Respondents to relieve the Petitioner forthwith along with all consequential monetary benefits in accordance with law.”

(Quoted from page 8 of O.A)

3. Impugned order recites reasons which are as follows:-
 - (a) There is shortage of Medical Officers and hence request for voluntary retirement cannot be accepted in view of Rule 66(2) of the Maharashtra Civil Services (Pension) Rules, 1982.
 - (b) Through letter dated 6.5.2018 applicant is informed pursuant to directions issued by the Government that proposal for initiation of D.E is pending.

4. The applicant has raised challenge to the said reason by raising various averments and grounds in the O.A which are as follows:-
 - (a) Medical Officers undertaking private practice are already protected by Hon’ble High Court through various orders, copy whereof are on record at Exh. ‘E’ [Para 6.6 and 7.3 of O.A].
 - (b) Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 has no application to request for voluntary retirement made under Rule 65 of Maharashtra Civil Services (Pension) Rules, 1982. [para 6.2, 6.4, 6.7, 7.1 & 7.2 of O.A]
 - (c) The reason that there is paucity of Medical Officer though used to refuse applicant’s request for voluntary retirement, recently as much as six Medical Officers are allowed to retire [Para 7.7 of O.A].

5. In so far as reply of the State is concerned, it is in the nature of bare denial.

6. The ground of discrimination pleaded by the applicant is not replied though it is pleaded that cases are decided on its own merit, the orders which applicant has placed on record at Exh. 'G' collectively do not disclose as to how the State Government has overcome its difficulty of paucity of Medical Officers.

7. In the reply filed by the State Government, State has maintained conspicuous silent as to what is the effect of the order of stay relating to private practice which is being used on foundation of proposed enquiry for misconduct of private practice. The reply is also totally silent on the point as to how even after the protective order of stay granted by the Hon'ble High Court regarding private practice done by Medical Officer, the State Government is entitled to deal with Medical Officers for indiscipline on the ground of private practice.

8. Learned advocate for the applicant has placed reliance on the judgement rendered by Division Bench of this Tribunal in O.A 12/2017 as confirmed by Hon'ble High Court in Writ Petition no 2240/2017 and 3988/2016. In this judgment, the Division Bench of this Tribunal has recorded a finding, based on one of the earlier judgment as follows:-

“9.....

 The Rule (supra) permits the appointing authority, withhold permission in two contingencies, i.e. 1). The Government servant who gave notice being under suspension at the time when he give notice; and 2) or he is placed under suspension after the Government servant gave notice under Rule 65(1)(a). Thus, whether there are contingencies / circumstances present in this case, is to be find out. It is

accepted by both the Learned Counsels that the applicant is not under suspension when she give notice on 27th September, 2006 nor she was put under suspension after receipt of the notice. If this so, then, withholding of permission on the face of it is bad and illegal, and is withheld by the appointing authority for some extraneous reasons. Thus, the action of not granting/withholding permission thus cannot be allowed to stand.

10. Shri Lonkar, learned counsel submitted before us that when the departmental enquiry is contemplated or pending, the permission to retire has to be granted (except in those cases, falling under the exception carved out by the Rule itself), to support his contention. The learned Counsel brought to our notice a judgment of this Tribunal where this Tribunal on similar set of facts and law had permitted the Government servant to seek voluntary retirement under the Rules. The Bench of this Tribunal having considered and compared the provisions of Rule 64, 65 and 66 of the Pension Rules has expressed the opinion in the following manner:

“It may be seen from the above rule that the appointing authority is empowered to refuse permission for retirement before the expiry of the period specified in the notice. Unlike Rule 65, which provides that a Government servant who has completed 30 years of qualifying service after giving notice in writing of three months before he wishes to retire and where such Government servant is placed under suspension, after she has given notice of retirement, it shall be open to the appointing authority to withdraw permission, Rule 66 does not stipulate any such conditions. However, refusal to grant permission for retirement should be based on valid grounds. In this case there are no such valid grounds especially after the period of absence of the applicant has been separately dealt with and the departmental enquiry has been ordered almost after three months after he sent his notice of voluntary retirement. Thus considering the background of the case, we hold that it will be in public interest to allow the applicant to retire voluntarily. The respondents, however, are free to continue the departmental enquiry against the applicant after accepting the notice of voluntary retirement.”

11. The above quoted extract from the order support the contention of Shri Lonkar. Thus, we accept the contention of Shri Lonkar and reject the contention of Shri Rajpurohit.”

9. The judgment above referred is confirmed by the Hon'ble High Court in W.P 2240/2007 with following observations:-

“The Tribunal has noted that there is no power in the Petitioners to withhold the voluntary retirement considering language of Rule 65. We find no reasons on the facts to differ from the view taken. At the same time, the tribunal has also noted in Para 12 of the impugned order bearing in mind Rule 26 and 27 that it is open to the Petitioners to conduct an enquiry as set out therein.”

(Quoted from order of Hon'ble High Court in W.P 2240/2007)

10. Even in the another judgment Division Bench of Hon'ble High Court in Writ Petition no. 3988 of 2016 (Dr Gopal Tulshiram Jinde Vs. The State of Maharashtra & Ors)which was in relation to power under Rule 66 of the M.C. S (Pension) Rules, 1982, Hon'ble High Court took a view that retirement under Rule 65 of M.C.S (Pension) Rules, 1982 is automatic, while that is not the position for Rule 66. Relevant text is quoted below:-

“Rule 66 unlike Rule 65 does not provide for automatic acceptance of notice for voluntary retirement after notice period is over. Admittedly, the petitioner is covered by Rule 66 and not Rule 65.”

(Quoted from page 4 of W.P 3988/2016)

11. The result that emerges is as follows:-

(i) Rule 66 has no application to govern the application made under Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982.

- (ii) The State Government practiced hostile discrimination while rejecting applicant's voluntary retirement notice, on the ground of paucity of Medical Officers, because six Medical Officers, longer tenure to serve, more than the applicant, have been allowed to retire voluntarily. The State has failed to justify as to how cases of these six Medical Officers were "different", and merit of each case is weighed before the Government.
- (iii) The use of the ground of lack of adequate Medical Officers for retirement of an officer, while considering application under Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982, as done in the present case, is on the face of it malafide.
- (iv) Present case is governed by the judgment pronounced in O.A 12/2007 (Mrs Sarika S. Pradhan Vs. The Government of Maharashtra & Ors) as confirmed by the Hon'ble High Court in W.P 2240/2007.

12. Hence, following order is passed.

- (a) It shall not be open to the State Government to take recourse to rule 66 M.C.S (Pension) Rules, 1982 while dealing with application under Rule 65 of M.C.S (Pension) Rules, 1982.
- (b) Order dated 1.6.2018 is quashed and set aside.
- (c) Applicant stands automatically retired after completion of notice period of 90 days.
- (d) If he has already served beyond 90 days due to impugned order, applicant shall stand retired from the date in case he has absented later on or from the date of this judgment.
- (e) Parties are directed to bear their own costs.

Sd/-
(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 05.10.2018
Dictation taken by : A.K. Nair.