IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.325 OF 2015

DISTRICT : THANE

Dr. Ramesh Venkatrao Deshmukh.)
Age : 50 years, Occu.: Service,)
R/at : A-11, Anuradha Apartment,)
Ayodhyanagar, Manpada Road,)
Dombivali (E).)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)

2. The Deputy Director of Health)
Services, Mumbai Circle, Thane.)

3. The Civil Surgeon.)
Central Hospital, Ulhasnagar 3.)...**Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 24.06.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This OA seeks in effect a declaration that notice of voluntary retirement given by the Applicant vide his application dated 7.12.2012 has become effective and further consequential directions to the Respondents are sought. Certain directions are sought with regard to the quashing and setting aside of the departmental enquiry by way of the charge-sheet dated 10.11.2014.

2. The Applicant was working as Medical Officer, Class-II at Ulhasnagar. As far as the facts are concerned, the Applicant initially joined as a bonded candidate on 14.8.1987. Then he was selected through MPSC on 8.2.1990. He submitted the notice of retirement on 7.12.2012. His case would be governed by Rule 66(2) of the Maharashtra Civil Services (Pension) Rules, 1979 (Pension Rules). It is an admitted position that there was no response at all on behalf of the Respondents thereto and quite clearly no refusal to accept the said notice was ever made by the Respondents much less conveyed to the Applicant.

3. On another front, the Applicant was already issued a show cause notice on 14.12.2009 with regard to an incident arising out of the death of a patient who was supposedly under his care. He denied all the allegations vide the reply submitted on 15.12.2009. Thereafter, on that front, nothing happened. On 5.5.2012, the Applicant wrote another communication informing *inter-alia* that he would stand retired w.e.f. 6.5.2012. Till then, no progress took place in so far as the show cause notice above referred to is concerned. On 25.11.2014, a charge-sheet dated 10.11.2014 was received by the Applicant. He submitted the reply of 30.12.2014. On 5.5.2015, by some kind of an Office Order, an Enquiry Officer came to be appointed while on 15.5.2015, the present OA was filed. These facts are quite clearly admitted either expressly or by necessary implication in the Affidavit-in-reply filed by Shri B.B. Patil, Under Secretary in Public Health Department and more particularly, in Paras 18 and 19 thereof wherein Paras 6.12 and 6.13 respectively of the OA have been traversed.

4. In the context of the above facts, we have peruse the record and proceedings and heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

5. It is absolutely clear that the notice of voluntary retirement evinced no reply and we must repeat times out of number that the refusal to accept it was never conveyed to the Applicant and in fact, such a decision was not taken by the Respondents ever. Therefore, by the self-operating proviso to Rule 66(2) of the Pension Rules, the voluntary retirement shall become effective and even if there were some Rules which the learned P.O. was talking about in the DE Manual, etc. they quite certainly cannot override these Rules framed under the proviso 309 of the Constitution of India. In this connection, our attention was invited by the learned Advocate for the Applicant to a few judgments rendered by this Tribunal. In **OA No.193/2012 (Shri Gurmailsingh M. Kundi Vs. State of Maharashtra, dated 21.1.2013), OA 88/2015 (Shri Subhash V. Gosavi Vs. Deputy Director of Land Records, dated 22.12.2015) and OA 914/2014 (Mrs. Pramila M. Lohakare Vs. State of Maharashtra & 3 Ors, dated 19.1.2015)**.

6. Therefore, in so far as the issue of voluntary retirement is concerned, the above discussion works it out and necessary directions in that behalf will have to be given.

7. Turning to the issue of the disciplinary proceedings, the above referred dates must have made it very clear that the "charge-sheet" was issued on 10.11.2014. We are not called upon to and we do not make even any observation much less comment on the merit of the charge-sheet. However, it is very clear that it pertained to the year 2009 which was more than 4 years before the issuance thereof, and therefore, granting all latitude to the Respondents, on the plain language of Rule 27 of the Pension Rules along with all the various sub-rules including Rule 27(2)(b)(ii) such an action becomes legally stale and incapable of being adopted. This becomes very clear even on a plain reading of the provisions, and therefore, we do not think we should allow something which is ineffective, ex-facie as well as per law to continue to remain in effect, and therefore, the said "DE" will have to be quashed and set aside.

8. It is hereby declared that the Applicant stood retired w.e.f. 6.5.2012. The Respondents are directed to take all steps necessary in according to him the pensionary and other post retiral benefits by taking that as a date of retirement. Compliance within three months. The departmental enquiry apparently initiated on 10.11.2014 by issuance of the charge-sheet stands hereby quashed

and set aside. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
24.06.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
24.046.2016

Mumbai
Date : 24.06.2016
Dictation taken by :
S.K. Wamanse.
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