

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. PARBHANI.

ORIGINAL APPLICATION NO.723/2015.

Bhalchandra s/o Venkateshrao Sagdeo,
Age 45 years, Occupation Senior Clerk,
R/o Saraswati Nagar Santosh Bhavan,
A/P Tq. Dist. Parbhani.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through the Secretary,
School Education & Sports
Department, Mantralaya,
Mumbai Pin. 400 032.
2. The Deputy Director,
Sports and Youth Services,
Directorate Mumbai / Nasik Division
Administrative Officers Training
College Room No.21/22,
Boribandar Hazarimal Somani Marg,
Mumbai 400 001.
3. Commanding Officer,
1 Maharashtra Girls Battalion (NCC)
NCC Building Second floor,
Old Secretariat Surrounding,
Fort, Mumbai 400 032.

-- **RESPONDENTS.**

APPEARANCE : Shri A. D. Gadekar, learned Advocate for the
Applicant.

: Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 30.01.2017.

JUDGMENT.

(Delivered on this 30th day of January, 2017)

1. Heard Shri A.D. Gadekar, learned Advocate for the Applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

2. From the admitted facts on record it seems that the applicant was appointed as a Clerk by the Respondent authorities on 1.7.1994 and has rendered total service of 17 years 10 months and 15 days. After completion of 17 years 10 months and 15 days the applicant applied for voluntary retirement scheme (V.R.S.) on 15.2.2012. He gave three months' notice and his application was forwarded by respondent no.3 to respondent no.2 for necessary action and vide letter dated 23.2.2012 the respondent no.2 sanctioned him his case under V.R.S. w.e.f. 15.5.2012.

3. Prior to sanctioning the claim some additional information in due proforma was called from the applicant. In the order to

sanction V.R.S. it is mentioned that the applicant's claim was considered under Rule 65, 66 (4b) under clause (a) sub Rule 2 of the M.C.S. (Pension) Rules 1982 was considered. The applicant was relieved on 15.5.2012.

4. On 14.4.2013 the applicant made a representation and requested for grant of retirement pension and all other pensionary benefits such as commutation of pension, gratuity etc. including the remaining claims such as arrears of yearly increments, benefit of Assured Progressive Scheme etc. or in the alternative reinstate the applicant.

5. According to the applicant his pension and pensionary benefits were withheld without any reason and therefore, he filed application to Lok Aayukta Mumbai on 2.5.2013. On 17.12.2014 the Lok Aayukta Mumbai passed an order in favour of the applicant mentioning therein as under :-

“the opinion of Law and Judiciary that, once retirement is final then that order cannot be called back. And also mentioned that in view of sanction of VRS to applicant even without completing 20 years of service is now under consideration to take the decision in this matter according to Maharashtra Civil Services (Pension) Rule 1982 Rule 4 by which appropriate Govt. is having power to remove any difficulty while applying

rules and Govt. is going to take a suitable steps in this regards up to next hearing.”

6. It is stated that, in spite of such observation no steps have been taken by the respondents. Respondents thereafter filed representations on 10.2.2015 and 10.3.2015. In the meantime the Departmental Enquiry pending against the applicant was closed on 12.11.2014. However, no action has been taken and hence this O.A.

7. In the O.A. the applicant has claimed following main reliefs :-

B) By order or direction the Respondents may please be directed to consider the claim of the applicant for grant of pension under Rule 110(2) (b) of MCSR Pension Rule referred in para 5.1 in G.R. dated 30.10.2009.

C) By order or direction the Respondents may please be directed to reinstate the applicant in service so as to enable him to complete 20 years of qualifying service.

However, relief “C” is not pressed and subsequently deleted.

8. The reply affidavit has been filed by the Respondents no.1 & 2. The Respondents admitted that the applicant has applied for V.R.S. after completion of 17 years 10 months and 15 days service and his application for V.R.S. was granted. It is however, stated that the applicant is not entitled for the benefits claimed under the pension Rules particularly Rule 110 (2) (b) read with G.R. dated 30.10.2009,

as per that provision the employee who has retired from service subject to superannuation (i.e. after attaining 58 years of age). On completion of service on medical grounds or subject to compassionate pension. Applicant is not entitled to any kind of benefit as per para no.5.1 of the G.R. dated 30.10.2009.

9. In para no.12 of the reply it is stated that, the respondents have highest regards and respect for order of Lok Aayukta. The Department has recommended to reconsider the matter of the applicant to Finance Department, but the Finance Department has declined to consider the case of the applicant. The applicant was absent in service unauthorizedly without permission of the competent authority and therefore, lost his right of service as per Rule 47 of the M.C.S. (Pension) Rules. It is stated that he was informed so vide letter dated 25.2.2014.

10. The applicant has filed rejoinder and submitted that he is entitled to claim benefit as per Rule 110 (2) (b) read with G.R. dated 30.10.2009 which provides that, the employee who has completed 10 years' service, but below 20 years of his qualifying service is also entitled to claim pension.

11. It seems from the rejoinder affidavit that, the applicant was paid G.P.F. and G.I.S. amount. It is material to note that, even though the applicant has not completed qualifying service of 20 years, the respondent authorities have accepted his application for voluntary retirement. The letter of acceptance of applicant's request for voluntary retirement is at Annexure A-3 at paper book page no.14. As per the said letter the applicant was allowed to retire voluntarily w.e.f. 15.5.2012 after office hours. In the said letter it was specifically mentioned that, the applicant will not be entitled to claim payment of pensionary benefits before the completion of notice period. In the said letter it is nowhere stated that the applicant will not be entitled to claim pension or pensionary benefits. For the first time it reveals from the office note placed on record at paper book page nos.60 to 67 (both inclusive), which is filed along with reply affidavit that the applicant's claim was forwarded for pensionary benefits as claimed by him, but the Finance Department took objection. There is nothing on the record to show that, this decision was ever communicated to the applicant. This note bears last dated 19.12.2014, but it is not clear that whatever any decision has been taken by the Govt. from the various representations filed by the applicant.

12. The learned Advocate for the applicant has invited my attention to Rule 110 and particularly Rule 110 (2) (b) which reads as under :-

“(b) In the case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of thirty three years but after completing qualifying service of then years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy five) per mensem.”

13. The learned Advocate for the applicant also invited my attention to G.R. dated 30.10.2009 and particularly clause 5 & 5.1 of the said G.R. which reads as under :-

निवृत्तीवेतन

५. महाराष्ट्र नागरी सेवा निवृत्तीवेन नियम १९८२ नुसार दहा वर्षांची अहंताकारी सेवा पूर्ण होण्यापूर्वी सेवानिवृत्त होणाऱ्या कर्मचाऱ्यास निवृत्तीवेन देय नाही परंतु अशा प्रकारणात महाराष्ट्र नागरी सेवा निवृत्तीवेन नियम १९८२ मधील नियम ११० १ नुसार सेवेच्या प्रमाणात सेवा उपदान देय ठरेल अशा प्रकरणात सेवानिवृत्त होणाऱ्या कर्मचाऱ्यांना देय असलेल्या निवृत्तीविषयक लाभाचा खुलासा जोडपत्र १ मध्ये नमूद करण्यात आला आहे

५.१ महाराष्ट्र नागरी सेवा निवृत्तीवेतन नियम १९८२ मधील नियम ११० २ बी नुसार दिनांक २७ फेब्रुवारी २००९ पासून हकीम समितीच्या शिफारशी स्विकारल्याच्या दिनांकापासून दहा वर्षे किंवा त्यापेक्षा जास्त परंतु वीस वर्षांपेक्षा कमी एवढी अहंताकारी सेवा पूर्ण केल्यानंतर नियतवयोमान पूर्ण सेवा रफगणता किंवा भरपाई निवृत्तीवेनावर सेवानिवृत्त होणाऱ्या शासकीय कर्मचाऱ्यास त्याने

सेवानिवृत्तीच्या शेवटच्या १० महिन्यात अर्जित केलेल्या सरासरी मूळ वेनाच्या ५०: यापैकी जी रक्कम त्याला लाळादायक ठरेल, ती रक्कम निवृत्तीवेन म्हणून अनज्ञेय होईल त्यामुळे महाराष्ट्र नागरी सेवा निवृत्तीवेतन नियम १९८२ मधील नियम ११० २ बी ची तरतुद दिनांक २७ फेब्रुवारी २००९ पापसून वगळण्यात आली आहे अशा प्रकरणात सेवानित्त होणाया कर्मचायांना देय असलेल्या निवृत्तीविषयक लाभाचा खुलासा जोडपत्र २ मध्ये नमूद करण्यात आला आहे या अनुषंगाने महाराष्ट्र नागरी सेवा निवृत्तीवेन नियम १९८२ मधील नियम ११० २ बी हा त्या मर्यादेपर्यंत सुधारण्यात आला आहे

14. As already stated the applicant has applied for voluntary retirement. His request has been accepted and therefore, it was the duty of the competent authority to see as to whether the applicant has completed qualifying service of 20 years before acceptance of such request.

15. As already stated the Respondents for the first time are stating that the applicant is not entitled to claim pension and pensionary benefits since he has not completed 20 years qualifying service in their reply affidavit. It was necessary for the respondent authorities to consider various provisions of the pension rules and particularly Rule 110 of the pension Rules. The employee is entitled to claim pension after he completes 10 years' service though the rate at which pension will be sanctioned may be less than regular pension amount. Clause 5 & 5.1 of the G.R. dated 30.10.2009 deals with the situation whether the employee has completed more than 10 years' service, but less than 20 years' service. There is no reason as

to why the applicant's case has not been considered as per said Rule by the Respondents.

16. The defence that Rule 110 is applicable only in cases with Govt. servants retiring on superannuation, retiring invalid or compassionate pension before completing qualifying service of 10 years is not applicable in the present case cannot be accepted. It is material to note that the applicant cannot be held responsible for accepting his case for voluntary retirement before completion of 20 years of qualifying service. There is provision under Rule 4 as regards power of relaxation and which reads as under:-

“4. Power of relaxation.

Where Government is satisfied that the operation of any of these rules causes or is likely to cause undue hardship in the case of any Government servant or class of Government servants, it may, by an order in writing, exempt any such Government servant or class of Government servants from any provisions of these rules or may direct that such provision shall apply to such Government servants or class of Government servants with such modifications not affecting the substance thereof as may be specified in such order.”

17. In this particular case I am satisfied that initially the applicant's application for voluntary retirement should not have

been accepted since he had not completed qualifying service of 20 years, but since the said has been accepted by the respondents there is no reason as to why the respondents are not considering the applicant's case as special case, or under Rule 110 or any other Rule under M.C.S. (Pension) Rules, as may be admissible. No final decision has been taken and communicated to the applicant as seen from the proposal. Considering all these circumstances, I pass the following order.

ORDER.

- i) The original application is partly allowed.
- ii) The Respondents are directed to consider the claim of the applicant for grant of pension under Rule 110 (2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 read with G.R. dated 30.10.2009 and also in view of the relaxation power as already stated and or any other rule as may be deemed fit necessary in the given circumstances. Such decision shall be taken within 3 months from the date of this order and same shall be conveyed to the applicant in writing.
- iii) No order as to costs.

MEMBER (J).

atpoa72315

