

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4046 /2014

(Ganesh s/o Atmaram Gawande vs. Zilla Parishad, Yavatmal and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Ms. A.s.Athaley, Adv. for petitioner
Mr. Sonwane, Adv.for Respondents 1 to 3

CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.

DATED : 31st March, 2015.

By this petition, the petitioner seeks a direction to the respondents to pay the arrears of salary to the petitioner for the period from 1.8.2011 to 9.1.2013.

The petitioner was working with the respondent-Zilla Parishad and had applied for voluntary retirement from service on 3.5.2011. According to the petitioner, the application made by the petitioner for voluntary retirement was accepted by the respondents on 31.7.2011, but the petitioner was not relieved from duty till 9.1.2013. Since the petitioner claims to have been actually relieved on 9.1.2013, the petitioner has sought the salary for the period from 2.8.2011 to 9.1.2013.

The claim of the petitioner is denied by the Respondent -Zilla Parishad. It is stated that the proposal of the petitioner for voluntary retirement was sent to the Chief Executive Officer on 4.6.2011 and the order accepting voluntary retirement dated 22.6.2012 was communicated to the petitioner. It is stated that,

however, at the end of three months from the date of issuance of the application for voluntary retirement, the petitioner was relieved from service on 2.8.2011. It is stated that the petitioner has never worked with the respondent after 2.8.2011 and, therefore, the petitioner is not entitled to salary after the said date.

The submission made on behalf of the respondents is disputed by the learned counsel for the petitioner and certain documents have been sought to be relied, for the purpose of proving that the petitioner actually worked with the respondents after 2.8.2011.

We find on hearing the learned counsel for the parties and on a perusal of the documents annexed to the writ petition and to the affidavit-in-reply filed on behalf of the respondents, that several disputed questions of facts arise for determination in this case. It is stated on behalf of the petitioners that the petitioner continued to work with the respondent-Zilla Parishad till 9.1.2013; whereas it is the claim of the respondent-Zilla Parishad that the petitioner was relieved on 2.8.2011 and the petitioner did not work with the respondent after that date. Even otherwise, in view of Rule 66 of the Maharashtra Civil Services (Pension) Rules, the application made by the petitioner for voluntary retirement is deemed to have been accepted after expiry of the period of three months as it was not specifically rejected by the Zilla Parishad by that time, within three months. In the facts of the case, the documents cannot be considered by this Court to give a declaration that the petitioner actually worked with the respondent -Zilla Parishad after 2.8.2011 and till 9.1.2013 as the said issue could be decided in the Civil Court where the parties would have an opportunity of tendering evidence – both oral and documentary. The issues involved in this case cannot be decided in exercise of the writ jurisdiction.

In the result, the Writ Petition is dismissed, with no order as to costs. The points raised in the petition are, however, kept open.

JUDGE

JUDGE

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