

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2314 OF 2015

Dr.Rajendra Rangnath Dharmadhikari,
Age: 53 Years, Occu:Service,
R/o. "Sanket" Plot No.1,
Shrikrishnanagar, Pipeline Road,
Sawedi, Ahmednagar

PETITIONER

VERSUS

- 1] The State of Maharashtra
through the Secretary,
Animal Husbandry and Dairy
Development, Mantralaya,
Mumbai-32.
- 2] The Commissioner,
Animal Husbandry Maharashtra
State, Central Building Ground
Floor, Pune-1.
- 3] Regional Joint Commissioner,
Nasik Region, Ashok Chowk
Nasik-2
- 4] District Animal Husbandry Officer,
Zilla Parishad, Ahmednagar
- 5] District Animal Husbandry Officer,
Zilla Parishad, Nasik

[Copy of the respondent nos.1 to 3
to be served through G.P. High Court
of Bombay Bench at Aurangabad]

RESPONDENTS

...

Mr.V.B.Wagh, Advocate for the petitioner
Mr.V.H.Dighe, AGP for Respondent Nos.1 to 3
Mr.S.T.Shelke, Advocate for Respondent No.4.
Mr.V.C.Patil, holding for Mr.U.B.Bondar,
Advocate for Respondent No.5.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Date: 15.06.2016

PER COURT: [Per S.S.Shinde, J.]:

This Petition takes exception to the impugned judgment and order dated 23rd January, 2015 in Original Application No.18 of 2014 passed by the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad [in short 'MAT']. The petitioner further seeks declaration that the petitioner stood retired from the post of Live Stock Development Officer as on 28th April, 2011 i.e. the date on which three months period is expired after submission of VRS notice dated 28th January, 2011, and further seeks directions to the respondent to prepare the pension papers and to forward to the A.G.

Mumbai and to pay all the retiral benefits with appropriate rate of interest since its due date till its actual realization.

2] The learned counsel appearing for the petitioner submits that the findings recorded by the Tribunal are not supported by the documentary evidence in relation to the service of the notice dated 9th July, 2013 to the petitioner. The Tribunal did not consider the fact that the respondent authorities did not communicate any deficiencies in the VRS notice dated 28th January, 2011. The Tribunal did not consider that the respondent authority has ignored the provisions of Rule 66 of the Maharashtra Civil Services [Pension] Rules, 1982. The said Rules specifically prescribed the parameters of retirement under the deemed provision in respect of acceptance of VRS. In addition to that, the petitioner has rendered unblemished service for more than 25 years. The Tribunal

has not recorded any reasons for not considering Rule 66 of the MCS [Pension] Rules, 1982. The learned counsel for the petitioner submits that the respondents ought to have accepted the prayer of the petitioner to allow him to voluntarily retire from the service. It is submitted that the respondents may be directed to accept the VRS application, the petitioner is ready to forgo the pay in respect of the period from 25th September, 2009 till 28th April, 2011 and the said period of 1 year, 7 months can be counted for pensionary benefits, and also the increments may be released in favour of the petitioner from 23rd February, 1999 till 28th April, 2011, and accordingly, pay fixation as per the 6th Pay Commission be done. Therefore, relying upon the pleadings in the Petition, grounds taken therein, annexures thereto and the judgment of the Bombay High Court at Principal seat in the case of

*Anandrao Dhondiba Kandalkar Vs. The State of Maharashtra and others*¹. The learned counsel appearing for the petitioner submits that the Petition may be allowed.

3] We have considered the submissions of the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent – State, and the State Authorities, and the learned counsel appearing for the respective respondents. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply filed by respondents and the judgment of the MAT. It appears that the applicant submitted notice / representation dated 28th January, 2011 to respondent no.1 and thereby sought grant of 202 days extraordinary leave and annual increment and difference of pay during the period of suspension, and also pay fixation as per the

1 1995 [2] Bom.C.R. 249

6th Pay Commission as well as voluntary retirement and grant of pension. The MAT, after appreciating the rival contentions and advertng to the documents submitted by the parties on record, has given elaborate reasons for rejection of Original Application from paragraphs 22 to 39 of the impugned judgment. The MAT has adverted to the contents of last two paragraphs of the representation dated 28th January, 2011, filed by the petitioner, in para 23 of the impugned judgment, and after advertng to the provisions of Rule 66 of the Pension Rules, 1982 in para 25, reached to the conclusion that in substance, the applicant has not given the notice / representation dated 28th January, 2011 specifying the period of not less than three months therein to retire from the service, and therefore, the respondents did not feel it necessary, either to accept or reject such representation / notice of the

applicant for voluntary retirement since it is without specifying not less than three months' period, as contemplated in sub-rule (1) of Rule 66 of the Pension Rules, 1982. The MAT has considered the judgments cited by the learned counsel for the petitioner and discussed the relevance of ratio laid down in the said cases vis-a-vis facts of the case of the petitioner in para 29 and 30 of the impugned judgment. Therefore, there is no substance in the contention of the learned counsel appearing for the petitioner that the judgments cited across the Bar by the learned counsel appearing for the petitioner were not considered by the MAT.

4] In our opinion, the conclusion recorded by the MAT, after adverting to the contents of the representation filed by the petitioner vis-a-vis the provisions of sub-rule (1) of Rule 66 of the MCS [Pension] Rules, 1982, are in conformity with the

documents placed on record. There is no perversity as such. The MAT has also observed that it cannot be ignored that the Government servant cannot give notice of voluntary retirement during the leave period. The MAT has also recorded the reasons on the basis of the documents placed on record that the applicant is habitual inattentive on duty and he was absent from duty since 1st December, 1999 till the Original Application was decided by the MAT, and the said period of absence is still not settled since the leave is not balance in the account of the petitioner.

5] Therefore, in the light of the discussion in the foregoing paragraphs, in our opinion, the MAT has recorded the correct reasons on interpretation of the relevant provisions, and also on the basis of the material placed on record. We do not find any perversity, rather the view taken by the

MAT is a plausible and reasonable. No case is made out for interference in the impugned judgment and order, and hence the Writ Petition stands rejected. No costs.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE