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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3905 OF 2017

Smt.Padmini Nandkumar Nair ...Petitioner
vs.
Hon'ble High Court of Judicature
at Bombay and another ...Respondents

Mr.R.S.Apte, Senior Advocate i/b Mr.Meelan Topkar
for the Petitioner
Mr.Amit B. Borkar for the respondent No.1
Mr.Manish M. Pabale, AGP for respondent No.2

CORAM : A.S.OKA, &
RIYAZ I. CHAGLA, JJ.
DATE : SEPTEMBER 11, 2017

P.C.:

1 As per the administrative order dated 27th June 2017 passed by the Hon'ble the Chief Justice, this Writ Petition has been specifically assigned to the Bench of which one of us (A.S.Oka,J.) is a member.

2 We have heard the learned senior counsel for the petitioner. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the condition imposed in the order dated 13th January 2017 by which the prayer made by the petitioner for grant of voluntary retirement was accepted. The condition imposed was of continuation of disciplinary proceedings against the petitioner.

3 The petitioner who was in judicial service from

7th September 1992 applied for grant of voluntary retirement on 3rd December 2016. The petitioner was served with Memorandum and Articles of Charge dated 7th December 2016. While accepting the application for voluntary retirement, the disciplinary enquiry was ordered to be continued.

4 The learned senior counsel for the petitioner invited our attention to the fact that by a letter dated 19th October 2016, the Ministry of Road Transport and Highways, Government of India has offered the post of the Presiding Officer of the National Highways Tribunal at Lucknow to the petitioner. By a letter dated 25th October 2016 addressed by the petitioner to the learned Registrar General of this Court, she requested to relieve her from the post held by her viz; District Judge-III, Dhule as she was intending to join the post of the Presiding Officer of the National Highways Tribunal. She stated that she was desirous of keeping a lien on her job in the judicial service till her superannuation. On 3rd December 2016, the petitioner addressed a letter to the learned Registrar General of this Court stating that she wants to join the new post and that there was a pressing need to be at Mumbai for her husband's medical treatment. She requested for grant of voluntary retirement. She requested that the notice period of three months be waived considering the Government Resolution dated 2nd March 2016 and her application for voluntary retirement be accepted with immediate effect.

5 By a letter dated 7th December 2016 addressed by the petitioner to the learned Registrar General, she contended that even if an enquiry is contemplated, vigilance clearance has to be granted. She contended that if the employee applies for a voluntary retirement on his selection to another post, automatic technical resignation takes place. As stated earlier, the Memorandum dated 7th December 2016 along with the charge sheet was served to the petitioner. On 30th December 2016, the petitioner replied to the charge sheet. On 13th January 2017, the impugned order of the State Government was issued accepting the request of the petitioner for grant of voluntary retirement by relaxing the condition of three months' notice to the State Government. The petitioner was directed to pay an amount of Rs.93,600/- towards outstanding dues and it was directed that the disciplinary proceedings will be continued even after voluntary retirement.

6 The submission of the learned senior counsel for the petitioner is that there could not have been conditional acceptance of the application for voluntary retirement. He would submit that either the application should have been accepted unconditionally or the same ought to have been rejected. His submission is that in any event, after accepting the prayer for voluntary retirement, now the disciplinary proceedings cannot continue against the petitioner. He submitted that as a result of the continuation of the disciplinary proceedings, the petitioner is unable to take charge

of the post of the Presiding Officer of the National Highways Tribunal. He submitted that on 16th January 2017, the petitioner addressed a letter to the learned Registrar General recording her protest.

7 We have considered the submissions. It is an admitted position that on the basis of the order dated 13th January 2017, immediately on service of the said order, the petitioner relinquished the charge of the post held by her. In fact, in the affidavit in reply filed by the Registrar (Legal and Research) on behalf of the High Court Administration, it is specifically contended that the petitioner has accepted conditional order of the State Government of voluntary retirement by voluntarily handing over the charge of the post held by her to the another Judicial Officer. In her rejoinder, she has not come out with the case that she relinquished the charge of her post under protest.

8 We have carefully perused the letter dated 16th January 2017 addressed by the petitioner to the learned Registrar General of this Court. The second last paragraph of her letter reads thus:

"I have served in Judiciary for 24.5 years and no such allegations were made against me at any point of time by any Principal District Judge. In such circumstances, I with utmost humility request that now I am leaving this esteemed institution for joining a new

assignment. Hence, and for the above reasons, the Departmental Enquiry initiated against me may be dropped."

9 This letter was addressed by the petitioner within a period of three days from the date on which the order dated 13th January 2017 was passed accepting her plea for voluntary retirement. This letter clearly shows that the petitioner unconditionally relinquished the charge of the post held by her by acting upon the order dated 13th January 2017. In fact, in the portion quoted above, she has stated that she is leaving esteemed institution for joining a new post. She prayed for dropping the disciplinary proceedings. Thus, the conduct of the petitioner shows that the petitioner voluntarily accepted the order dated 13th January 2017 and voluntarily acted upon it by handing over the charge of the post held by her. The petitioner did not protest about the two conditions and in particular, the condition of continuation of disciplinary proceedings while or before acting upon the order dated 13th January 2017. Therefore, in writ jurisdiction, now she cannot challenge the conditions imposed in the order dated 13th January 2017. Prayer clause (a) of this petition is for setting aside the order of continuation of the disciplinary proceedings.

10 The petitioner can always raise a contention about the legality of the disciplinary proceedings after acceptance of voluntary retirement at the

appropriate stage in the said proceedings. Moreover, the Registrar (Legal and Research) who has filed the affidavit in reply has stated in paragraph 4 as under:

"4 I say that the principal reliefs sought in the petition are to the effect that the Respondent No.1 has no authority to continue inquiry under Rule-8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 after acceptance of voluntary retirement as there is no provision in the said rules for continuation of inquiry. I say that, in so far as continuation of inquiry is concerned Sub-Rule 2(a) of Rule 27 of Maharashtra Civil Services (Pension) Rules specifically permits respondents to continue departmental proceedings instituted while the employee is in service to be proceedings deemed to be under the said rule. I say that the rational behind said rule is to take action in respect of irregularities committed by employee while in service and the disciplinary proceedings are initiated, it may not be proper to allow him to earn full pension for rest of his service which can be given only to the person who are faithful and sincere in discharge of their duties."

(underline supplied)

11 Thus, the stand of the High Court Administration is that continuation of disciplinary proceedings will be now in accordance with sub Rule

2(a) of Rule 27 of the Maharashtra Civil Services (Pension) Rules. Hence, at highest, if any adverse order is passed in the disciplinary proceedings, only the pension is likely to be affected.

12 Therefore, in the light of the statement made in the aforesaid affidavit and in view of what is observed earlier, we see no reason to entertain this petition under Article 226 of the Constitution of India.

13 Therefore, there is no merit in the petition and the same is rejected.

14 We, however, make it clear that we have made no adjudication on the merits of the disciplinary proceedings and all contentions on merits are kept open.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)