

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1664 OF 2013

Sau. Bharti M. Yadav	}	Petitioner
versus		
The State of Maharashtra	}	
and Anr.	}	Respondents

Mr. Atul Damle - Senior Advocate with
Mr. H. M. Inamdar for the petitioner.

Mr. Rajiv Mane - Assistant Government
Pleader for respondent no. 1.

Mr. Shardul Singh with Mr. Vaibhav
Gaikwad i/b. Mr. Jitendra P. Patil for
respondent no. 2.

Mr. V. D. Kapate - General Manager of
respondent no. 2 Corporation present.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- JANUARY 13, 2017

P.C. :-

1. This petition under Article 226 of the Constitution of India challenges an order dated 6th April, 2013 annexed as Exhibit-'E' to the writ petition. A mandamus is sought to direct the respondent Corporation to forthwith withdraw this order and an earlier communication dated 15th February, 2013.

2. On such a petition, which is pending in this court from 24th April, 2013, it may be that initially only notice was issued, but on 6th May, 2013, an order was passed staying the effect of a communication dated 26th April, 2013.

3. That communication called upon the petitioner to join the office known as Divisional Office at Amravati of the Corporation. Since the transfer by the order dated 6th April, 2013, according to the General Manager (Administration), was operative and the petitioner was directed to report at the transferred place of working on 16th April, 2013, having not so reported, she is unauthorisedly absent.

4. The effect of this order was understood by the petitioner as no proceedings, treating her absence from duties unauthorisedly, would be initiated, whereas, the Corp[oration maintains that it is its right and power intact and since the petitioner did not report at the Divisional Office, Amravati so also did not serve the respondent Corporation, she is not entitled to any relief. The court will permit the Corporation to proceed with the disciplinary action.

5. This writ petition was placed before us today. when it was called out in the morning session, we indicated to both sides that

the petitioner is attaining the age of superannuation in April, 2018, but she has completed the required qualifying service so as to seek the benefit of voluntary retirement scheme. Therefore, if she is interested in availing of the benefit of such a scheme, she should intimate the Corporation to that effect in writing and the Corporation will thereafter relieve her from the services with effect from 31st March, 2017. This would be on the basis that she has sought voluntary retirement and which request has been granted. We also suggested to both sides that in the larger interest of justice and without this case being treated as a precedent, if such a readiness and willingness is shown by the petitioner and the request is accepted by the Corporation, then, all proceedings, disciplinary or otherwise, should be amicably closed. In that event, the petitioner's transfer order would also be set aside, the impugned communication dated 26th April, 2013 as well must go and the petitioner, in terms of this voluntary retirement scheme, obtain all benefits as if she has rendered continuous service.

6. Both sides sought time in the afternoon session. Accordingly, the matter was kept back for them to make the necessary statements.

7. After the matter was called out on the second occasion, Mr. Damle, learned senior counsel appearing for the petitioner stated, on instructions, that the petitioner would resume duties with the Corporation, but at the Head Office in Mumbai, as suggested by the court. On resumption of duties with effect from 16th January, 2017, within a period of one week, she would put in her written request seeking voluntary retirement from the services of the Corporation. Thereupon, she would have no-objection if the Corporation treats her as retired from services with effect from 31st March, 2017.

8. Mr. Singh appearing for the respondent Corporation, on such a suggestion and statements of Mr. Damle, took instructions and states that the Corporation is ready and willing to the course suggested by the petitioner. She will be allowed to join the duties at the Head Office of the Corporation at Mumbai. However, she should put in the requisite application and seeking the aforereferred relief. The Corporation would immediately take a decision thereon and communicate it within a period of one week from the receipt of the communication/written request seeking voluntary retirement from the Corporation services. The Corporation would address a formal communication accepting this request, but effective from 31st March, 2017. The

Corporation, in the meanwhile, would compute all the benefits due and admissible to the petitioner. While computing them, the Corporation is ready and willing to treat the period spent from the date of receipt of the transfer order/relieving order till today, as the period spent under suspension by the petitioner pending disciplinary inquiry and release the admissible subsistence allowances in terms of its rules. However, the Corporation would withdraw the suspension order on the petitioner reporting for duty on 16th January, 2017. The Corporation will also drop all the disciplinary proceedings. Thereafter, the charge-sheet and the requisite documents accompanying it shall not be acted upon. The petitioner would be relieved from the services with effect from 31st March, 2017. This would be under the scheme of voluntary retirement and admissible in terms of the Corporation Rules and Regulations. The Corporation, thereafter, would have no claims against the petitioner.

9. We accept the statements made by both sides as undertakings given to this court. By consent of both sides, we dispose of this writ petition in the following manner:-

(a) The transfer order of the petitioner dated 6th April, 2013 is quashed and set aside.

(b) The communication dated 26th April, 2013 shall stand quashed and set aside.

(c) The petitioner shall be allowed to resume duties, not at the Thane office of the Corporation, but at its Head Office at Kripa Nidhi, 9, Walchand Hirachand Marg, Ballard Estate, Mumbai 400 001.

(d) The petitioner shall be assigned work commensurate to her status till the decision is taken on her application for voluntary retirement as above and it being effective.

(e) The petitioner is ready and willing to tender a written request seeking voluntary retirement from the services of the respondent Corporation.

(f) The respondent Corporation shall, within one week from the receipt of this written request, allow the petitioner to retire voluntarily from its services with effect from 31st March, 2017.

(g) The Corporation shall release all the terminal benefits in terms of the applicable voluntary retirement scheme and by treating the petitioner's absence from duties post receipt of the relieving order till today as a period of suspension from service. The admissible subsistence allowance, if not already released, shall be released together with the terminal benefits, which shall be admissible to the petitioner.

(h) The petitioner withdraws all the allegations and as made in the writ petition or other correspondence prior thereto against the petitioner.

(i) Equally, the Corporation withdraws and drops all the charges and disciplinary proceedings against the petitioner.

(j) The petitioner, on receipt of the sums styled as terminal benefits, shall have no claim against the Corporation.

(k) Equally, the Corporation will not raise any claim nor seek any recoveries from the petitioner.

(l) The petitioner would be paid all her terminal benefits and other dues latest by 12th May, 2017. The Corporation will not seek any further extension to release the same.

10. Needless to clarify that the writ petition is disposed of on the above consent arrangement and which is peculiar to the facts and circumstances of the petitioner's case. This order shall not be treated as a precedent for any future cases of this nature and noticed by the Corporation. The Corporation shall be free to act in accordance with law. It is in response to the suggestion by the Court that the Corporation has accepted this request and it shall not be bound to accept any similar request in future.

11. This order is passed in presence of the petitioner and the General Manager (Administration) of the respondent Corporation.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)