

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2196 OF 2018

01 The State of Maharashtra,
through its Secretary,
Public Health Department,
Maharashtra State,
Mantralaya, Mumbai.

02 The Director,
Health Department,
Maharashtra State,
St.Georges Hospital Campus,
Mumbai.

03 The Deputy Director,
Health Department,
Latur Division, Latur.

04 The District Civil Surgeon,
Nanded, Tq. & District
Nanded.

Petitioners

Versus

Dr.Balaji Ganpatrao Manoorkar,
age: 53 years, Occ: Retired,
R/o Vasant Nagar, Nanded,
Tq. & District Nanded.

Respondent

Mrs.P.V.Diggikar, A.G.P. for petitioners.
None for the Respondent.

**CORAM : R.M.BORDE AND
K.K.SONAWANE, JJ.
DATE : 23rd February, 2018.**

P.C. :

1 The State Government is objecting to the decision rendered by the Maharashtra Administrative Tribunal dated

24.11.2016 in O.A.No.830/2015, whereby the Original Application tendered by the Respondent has been allowed and the communications issued by the petitioners to the respondents dated 06.04.2013 and 23.12.2013 are quashed and set aside. The respondent-authorities were also directed to take into account the period of past service of the respondent by condoning the technical break of one day for grant of pension and pensionary benefits to the respondent. It is further directed that the application of the respondent for voluntary retirement be accepted as per the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 and the petitioners herein shall release all the pensionary benefits and regular pension to the respondent as per his application for voluntary retirement dated 16.10.2012.

2 Respondent - Dr.Balaji s/o Ganpatrao Manoorkar entered service on 05.08.1985 as a bounded candidate and was given status of a regular employee subsequently. The Respondent continued to work from 05.08.1985 to 16.12.1994 with only one day's technical break on 05.09.1988. While in employment, the respondent tendered an application for voluntary retirement, however, his request was turned down vide communication dated 06.04.2013, on the ground that he has not completed 20 years of qualifying service. The Respondent was permitted to retire voluntary by an order dated 23.12.2013 as per Rule 10(5) of the Maharashtra Civil Services (Pension) Rules.

3 According to the respondent, Rule 10(5) cannot be made applicable since, said rule applies in case where the employee has completed 25 years service. However, according to

the him, provisions of Rule 66(1) shall have to be made applicable by condoning technical break of one day.

4 In the instant matter, petitioner was less than 55 years of age at the time of tendering the request for acceptance of application for voluntary retirement and as such, Rule 10 ought not to have been invoked. It cannot be disputed that the Respondent has completed more than 20 years of qualifying service. Rule 66(1) of the Maharashtra Civil Services (Pension) Rules, 1982, provides that, at any time after a Government servant has completed 20 years of qualifying service, he may, by giving notice of 3 months in writing to the appointing authority, retire from service.

5 The petitioner was appointed initially in the year 1985 and was allowed to retire in the year 2013. Except for a technical break of one day during the year 1988, the petitioner has completed more than 20 years of continuous service. The technical break of one day also shall not be construed as an impediment for conferment of pensionary benefits upon the petitioner. It cannot be denied that the petitioner has completed qualifying service required under Rule 66. Rule 30 of the Rules of 1982 define the qualifying service. It is provided that the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It is provided that at the time of retirement, the employee shall hold substantively a permanent post in Government service or holds a suspended lien or a certificate of permanency.

6 In the instant matter, it cannot be denied that the petitioner was inducted in employment in the year 1985 and was a permanent employee of the State Government and was permitted to retire on 15.01.2013. The petitioner, thus, shall be deemed to have completed more than 20 years of qualifying service and as such, eligible to apply for voluntary retirement under Rule 66(1) of the Maharashtra Civil Service (Pension) Rules, 1982. We do not find any error or irregularity in the decision of the Maharashtra Administrative Tribunal. The petition is devoid of substance.

7 Hence, Writ Petition stands dismissed.

K.K.SONAWANE
JUDGE

R.M.BORDE
JUDGE

adb/wp