

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

WRIT PETITION NO. 12235 OF 2017

Dr. Santosh S/o Sudhakar Rao Kulkarni,
Age : 52 Years, Occu. : Service as
Professor in the College of Veterinary
and Animal Sciences, Udgir,
Tq. Udgir, Dist. Latur,
R/o "Chaitraban", Shyam Society,
Near Yerne Nagar, Udgir,
Tq. Udgir, Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
through the Principal Secretary,
Department of Animal Husbandry,
Dairy Development and Fisheries,
M. S. Mantralaya, Mumbai.
2. Maharashtra Animal and Fishery
Sciences University, Futula Lake
Road, Nagpur,
Through its Registrar.
3. The College of Veterinary and Animal
Sciences, Udgir, Taluka : Udgir,
District : Latur,
through its Associate Dean.
4. The Assistant Registrar of
Maharashtra Animal and Fishery
Sciences University, Futula Lake
Road, Nagpur.

.. Respondents

Shri R. S. Deshmukh, Advocate for the Petitioner.
Mrs. M. A. Deshpande, Addl.G.P. for the Respondent No. 1.
Shri P. G. Rodge, Advocate for Respondent Nos. 2 to 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

CLOSED FOR JUDGMENT ON : 16.04.2018

JUDGMENT PRONOUNCED ON : 27.04.2018

JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The application of the petitioner for voluntary retirement is rejected, ergo present writ petition.

3. The petitioner came to be appointed as a Assistant Professor of physiology and biochemistry by Marathwada Agriculture University, Parbhani in the college of Veterinary and Animal Sciences at Parbhani on 09th February, 1993. Prior to that the petitioner since 1988 was working as assistant professor on temporary basis.

4. It is the case of the petitioner that, on 08.08.1997, the petitioner was appointed as associate professor by adhoc promotion and was transferred to the respondent No. 3 college at Udgir. It is further case of the petitioner that, on 26.02.2008, the

petitioner came to be promoted to the post of professor of veterinary physiology on the recommendation of the selection committee and was transferred to the respondent No. 2/college at Nagpur. The petitioner contends that under the office order dated 13.06.2014, the respondent No. 3/college at Udgir permitted the petitioner to use the designation as professor and head of department along with two others. Resolution came to be passed on 05.10.2016 vide resolution No. 93/2016 by Executive Council of the respondent No. 2 in 68th Meeting dated 19.07.2016 to revert the petitioner to the post of associate professor on temporary basis. The petitioner filed writ petition bearing Writ Petition No. 10638 of 2016. The respondents took the plea that the writ petition is premature as only resolution is passed and no decision is taken reverting the petitioner. If the petitioner is required to be reverted, show cause notice would be issued to the petitioner. In view of the said statement, the writ petition was disposed of. The petitioner on 13.04.2017 submitted an application for voluntary retirement through proper channel. The petitioner had completed twenty years of qualifying service. The application dated 13.04.2017 was forwarded by the office of the associate dean to the office of the respondent No. 2. The petitioner on 12.06.2017 requested to relieve him from his duties with effect from 15.08.2017. The respondent No. 3/college at Udgir issued a certificate to the effect that no departmental enquiry was proposed or pending against the petitioner, nor any dues are outstanding. The petitioner further contends that, on

29.07.2017, the petitioner again submitted separate letter through proper channel to the office of the respondent No. 2 to accept his case of voluntary retirement. The respondent No. 4 under letter dated 03.08.2017 rejected the application on the ground that letter dated 13.04.2017 for voluntary retirement is not in tune with the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. The said order is assailed in the present writ petition.

5. Mr. Deshmukh, the learned counsel submits that, the request of the petitioner for voluntary retirement ought to have been granted. The rejection of the application of the petitioner for voluntary retirement is without any application of mind. The learned counsel submits that, the case of the petitioner is squarely covered under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to "Pension Rules"). The petitioner has already completed more than twenty years of qualifying service. Rule 66(4) of the Pension Rules do not come into play. As such, there is no reason to submit valid reason for voluntary retirement. The application of the petitioner is dealt with prejudice mind. The petitioner was validly selected for the post of Dean Lower Education, MAFSU, Nagpur, but was not given any appointment order and further was not granted voluntary retirement. This attitude shows the malafide intention. The application of the petitioner dated 13.04.2017 was perfectly valid and the same was

not a conditional application. The learned counsel relies on the judgment of the Apex Court in a case of K. L. E. Society Vs. R. R. Patil reported in (2002) 5 SCC 278. The learned counsel submits that, no orders were passed on the application of the petitioner for three months from the date of issuance of notice of voluntary retirement. In view of that, the notice would become effective from the date of completion of three months. The learned counsel relies on the judgment of the Apex Court in a case of Kilkanth Ramji Akarte Vs. State of Maharashtra and others reported in 2007 (2) Bom.C.R. 479. The learned counsel also relies on the judgment of the Division Bench of this Court in a case of Narayan Kesharao Puranik (Dr.) Vs. State of Maharashtra and another reported in 2007 (4) Bom.C.R. 251.

6. Mr. Rodge, the learned counsel for respondent Nos. 2 to 4 submits that, the petitioner was temporarily promoted as associate professor on 08.08.1997. The temporary promotion of the petitioner was neither confirmed by the Marathwada Agriculture University, nor by the respondent No. 2. subsequently, presuming seniority of the petitioner in the cadre of associate professor, petitioner was promoted as professor of veterinary physiology vide university order dated 26.02.2008. In the 68th Executive Council meeting held on 19.07.2016, the enquiry committee in its report recommended to cancel the promotion of the petitioner as a professor, because promotion of

the petitioner to the post of associate professor was not confirmed and it was resolved to revert the petitioner to the post of associate professor (temporary). It was resolved in the 69th meeting dated 26.10.2016 to keep the decision of reverting the petitioner as it is and not to revert him till the decision in Writ Petition No. 10638 of 2016. Thereafter, after disposal of the writ petition, the respondent No. 2 issued show cause notice dated 30.01.2018 to the petitioner as to why his promotion order dated 26.02.2008 should not be cancelled. The learned counsel further submits that, though the petitioner made an application for voluntary retirement on 13.04.2017, however, the said application of the petitioner did not state the exact period of his total service. So also application of the petitioner for voluntary retirement was by way of retaining the post of professor, to which petitioner was not at all entitled, in as much as initial promotion of the petitioner from the post of assistant professor to the post of associate professor was temporary. According to the learned counsel, as per Rule 66(2) of the Pension Rules, the competent authority has power to accept or reject the application for voluntary retirement. The learned counsel submits that, no illegality has been committed.

7. We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that, the petitioner has completed qualifying service of more than twenty years and is eligible to seek voluntary retirement. The

respondents also admit that, the petitioner has given application for voluntary retirement on 13.04.2017, through proper channel and it was also forwarded. The petitioner did not hear from the respondents about the fate of his application for voluntary retirement dated 13.04.2017, as such, the petitioner again on 19.05.2017 issued one more letter with particular reference to the application dated 13.04.2017 and requested respondents to consider his application and approve his request for voluntary retirement as professor. Thereafter, again the petitioner on 12.06.2017 issued one more letter and requested the respondents to relieve him by accepting his application for voluntary retirement with effect from 15.08.2017. The petitioner again on 29.07.2017 referring to his earlier application dated 13.04.2017 requested to relieve him. The request of the petitioner was rejected under order dated 03rd August, 2017 on the ground that, three months notice has to be given and in application dated 12.06.2017, the petitioner sought to be relieved on 15.08.2017. The period is less than three months and no reasons are given for curtailing the period of three months as required under Rule 66(4) of the Pension Rules and on that ground his application is rejected.

8. The documents on record show that pursuant to application dated 13.04.2017 of the petitioner seeking voluntary retirement through proper channel, the associate dean veterinary college Udgir under his letter dated 20th April, 2017

forwarded the said letter to the Registrar, Maharashtra Animal and Fishery Sciences University, Nagpur. The college at Udgir also communicated to the petitioner under letter dated 01.06.2017 that, the petitioner has not mentioned the date from which the petitioner would stand retired, the same be communicated. The petitioner thereafter on 12.06.2017 giving reference of his application dated 13.04.2017 communicated that, he may be relieved with effect from 15th August, 2017. The college at Udgir further communicated the Registrar, MAFSU, Nagpur that, there is no departmental enquiry pending against the petitioner, nor it is proposed. He also communicated that, there are no dues receivable from the petitioner. The certificate to that effect was also issued on 13.06.2017.

9. It would be seen that, the application given by the petitioner on 13.04.2017 was processed and was forwarded to the competent authority through proper channel. Rule 66(1) of the Pension Rules specifically provides that, at any time after the Government servant completes 20 years qualifying service, he may by giving notice of three months in writing to the appointing authority retire from service. Rule 66(1) of the Pension Rules contemplate three months notice to be given, if the petitioner seeks voluntary retirement. The notice was given on 13.04.2017. On 20th April, 2017, the said notice was forwarded by the respondent No. 3 to the respondent No. 2. In absence of any shorter period being mentioned, the notice shall be of three

months. The three months would lapse on 13th July, 2017. Proviso to Sub Rule 2 of Rule 66 of the Pension Rules provides that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement would become effective from the date of expiry of the said period. In the present case, upto 13.07.2017, the respondents never communicated that, the notice of the petitioner for voluntary retirement is not accepted. Proviso to Rule 66(2) of the Pension Rules is self operative. The consequences would follow, upon the appointing authority failing to refuse to grant the permission for retirement before the expiry of the period specified in the notice. The notice as per Rule 66(1) of the Pension Rules shall be for three months.

10. It is true that, the petitioner in his notice dated 13.04.2017 did not mention the date when he would stand retired. The petitioner did not also mentioned any shorter date, in view of that Rule 66(1) of the Pension Rules would operate and the notice would be of three months.

11. The respondent No. 3 communicated the petitioner under letter dated 01.06.2017 that, the petitioner has not given the details as to the date from which the petitioner is seeking voluntary retirement. In response to the letter dated 01.06.2017, the petitioner responded under letter dated 12.06.2017 by giving

reference to his application for voluntary retirement dated 13.04.2017 that he be relieved from his duties with effect from 15th August, 2017. The only reason mentioned in the order dated 03.08.2017 rejecting the application for voluntary retirement is that, the petitioner has given his application for voluntary retirement on 12.06.2017 and he intends to retire on 15.08.2017. The period is less than three months as required under Rule 66(1) of the Pension Rules and that no special reasons are mentioned for shorter duration of notice as required under Rule 66(4) of the Pension Rules. The application is rejected. The reasons mentioned in the order are against the record. The respondent Nos. 2 and 4 even in their affidavit in reply more particularly in para 5 have admitted as under :

"5. In reply to Para Nos. 13 to 18 of the writ petition, it is submitted that, it is true that petitioner made application for voluntary retirement on 13.04.2017 and the said application of the petitioner was forwarded by respondent no.3. Associate Dean to the respondent no.2-University on 20.04.2017. However, the petitioner did not state the exact period of his total service in his application. It is not disputed that, petitioner vide letter dated 19.05.2017 requested to expedite his case of voluntary retirement. It is not disputed vide letter dated 01.06.2017 the petitioner was asked to submit date of voluntary retirement and he was directed to submit requisite certificates of no enquiry/no dues. It is true that petitioner vide letter dated 12.06.2017 has informed the date of voluntary retirement as 15.08.2017 and the respondent no. 3 Associate Dean has informed the University vide letter dated 13.06.2017 that no departmental enquiry is pending against the petitioner.

It is respectfully submitted that, the

application of the petitioner for voluntary retirement was not accepted by the competent authority for the reason that the petitioner did not disclosed total period of his service in his application and the application of the petitioner for voluntary retirement was by way of retaining the post of Professor, to which petitioner is not at all entitled, in as much as initial promotion of the petitioner from the post of Assistant Professor to the post of Associate Professor made on 8.8.1997 was temporary and further subject to finalization of seniority and pending final selection of the candidate by the selection committee and further promotion of the petitioner to the post of Professor was also temporary and not confirmed and as such, the application of the petitioner for voluntary retirement being conditional i. e. by retaining post of professor was not worthy to be accepted. It is submitted that as per Rule 66(2) of the said Pension Rules, the competent authority has power to accept or reject the application for voluntary retirement. It is not the right of employee but the employer has right to take suitable decision as per rules. Hence petitioner's application was rejected and he was accordingly informed vide University letter dated 03.08.2017 signed by respondent no. 4 Assistant Registrar with approval of the Competent Authority Hon'ble Vice Chancellor."

12. It would be clearly observed that, the respondents admit of having received notice of voluntary retirement dated 13.04.2017 and the said application of the petitioner was forwarded by the respondent No. 3 associate dean to the respondent No. 2/university on 20th April, 2017. As such, it is no gain saying that the application of the petitioner for voluntary retirement is dated 12.06.2017. The letter dated 12.06.2017 was in response to the letter of the respondents dated 01.06.2017 asking the petitioner to communicate the date from which the petitioner desires to stand retired. The petitioner responded by letter dated

12.06.2017 that, he will stand retired on 15th August, 2017. It cannot be said that, 12.06.2017 was the first application for voluntary retirement. The application for voluntary retirement was dated 13.04.2017, which was received and on 20th April, 2017, the same was forwarded by the respondent No. 3 to the respondent No. 2. Considering the date of voluntary retirement as 13.04.2017, the petitioner had not given any shorter period for voluntary retirement. Apart from the above, no other reason is mentioned in the impugned order.

13. It is trite that, the reasons mentioned for rejecting the application cannot be substituted or added in affidavit. In the affidavit in reply two more grounds are raised by respondents. According to respondents, the petitioner did not state the exact period of his service. In para No. 1 of letter dated 13.04.2017, the petitioner has stated that, he was serving for a period of more than 22 years. As such, the said reason is improper. Another reason mentioned by respondents in the affidavit is that, the petitioner sought the retirement from post of professor and decision was already taken to revert him. The respondents had never taken final decision to revert the petitioner from the post of professor. Show cause notice was issued to petitioner. The petitioner filed reply, but no further decision was taken by respondents. As such, the petitioner was holding the post of professor. Though petitioner was selected as dean, but the appointment order was not issued. As such, the petitioner

sought to retire as a professor only. The respondents even in their affidavit have categorically admitted in para No. 4 that, the petitioner was selected as Dean Lower Education MAFSU, Nagpur. However, appointment order was not issued in view of the pendency of earlier writ petition and in view of the status quo order in the said writ petition. The petitioner was working as a professor since the year 2008 and no final order was passed reverting him, as such had rightly suggested for retiring him as a professor.

14. Considering the overall conspectus of the matter, it is apparent that, the reason mentioned for rejection of application for voluntary retirement is erroneous and against the record. As such the writ petition deserves to be allowed. The impugned order is quashed and set aside. Rule is accordingly made absolute in terms of prayer clauses "C" and "D". No costs.

Sd/-

[A. M. DHAVAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]