

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2092 OF 2017

Samadhan V. Zare

.. Petitioner

Vs.

Navi Mumbai Municipal Corporation

& Anr.

.. Respondents

Mr. N. V. Bandiwadekar for the petitioner.

Mr. Sandeep V. Marne for respondent nos.1 & 2.

CORAM : A.K. MENON, J.

DATED : 21ST FEBRUARY, 2018.

ORAL JUDGMENT :

1. Considering the facts and the scope of the petition, the same deserves to be disposed of finally at the stage of admission. Accordingly, I issue **Rule**. Rule returnable forthwith. The same is taken up for final disposal by consent of parties.
2. By this writ petition, the petitioner has called into question the communication dated 6th January, 2017 whereby the respondent no.2 has conveyed the decision of the Commissioner of the respondent no.1 declining the request made by the petitioner to permit withdrawal of his notice for voluntary retirement dated 7th October, 2016.

3. The brief facts that lead to the present petition are as follows:-

The petitioner was all material times employed with the respondent no.1 Corporation as Assistant Teacher. On or about 7th October, 2016 the petitioner made an application for voluntary retirement. In response, the respondent no.1 granted permission to the petitioner to voluntarily retire from its service effective from 7th January, 2017 subject to provisions of Rule 66(1) of the Maharashtra Civil Services(Pension) Rules, 1982 (M.C.S Rules).

4. On 19th December, 2016, the petitioner wrote to respondent no.2 intimating the corporation that he intends to continue in service and he may be permitted to withdraw the notice of voluntary retirement dated 7th October, 2016. On 6th January, 2017 i.e. a day prior to the petitioner being relieved of his services, the respondent no.2 communicated its decision of the respondent no.1 declining his request effectively treating him as retired on the following day.

5. Mr. Bandiwadekar, the learned counsel for the petitioner submitted that the reason for the petitioner's seeking withdrawal of the notice dated 7th October, 2016 is squarely spelt out in his request for withdrawal dated 19th December, 2016 inasmuch as the application for withdrawal sets out that the petitioner had initially contemplated voluntary retirement on account of certain health issues which now

stood resolved and accordingly he was desirous of continuing working with the Corporation. He submitted that there was no reason for Corporation to deny such a request. He relies upon the provisions of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. Sub-rule (5) provides that an employee who has elected to retire under this rule and has given the necessary notice to his appointing authority, is precluded from withdrawing the notice except with the specific approval of such authority. In the instant case, the authority concerned viz the Commissioner of the respondent no.1 had refused to grant such approval but the refusal was without assigning any valid reasons.

6. He submitted that the denial of approval without any reasons is not valid. In that respect he relies upon the decision of this Court in the case of *Balram Gupta v/s. Union of India and another 1987 Supp SCC 228* wherein the Court observed that the normal rule which prevails is that a person can withdraw his resignation before it is effective but in cases where the approval of any authority is required, the employee concerned could not withdraw except with the approval of such authority. This effectively requires each case to be decided on its own merits. In *Balram Gupta (Supra)* paragraph 13 records that in the facts of that case there was no valid reason for

withholding the permission to the employee and the application for withdrawal of notice for voluntary retirement was in accordance with certain guidelines setting out changed circumstances.

7. Mr. Marne, the learned counsel appearing on behalf of Corporation submitted that the petitioner had consciously sought to retire voluntary and the request for relieving him was accepted. It appears that he had decided to withdraw the notice but without assigning any reason and hence the Corporation has declined to grant approval contemplated under sub-rule(5) of Rule 65. He relies upon an affidavit of Sandeep Sangave, Education Officer, filed on behalf of the respondents.
8. In paragraph 5 of the said affidavit, Mr.Marne relied upon the averment that the petitioner in the instant case did not demonstrate as to how his health problems had been resolved as contended in the request for withdrawal dated 19th December, 2016. It is further urged that no medical certificate(s) have also been shown to establish that he had health problems and which were subsequently treated and cured.
9. Apart from this,there is no other reason that Mr. Marne has been able to point out which led to the impugned decision and communication of the impugned order. In my view, the letter seeking withdrawal of the

notice dated 17th October, 2016 did in fact contain reasons of his decision to retire voluntarily. However, on reconsideration and considering his improved health, he was of the view that he should continue in service. A decision of this nature, in my view, is a personal decision which the petitioner was entitled to take and it was not open for the respondent no.1 in the facts of the present case to communicate denial of approval which on the face of it appears to be of denial without assigning any reason whatsoever. Mr. Marne is not able to point out any policy of the Corporation or any guideline named in the name of Voluntary Retirement Scheme. Hence, there is no question of the petitioner being required to comply with any such guidelines or specify the Corporation about his ill health and having recovered from his health problems. Although there are no guidelines, the response of the Corporation is one of a blanket denial of the approval sought. Moreover the denial of approval is seen to be communicated to the petitioner a day before he was scheduled to retire had he not sought withdrawal of the notice.

10. In the circumstances, I find that the impugned communication calls for interference. The petitioner was entitled to withdraw his application since the application for voluntary retirement of the notice dated 7th October, 2016 was made well before the date of retirement

becoming effective. No doubt, there may be administrative inconvenience caused to the Corporation by virtue of this. However, that by itself there is no reason to deny approval by the Commissioner. In the circumstances, the petition must succeed. Therefore, I pass the following order:-

- (i) Rule made absolute in terms of prayer clause (b).
- (ii) Compliance to be reported within a period of two weeks from today.
- (iii) Petition is disposed of in the above terms.
- (iv) Parties to an on an authenticated copy of this order.

(A.K. MENON,J.)

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