

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

WRIT PETITION NO.6640 OF 2014

Abhimanyu Bhimrao Chaure ... Petitioner
Vs
The Principal District Judge,
Solapur and Anr. ... Respondents
...

Mr. Parmeshwar A. Bhise for the Petitioner.
Mr. Amit B. Borkar for the Respondent Nos.1 and 2.

**CORAM : A.S.OKA &
SANDEEP K. SHINDE JJ.
DATE : 10 DECEMBER, 2018**

P.C. :

The learned counsel appearing for the Petitioner tenders draft amendment. The draft amendment is taken on record and marked 'A-1' for Identification. We permit the Petitioner to argue the Petition on the footing that the draft amendment is carried out.

2 On 1st June, 1999, the Petitioner was appointed as a Junior Clerk by the learned District and Sessions Judge, Solapur.

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On 8th October, 2008, the Petitioner was suspended on the ground of misconduct. After holding a disciplinary enquiry, by the order dated 7th February, 1999, penalty of temporary stoppage of two increments was imposed. On 2nd April, 2012, the Petitioner tendered his resignation. He was allowed to withdraw the resignation dated 2nd April, 2012. On 13th May, 2012, the Petitioner was transferred to the Court of the learned Civil Judge Senior Division, Solapur. After working for two days i.e. on 11th June and 12th June, 2012, from 13th June, 2012 onwards the Petitioner remained absent. Thereafter, a show-cause notice was issued to the Petitioner on 26th July, 2012 by the learned Principal District Judge, Solapur which refers to earlier show-cause notice issued to the Petitioner. The show-cause notice alleges that from 13th June, 2012, the Petitioner remained absent without proper notice and without making an application for grant of leave. As pointed out in the affidavit filed by Shri Atul Madhukar Kurhekar, the Registrar (Legal and Research) of this Court, show-cause notices were served to the Petitioner on 14th

August, 2012 and on 5th September, 2012. The Petitioner applied for time to file a reply and to join the service. It is pointed out in the reply that permission was granted to join the service on 10th September, 2012. On 10th September, 2012, the Petitioner tendered resignation. The resignation of the Petitioner was accepted on 7th November, 2012 subject to the provisions of the Government Resolution dated 2nd December, 1997 and the Petitioner was relieved from 7th September, 2012. On 10th December, 2012, the Petitioner applied to the learned Principal District and Sessions Judge, Solapur seeking a permission to withdraw his resignation on humanitarian grounds. It appears that he also sought re-appointment relying upon Rule 46(4) of the Maharashtra Civil Services (Pension) Rules, 1982. The said application was rejected by the learned Principal District Judge on 30th May, 2013. It is this order which is challenged in the Petition as originally filed. Thereafter on 7th August, 2013, the Petitioner made a representation to the Registrar of this Court seeking to set aside the order dated 30th May, 2013.

3 The learned counsel appearing for the Petitioner pointed out that the resignation submitted by the Petitioner on 10th September, 2012 was accepted belatedly on 7th November, 2012 (Ex.'F' to the Petition). He invited our attention to the provisions of the Government Resolution dated 2nd December, 1997. He submitted that resignation given by the Petitioner was conditional and, therefore, the Petitioner was entitled to withdraw the same. He submitted that the order accepting the resignation is itself illegal.

4 We have considered the submissions. We have perused the draft amendment. By the draft amendment, the Petitioner wants to add in paragraph 2, the fact that he lost his father on 14th September, 2018. In paragraph 3 of the Petition, the Petitioner wants to add a reference to X-ray showing that his clavicle bone was fractured. Originally, only the order dated 30th May, 2013 was challenged and by the amendment, the Petitioner

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has challenged the order dated 7th November, 2012 of the acceptance of his resignation.

5 We have considered the submissions. We have perused the draft amendment and the documents annexed thereto by the Petitioner. As stated earlier, the resignation tendered was accepted by the order dated 7th November, 2012. On 10th December, 2012, the Petitioner made a representation to the learned Principal District Judge at Solapur. In the said representation, the Petitioner has not even alleged that acceptance of resignation was illegal. He has stated that when he tendered resignation, his mental and physical health was not normal due to illness, accident, etc. He further stated that he was unable to travel from Madha to Solapur everyday. He stated that he was under tension due to family difficulties. He stated that he wanted to avoid inconvenience to the office due to his prolonged absence and therefore, he tendered the resignation. He further stated that the circumstances under which he tendered

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resignation have undergone a change and, therefore, firstly, he prayed that he may be permitted to withdraw the resignation and that he may be granted employment. The second request was in terms of Sub-Clause (a) of Clause (4) of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. Sub-Clause (a) of Clause (4) of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus:

“Rule-46(4)- The Appointing Authority may consider the request of a person who had earlier resigned his post under Government, to take him back in service in the public interest on the following conditions, namely-

(a) that, the resignation was tendered by the government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;”

6 Firstly, belatedly in the year 2018, the Petitioner has challenged the order of acceptance of resignation passed on 7th November, 2012 in this Petition filed on 1st July, 2014. Even assuming that the Petitioner has explained the delay, the representation dated 10th December, 2012 clearly shows that the Petitioner had no grievance whatsoever about the acceptance of the resignation. Therefore, the only question which needs consideration is whether Sub-Clause (a) of Clause (4) of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 is applicable. Before we deal with this aspect, we may note that the impugned order dated 7th November, 2012 records that the Petitioner has remained unauthorisedly absent from 13th June, 2012 onwards. It is observed therein that instead of taking recourse to departmental enquiry, it would be appropriate if the resignation of the Petitioner is accepted without grant of any benefit. The perusal of the letter of resignation shows that reasons stated therein cannot be said to be compelling reasons.

Show-cause notice was served to the Petitioner on 14th August, 2012. Nearly three weeks after the service of the show-cause notice that the Petitioner tendered his resignation. But in the letter of resignation submitted on 10th September, 2012 , the Petitioner has not referred to the show-cause notice. No compelling reason for tendering the resignation is shown.

7 The challenge to the order dated 7th November, 2012 of accepting the resignation which is sought to be made in 2018 is not at all bonafide as the Petitioner never made any grievance about the acceptance of the resignation. As Sub-Clause (a) of Clause (4) of Section 46 of the Maharashtra Civil Services (Pension) Rules, 1982 is not applicable on the face of it, the prayer for grant of re-employment has been rightly rejected by the learned Principal District Judge. We find no error in the decision taken by the learned Principal District Judge. We find no

error in the order accepting resignation. Hence, no interference is called for. The Petition is rejected.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)