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

WRIT PETITION NO. 12531 OF 2018

The State of Maharashtra and Ors. ...Petitioners

Versus

Smt. Surekha Chandrapalsingh Hazari
and Anr. ...Respondents

Mrs. A.V. Gondhalekar, Additional Government Pleader
for Petitioners
Ms. Pradnya S. Talekar, Advocate, holding for
Mr S.B. Talekar, Advocate for Respondent Nos. 1 and 2

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

DATE: 23rd JANUARY, 2019

<u>ORAL ORDER</u> :

1. The present respondents had filed Original Application before the Maharashtra Administrative Tribunal (MAT), Aurangabad bearing Original Application No. 191/2015, thereby seeking directions against the petitioners herein to grant application seeking voluntary retirement and grant all the consequential benefits including arrears and pension from 01.06.1990 with interest.

2. The Tribunal under order dated 26.04.2017 allowed the Original Application filed by the present respondents observing that during the pendency of the application, the present petitioners have

accepted the notices of voluntary retirement and the present petitioners were directed to grant all the retirement benefits to the present respondents.

3. Mrs. A.V. Gondhalekar, the learned Additional Government Pleader submits that the Tribunal has not considered the case putforth by the present petitioners. Without adverting to the case putforth by the petitioners, the Tribunal has allowed the Original Application. The present petitioners had nowhere accepted the case putforth by the present respondents. It was clearly stated in the affidavit filed by the petitioners that the voluntary retirement notice dated 1st March, 1990 was not served to the proper authority and as such, could not have been accepted. The next notice was given only in the year 2005. The deceased Mr Hazari attained the age of superannuation in the year 2002. According to the learned Additional Government Pleader, the deceased Dr. Hazari submitted his revised voluntary retirement application notice on 20th September, 2005 to the Government with the request to sanction the voluntary retirement w.e.f. 01.06.1990. It is further submitted that the notice of voluntary retirement was rejected by the Government under letter dated 29.07.2009. The departmental inquiry was also initiated against deceased Dr. Hazari. He refused to accept the notice. He was

responsible for the pendency of the departmental inquiry. The deceased was paid an amount of Rs. 1,07,496/- towards the Provident Fund during his life time, so also, an amount of leave encashment, and also, Group Insurance is paid and the provisional pension was also paid for the period from 01.01.2003 to 30.06.2003. According to the learned Additional Government Pleader, the Judgment of the Tribunal was erroneous. The application of the deceased Dr. Hazari for voluntary retirement was rejected on valid grounds. The deceased did not join the service after 01.06.1990. Hence, the same is interruption in service.

4. Ms. Talekar, the learned Counsel for the respondents submits that the petitioners have accepted that the deceased has submitted voluntary retirement application. The same was received by them. Considering the said aspect, the Tribunal has observed it in the order. The Tribunal has not committed any error in observing that the petitioners have accepted notice of voluntary retirement given by the deceased Dr. Hazari. The learned Counsel submits that the consequences of acceptance of the notice of voluntary retirement has to follow. The deceased Dr. Hazari, during 3 months period, was never communicated of the rejection of the notice of voluntary retirement. According to the learned Counsel, as far as the

insurance is concerned, only an amount of Rs. 66,912/- has been credited to the account and not Rs. 1,31,712/-, as contended by the petitioners.

5. We have considered the submissions canvassed by the learned Counsel for the respective parties.

6. On perusing the order of the Tribunal, it transpires that the Tribunal has not considered the merits of the contentions of either of the parties and only on the ground that concerned respondent has accepted the notice of voluntary retirement, has passed the order, whereas in the affidavit, the case of the present petitioner was otherwise. In fact, the Tribunal was expected to deal with the case putforth by the parties.

7. We have considered the case putforth by the parties.

8. It is not debatable fact that the deceased Dr. Hazari had served 90 days notice of voluntary retirement on 1st March, 1990.

9. It does not appear from the record that within a period of three months, the present petitioners at any point of time, communicated to the deceased Dr. Hazari that the notice of voluntary retirement is not acceptable or that there are deficiencies in the same. If the present petitioners did not agree to accept the

notice of voluntary retirement, it was mandatory for the petitioners to communicate the same within a period of three months. Rule 66 of the Maharashtra Civil Services (Pension) Rules,1982 provides that if 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 shall become effective from the date of expiry of the said period. From the record, it nowhere appears that within a period of three months, the present petitioners communicated refusal of the acceptance of notice of voluntary retirement. By deeming provision, the notice of voluntary retirement became effective from 01.06.1990.

10. The deceased Dr. Hazari was appointed in the year 1969. He had completed the qualifying service of 20 years. In view of that, the Rule 66 of the M.C.S. (Pension) Rules would squarely apply.

11. It would appear that in a communication dated 29.11.2007, by District Civil Surgeon, District Hospital, Osmanabad to the Accountant General, Nagpur, it is clearly stated that Dr. C.S. Hazari, Medical Officer has been granted voluntary retirement from 01.06.1990 (page 52).

12. Considering the above, there cannot be any debate now

that the deceased Dr. Hazari stood voluntarily retired on 01.06.1990.

13. In light of the above, the order passed by the Tribunal though does not deal with the contentions, need not be interfered with as we have considered the submissions on merits in the present writ petition.

14. Needless to state the respondents shall be entitled for all the consequential benefits arising pursuant to the order.

15. The writ petition is disposed of. No costs.

(A.M. DHAVALE, J.) **(S.V. GANGAPURWALA, J.)**

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