

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

WRIT PETITION NO.1675 OF 2014

Mrs. Madhuri Rahul Muley

..Petitioner

Versus

Maharashtra Jeevan Pradhikaran

Through its Chief Administrative

Officer and others

..Respondents

**Mr. Vinayak Kumbhar I/by Mr. N. V. Bandiwadekar, Advocate
for the Petitioner.**

Mr. Ajit R. Pitale, Advocate for Respondent Nos.1 & 2.

CORAM : B. R. GAVAI &

N. J. JAMADAR, JJ.

DATE : 4th JANUARY, 2019

ORAL JUDGMENT (B. R. Gavai, J).

1] Rule. Rule made returnable forthwith. Heard by consent of the parties.

2] By way of present Petition, the Petitioner challenges the order dated 21st/25th July 2012 to the effect it directs the period of 409 days from 8th June 2011 to 21st July 2012 as an unauthorized absence.

3] The undisputed facts giving rise to the present Petition are as under :-

The Petitioner came to be appointed as Assistant Engineer on the establishment of the Respondents on 24th January 1997. The Petitioner came to be promoted as Deputy Engineer in August 2009. The Petitioner tendered her resignation on 9th May 2011, which was to be effective from 8th June 2011. Till 8th June 2011, the Petitioner did not receive any communication from the Respondents. As such, the Petitioner relieved herself from the services on 8th June 2011 by submitting the relieving report. However, it appears that the Petitioner was served with a copy of communication dated 7th June 2011 on 9th June 2011 addressed by the Chief Administrative Officer of the Respondent No.1 to the Respondent No.3. By the said communication, the Respondent No.3 was asked to submit 'No Dues Certificate' and 'No Departmental Enquiry Certificate' to the Respondent No.1. A copy of the said communication was also endorsed to the Petitioner. Thereafter, after a period of almost more than one year, the Respondent No.1 passed an order on 21st/25th July 2012, thereby accepting the resignation of the Petitioner. However, vide the impugned order, the Respondent No.1 also directed that the period of 409 days from 8th June 2011 to 21st July 2012 should be treated as an

unauthorized leave. Being aggrieved thereby, the present Petition.

4] Heard Mr. Kumbhar, learned counsel for the Petitioner and Mr. Pitale, learned counsel for Respondent Nos.1 & 2.

5] Learned counsel for the Petitioner submits that for no fault of the Petitioner, the Petitioner has been imposed with the action of treating 409 days period as unauthorized leave. He submits that since nothing was communicated to the Petitioner within a period of one month, she had rightly submitted her relieving report. It is therefore submitted that the part of the order dated 21st/25th July 2012, with which the Petitioner is aggrieved needs to be quashed and set aside.

6] Learned counsel for the Respondents on the contrary submits that in view of sub clause (8) of clause 2 of the Government Resolution dated 2nd December 1997, the period of 409 days has been rightly treated as a period during which the Petitioner was on unauthorized leave.

7] We find that the contention as raised by the

Respondents is without substance.

8] It will be relevant to refer to sub clause (4) of clause 2 of the Government Resolution dated 2nd December 1997 :-

“4) The Authority, competent to accept the resignation, should process the resignation application on priority and should inform the final decision regarding acceptance/rejection of the resignation to the concerned Government Officer/employee, within the period of one month from the date on which he has tendered resignation. The Authority competent to accept the resignation shall be responsible to scrupulously follow the said time limit.

If the authority, competent to accept the resignation has not at all informed the concerned Government Officer/employee, about the final decision regarding acceptance/rejection of his resignation, within the period of one month from the date of receipt of his application for resignation then, in such case, after completion of the aforesaid period of one month, it will be assumed that the Competent Authority has accepted the resignation of the concerned Government Officer/employee.”

Perusal of the same would reveal that after receipt of the resignation, the competent authority is required to take a decision and communicate the same to the Applicant within a period of one month from the date of resignation. It further provides that the responsibility of adhering to the time limit, would be solely on the competent authority. The proviso of sub clause (4) of clause 2 also

provides that if an employee has not been communicated anything within a period of one month, then it will be deemed that the resignation of the employee is accepted. Sub clause (9) of clause 2 would further reveal that if for some reason, the issue with regard to acceptance of resignation cannot be decided within a period of one month, in that event, the competent authority is required to intimate the employee that till the decision on the resignation by the Government, the employee should continue in service. It further provides that on failure to do so, the concerned officer would be responsible.

9] Insofar as sub clause (8) of clause 2 is concerned, the same would not be at all applicable to the present Petitioner. Sub clause (8) of clause 2 deals with an eventuality when the employee is already on unauthorized leave and during the period of such leave, he tenders his resignation. In such an eventuality, the period from the date on which such an employee is on unauthorized leave till the date on which he tenders his resignation is required to be treated as unauthorized leave.

10] In that view of the matter, we find that the impugned

action is not sustainable in law. In the result, we pass the following order :-

ORDER

- I] Rule is therefore made absolute in terms of prayer clause (b).
- II] It is held and declared that the Petitioner's resignation is deemed to have been accepted with effect from 8th June 2011.
- III] In the facts and circumstances of the case, no order as to costs.
- IV] The retiral benefit to which the Petitioner is entitled on the basis of the aforesaid shall be cleared within a period of three months from today.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]