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

WRIT PETITION NO. 2702 OF 2019

Maharashtra Public Service Commission ...Petitioner.

V/s

Pradipkumar Yashwant Bhurke & Ors ...Respondents.

Mr. Nitin P. Dalvi, Advocate for the Petitioner.

Mr. Bhushan Mahadik, Advocate for Respondent No.1.

Mr. N.K. Rajpurohit, AGP for Respondent No.2.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.**

DATE: 7th March, 2019

P.C : (Per B.R. Gavai, J.)

1] Petitioner challenges the Judgment and Order dated 13/02/2019 passed by the learned Maharashtra Administrative Tribunal in Original Application No.499 of 2017, vide which the Original Application filed on behalf of the Original Applicant came to be allowed and the order rejecting his application for withdrawal of

notice for voluntary retirement was set aside. In fact, the effect of the order of the learned Tribunal is to permit the Original Applicant to continue in service by treating his notice for voluntary retirement as withdrawn.

2] The facts are not in dispute. Respondent No.1 – Original Applicant, as required under Rule 66(5) of the MCS (Pension) Rules, 1982, had sent a notice for voluntary retirement on 09/12/2016. The notice was for a period of three months. The said period was to expire on 09/03/2017. Undisputedly, till the said date, the application of Original Applicant for grant of voluntary retirement was neither accepted nor rejected. However, it is the contention of the Petitioner that taking into consideration young age of the Original Applicant and his past record, it was found necessary by the Chairman of the Petitioner to call the Original Applicant for oral interaction on 24/03/2017 to find out, as to whether he is really interested in voluntary retirement or would like to continue in service. It is the contention of the Petitioner that the Original Applicant stated that he would like to pursue with his application for voluntary retirement and

as such, the order came to be passed, accepting his application for voluntary retirement on the same day. It is however submitted that, subsequently, on the same day, the Original Applicant submitted an application for withdrawal of notice of voluntary retirement. However, since the order was already passed on 24/03/2017, his application for withdrawal of notice came to be rejected. In these premises, Original Applicant had approached the Tribunal.

3] The Tribunal, while allowing the Original Application, has relied on the following observations of the Hon'ble Apex Court in the case of *Balram Gupta v. Union of India and Anr.*¹ :-

“administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement The court cannot but condemn circuitious ways “to ease out” uncomfortable employees. As a model employer the government must conduct itself with high probity and condour with its employees.”

1 AIR 1987 SC 2354

4] The learned Counsel appearing on behalf of the Petitioner – MPSC submitted that the learned Tribunal has erred in allowing the Original Application and not considering the Judgment of the Hon'ble Apex Court in the case of *Director General of ESIC & Anr. vs. Purshottam Malani* delivered in Civil appeal No.4611 of 2008. The passage from the said judgment of the Hon'ble Apex Court on which reliance has been placed by the learned Counsel for the Petitioner, has been reproduced in para 24 of the Judgment of the Tribunal, which reads thus :-

“9. However, in the present case, we find that the incumbent who has given the notice of voluntary retirement on 31.12.1999 and wanted to revoke the same on 22.3.2000 i.e., before the last date 31.3.2000, has not given any explanation whatsoever for revoking the notice of voluntary retirement and has got all the benefits which he was entitled to get on the basis of voluntary retirement. After having received all the benefits of voluntary retirement, the Respondent approached the Tribunal for setting

aside the order dated 17.4.2000 accepting the notice of voluntary retirement. This conduct of the Respondent also dis-entitles him any benefit.”

5] The scope of interference by this Court in its extra ordinary jurisdiction under Article 226 of the Constitution while examining the correctness of the order passed by the learned Tribunal is very limited. Unless it is found that the view taken by the learned Tribunal is perverse or impossible, interference would not be warranted.

6] The Judgment of the Hon'ble Apex Court in the case of *Director General of ESIC & Anr* (supra) on which the learned Counsel for the Petitioner has relied, has rightly been distinguished by the learned Tribunal. It has been found that, in the said case, the employee had received all pensionary benefits including gratuity, provident fund etc. After receiving all the benefits of voluntary retirement, the application for withdrawal of notice was made. However, in the present case, undisputedly, Respondent No.1 – Original Applicant has

not received any terminal benefits on the date on which he made an application for withdrawal of the notice of voluntary retirement. It is further to be noted that even according to the Petitioner – MPSC, since its Chairman was of the opinion that taking into consideration the age of the Original Applicant and his past record, it was necessary to ascertain, as to whether he really desired to pursue with his notice for voluntary retirement or would like to continue in service. According to the Petitioner, in oral interaction with its Chairman at 11.30 A.M. on 24/03/2017, Respondent No.1 – Original Applicant had expressed his desire to continue with his notice. It is the case of the Petitioner that, however, it is only after decision was taken by the Petitioner to accept the notice of the Original Applicant for voluntary retirement, he changed his mind in couple of hours and thereafter submitted an application for withdrawal of notice of voluntary retirement.

7] It could thus be seen that even till 11.30 A.M. on 24/03/2017, Chairman of the MPSC was of the view that taking into consideration the past record and age of the Original Applicant, it was necessary to

ascertain, as to whether the Original Applicant really desired to take voluntary retirement. In fact, according to the Petitioner, age and past record of the Original Applicant was such that he should have continued in service. Merely because the Original Applicant failed to exercise his discretion properly at that time and thereafter within a couple of hours changed his mind in response to the suggestion of the Chairman of the MPSC, cannot be a ground not to consider his case. As observed by the Hon'ble Apex Court in the case of *Balram Gupta* (supra), administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement.

8] In the present case, when the Chairman of the MPSC was of the opinion till 11.30 A.M of 24/03/2017 that Original Applicant should continue in service, we do not appreciate as to how the situation changed after a couple of hours. Merely because the Original Applicant had refused to accept the suggestion of the Chairman at 11.30 A.M. on 24/03/2017 to continue in service, cannot be the ground for not considering his request for withdrawal of notice of

voluntary retirement, which is made after couple of hours.

9] We therefore do not find any perversity having been committed by the learned Tribunal in passing the impugned order.

10] However, we find that some of the remarks made by the learned Tribunal insofar as conduct of the MPSC was concerned, were not warranted in the facts and circumstances of the case. In any case, before making such remarks against the authorities of MPSC, least that was expected of the learned Tribunal was to give an opportunity to the concerned authorities of being heard.

11] In that view of the matter, while dismissing the Petition, we expunge the adverse comments made by the learned Tribunal against the authorities of the Petitioner – MPSC. Petitioner, however, is directed to implement the order of the learned Tribunal within a period of one week from today.

(N. J. JAMADAR, J.)

(B. R. GAVAI, J.)