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

WRIT PETITION NO.1309 OF 2020

Sunil s/o Raghunath Deshpande,
Age 51 years, Occu. Service,
Working as Asstt. Traffic
Superintendent, Class-II-C,
Divisional Transport Office,
Jalna, Tal. & Dist. Jalna

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through : Secretary,
Department of Ministry of Road &
Transport, Mantralaya, Mumbai
2. The General Manager (P & R),
State Transport, Central Office,
Mumbai Central, Mumbai-400 008
3. The Divisional Controller,
M.S.R.T.C., Jalna,
Tal. Jalna, Dist. Jalna
4. The Divisional Labour Officer,
M.S.R.T.C. Jalna,
Tal. & Dist. Jalna
5. Divisional Personal Officer,
M.S.R.T.C., Jalna,
Tal. & Dist. Jalna

..RESPONDENTS

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Ms. Anjali Dube (Bajpai), Advocate for petitioner;
Smt. M.A. Deshpande, A.G.P. for respondent no.1;
Mr, D.S. Bagul along with Mr. G.D. Jain, Advocate for respondent nos.2 to
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**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, J.**

DATE : 26th November 2021

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ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner has put-forth prayer clauses (C), (D) and (E) as under:-

“(C) The Writ Petition may kindly be allowed by quashing and setting aside the impugned Order dtd. 31.12.2019 passed by the Divisional Controller, State Transport Office, Jalna;

(D) Writ Petition may kindly be allowed by directing the authorities to consider the case of the petitioner for voluntary retirement on the ground of Medically Unfit as per the Circulars dtd. 29.9.2017 and 5.4.2018, issued by MSRTC; Central Office, Mumbai

(E) Pending hearing and final disposal of the petition, the authorities may be restrained from terminating the services of the petitioner and further be directed to pay the salary of the petitioner and other consequential benefits, to which the petitioner found entitled.”

3. This matter was heard extensively on 18.11.2021. Having noted the submissions of the learned Counsel for the respective sides, we had passed the following order:-

“1. Having considered the nature of ailment of the petitioner as uncontrolled diabetic, hypertension and occasional fits (Neuropathy), we do not find, prima facie, that the petitioner, who is 51 years of age, could be declared to be unfit to perform the nature of the duties, which he has been allotted, on his promotion as Assistant Traffic Superintendent Class-II-C. In order to test the bona fides of the petitioner, we call upon the

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petitioner to file an affidavit that if his request for voluntary retirement on the ground of health is accepted, none of his son/daughter/wife/legal representatives would seek compassionate appointment with the Maharashtra State Regional Transport Corporation.

2. The learned Advocate for the petitioner submits that such affidavit would be filed before the next date.

3. In view of the above, list this petition on 26th November, 2021 in "passing of orders" category."

4. The undisputed factors in this case are as follows:-

- a) The petitioner was appointed as a Transport Controller on 25.5.1994 by the Maharashtra State Road Transport Corporation , Jalna (for short 'MSRTC').
- b) The petitioner came to be promoted to the post of Assistant Traffic Superintendent, Class-II-C with effect from 18.8.2017.
- c) Subsequent to the above, the petitioner noted certain health issues like increase in sugar levels, hypertension and occasional fits (Neuropathy).
- d) The M.S.R.T.C. had issued a Circular No.15 of 2018 dated 5.4.2018 providing that such employees who are medically unfit to continue in service in the light of the earlier Circular dated 29.9.2017, can apply for voluntary retirement.

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- e) As the petitioner found that he was unable to discharge the duties, he moved an application for voluntary retirement on 28.3.2019.
- f) The M.S.R.T.C. referred the petitioner to the Medical Board. After examining the petitioner, the Medical Board declared him unfit for duty vide the medical report signed on 14.10.2019 and 15.10.2019.
- g) The Divisional Controller, Jalna addressed a letter dated 17.10.2019 to the General Manager (P & R), M.S.R.T.C., Central Office, Mumbai recommending the case of the petitioner for voluntary retirement.

5. The learned Advocate for the petitioner has strenuously contended on specific instructions that considering the health issues, the petitioner is not inclined to continue in employment. Had there been no scheme for voluntary retirement, the petitioner would have been left with no option but to work or resign. There is no ulterior or oblique motive behind him seeking voluntary retirement.

6. The learned Counsel for the M.S.R.T.C. respondent nos.2 to 5 has strenuously opposed this petition. He submits that by a letter dated 31.12.2019, the petitioner was informed that he was not eligible for voluntary retirement considering that he was falling in Officer (II-C) category and the Circular dated 29.9.2017 bearing No.33/2017 does not apply the scheme to the officers category and it would be applicable to such persons who fall within the definition of workman/employee.

7. He further submits that seeking voluntary retirement is not a matter of right. The health issues concerning the petitioner are not such that he is not physically and mentally capable of performing any duty. The certificate of the Medical Board placed on record has been issued by the Standing Medical Board of the Government Medical College & Hospital, Aurangabad. Having been declared unfit for duty would not mean that the petitioner is disabled from doing any light work.

8. It was in the light of the above submissions that we called upon the learned Counsel for the petitioner to take instructions as to whether the petitioner would opt for an alternate employment in the light of Section 20 of the Rights of Persons with Disabilities Act, 2016 (earlier Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995). The learned Counsel had submitted on instructions that the petitioner finds himself unable to perform any other work including light work as an alternative to his present duties.

9. While considering this case, we had our doubts that as the petitioner was just 51 years of age and his health issues (which were not serious) were with regard to high level of sugar, hypertension and occasional fits, that he could be seeking voluntary retirement so that a son or daughter from the family could apply for compassionate appointment since such a scheme is available. To test the *bona fides* of the petitioner, we called upon him to submit an undertaking if so desired, that his application for

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voluntary retirement was not aimed at facilitating a son/daughter to be appointed on compassionate basis. Vide an affidavit/undertaking dated 24.11.2021, the petitioner has declared that he was not seeking voluntary retirement to facilitate compassionate appointment and that his son/daughter/wife/legal representatives would not seek compassionate appointment with the M.S.R.T.C.

10. Considering the above, we find that there are no *mala fide* intentions or ulterior motives attributable to the petitioner. It appears that he finds himself physically unable to perform the duties and no law could force him to continue with his job if he did not desire to do so. However, compelling him to resign would take away all his retiral benefits and we do not find that the M.S.R.T.C. could be permitted to adopt such a harsh stand.

11. The learned Counsel for the petitioner brings to our notice that after the impugned letter was served on the petitioner, he was disallowed to report for duties with effect from 1.1.2020 and at the same time, his application for voluntary retirement was not being entertained. Thus, on the one hand he was prevented from reporting for duties and on the other hand, he was not allowed to retire.

12. As such, without laying down a precedent and by concluding that in such a case the family members/dependents/legal representatives of such a candidate would not be entitled for compassionate appointment, we are allowing this petition in terms of prayer clause (C). Consequentially, the

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impugned order dated 31.12.2019 is quashed and set aside.

13. We accede to the specific request made by the learned Counsel for the petitioner that as the medical certificate is dated 15.10.2019, his retirement be deemed to be made effective from 1.11.2019. As such, the petitioner shall be deemed to have retired with effect from 1.11.2019. His retiral benefits as admissible in law and pensionary benefits shall be extended to him as expeditiously as possible and preferably on or before 31.12.2021.

14. Rule is made absolute in the above terms. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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