

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.689 of 2019

Santosh s/o Jagdishsingh Gautam

...Petitioner

Versus

State of Maharashtra,

through its Additional Chief Secretary,

Home Department,

Mantralaya, Mumbai and another

...Respondents

Shri S.P. Palshikar, Advocate for the Petitioner

Mrs. K. R. Deshpande, AGP for the Respondent Nos.1 and 2 - State

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 2 MARCH 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Maharashtra Administrative Tribunal dated 17 December 2018, rejecting the Original Application No.310 of 2017.

3. The Petitioner was working as Police Head Constable in Motor Transport Division, Police Headquarter, Wardha. The Petitioner submitted an application for voluntary retirement on 27 December 2014.

The Superintendent of Police, Wardha informed the Petitioner that since a criminal case was pending against the Petitioner, his application could not be considered. The Petitioner was thereafter placed under suspension. The suspension was revoked. Thereafter the Petitioner again submitted an application for voluntary retirement on 25 October 2016.

4. The Petitioner, contending that the Petitioner did not receive any reply on the application for voluntary retirement within a period of 90 days and that the application for voluntary retirement deemed to have been accepted as per the *Rule 66(2) of the Maharashtra Civil Services (Pension) Rules 1982* (for short “the Rules of 1982”) and filed an Original Application before the Maharashtra Administrative Tribunal seeking a declaration to that effect.

5. The Respondent State filed a reply and opposed the Application and it was stated that the earlier application was rejected, secondly that by communication dated 2 November 2016, the Application for voluntary retirement was rejected on the ground of pending departmental inquiry against the Petitioner and when the Petitioner was sought to be served, he was on leave and also did not join the transferred place.

6. The Tribunal considering the fact that the earlier Application of the Petitioner was rejected and wherein it was informed that the Criminal case is pending against the Petitioner, could have waited till the disposal of the case, and rejected the Original Application.

7. The learned Counsel for the Petitioner submitted that the only ground on which the Application was rejected was its earlier rejection, which was based on a criminal case and the learned Magistrate pleased to accept “A-Summary” on 11 September 2017 and these facts were placed on record by the additional affidavit dated 18 September 2017. The learned Counsel for the Petitioner submitted that since the consequence of not replying within a period of 90 days is automatic acceptance of voluntary retirement, the order passed by the Tribunal is perverse.

8. The learned Assistant Government Pleader reiterated the contention raised before the Tribunal in the reply that the Petitioner was attempted to be served within a period of 90 days and because of the Petitioner’s conduct, he could not be served.

9. The main question would be one of the fact. The letter dated 2 November 2016 rejecting the application of the Petitioner with reference to pending the departmental inquiry is on record. This letter was issued prior to the expiry of the period of 90 days.

10. As regards the non service of this letter, if the Petitioner’s conduct was such that the letter could not be served, then the Rule 66(2) of the Rules of 1982 can not be come automatically in operation as it cannot be the interpretation that the employee avoids receipt of the letter and yet seeks automatic implementation of the Rule. In this context the factual inquiry is necessary. In the paragraph Nos 5 and 6 of the reply, following position is stated by the Respondent- State:

“5. It is submitted that, since the letter dtd.2.11.2016 could not be served to the Applicant for the reason given herein above, thus as per the available record, the applicants’ permanent address is at Hinganghat, so the said letter had been sent to P.S.O. Police Station Hinganghat on 13.2.2017 to serve to the Applicant and the letter was served by P.S.O. Hinganghat to the Applicant on 22.04.2017. The enough efforts had been taken to serve the said letter to the Applicant by Respondent No.2. The copy of the above said letter dtd. 2.11.2016 is annexed herewith as Annexure R-2-1.

6. It is submitted that, the applicant does not apply for VRS after 08-05-2017. It is submitted that, after revocation of suspension on 07-10-2016 the Applicant was told to join his duty at PHQ Wardha, accordingly he joined his services to PHQ, Wardha. It is submitted that, after joining at PHQ Wardha, he was transferred to PS Arvi vide order dated 05-10-2016. The Applicant received the order but did not join PS Arvi. Thereafter he is continuously absent without sanction any leave and abandoned his services, as such the notice was issued to applicant. The copy of the said notice is annexed herewith as Annexure R-2-2.”

The fact that the Petitioner was on leave and did not join the transferred post is not in dispute. The contention of the Petitioner that the Respondent has managed to serve the Petitioner subsequently, therefore, there is no substance in the contention that he could not be served earlier. This however cannot take away the effect of the earlier factual situation. If the Petitioner was on leave and did not join the post, in normal circumstances, at that address the Petitioner could not be served. If the subsequently extra efforts have been taken to serve the Petitioner that

would be a different matter altogether. The Tribunal has taken a note of this argument of the Respondents and it is not a new theory put-forth. Even assuming the Tribunal has rejected the case of the Petitioner on a different ground, if the Petitioner is seeking relief in this Writ Petition, the above facet cannot be overlooked. Therefore, if a factual position emerges that the Petitioner could not be served within the period of 90 days in view of the Petitioner's own conduct, he is not entitled to the relief as prayed for.

11. The Writ Petition is accordingly rejected.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]