

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

WRIT PETITION NO. 4821 OF 2018

Ushabai Manohar Koche, aged about 63,
years, occ. Retired, r/o c/o Smt. Shobha
Dongre, Laxmi Vihar Apartment, Gaddam
Plot Square, Ramdaspath, Akola 440005

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.. Petitioner

Versus

1. State of Maharashtra, Medical
Education and Drugs Department,
through its Director, Mantralaya, Mumbai
400032

2. The Director, Medical Education and
Research, St. George Hospital Compound,
near CST, Mumbai 400 001

3. The Dean, Govt. Medical College and
Hospital, Nagpur.

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.. Respondents

Mr. R. S. Sundaram Advocate for petitioner.

Mr. N. R. Patil A.G.P. for respondent Nos.1 to 3.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 09/09/2021

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard Mr. Sundaram, learned counsel for the
petitioner and Mr. N. R. Patil, learned AGP for respondents.

(2) **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

(3) On going through the two orders passed by the respondent No.3, which are impugned here and also the judgment and order of the Maharashtra Administrative Tribunal challenged here, we find that there is substance in the submissions made by the learned counsel for the petitioner whereby it is pointed out that the last of the impugned orders dated 23/04/2008 is almost like a second punishment for the same misconduct.

(4) The petitioner, for her unauthorized absence from duty during the period from 01/07/1995 to 26/03/2000, was proceeded against departmentally by respondent No.3 and was awarded punishment of deprivation of salary and allowances for the period of absence and also stoppage of two increments for a period of two years. The petitioner suffered these punishments long back. However, when the petitioner submitted her application seeking permission for her voluntary retirement dated 16/10/2000, no decision was taken by the respondent No.3 till 15/01/2001. It was only on 15/01/2001, as per the stand taken by the respondents, that the

petitioner was informed about the rejection of her application for grant of permission to her to take voluntary retirement. Then, after a lapse of about 07 years, the petitioner suddenly received a termination order on 23/04/2008.

(5) The termination order dated 23/04/2008 was based upon the ground that the petitioner was already unauthorizedly absent from duty during the period from 01/07/1995 till 26/03/2000 and after resuming her duty on 06/06/2000 and then, working for hardly about four months, the petitioner tendered her application for acceptance of her voluntary retirement, all of which indicated the intention of the petitioner was to not perform her duty, but to avail of all the service benefits, rendering her unfit to continue in service. Accordingly, termination order dated 23/04/2008, was issued against the petitioner and her services were retrospectively terminated from 07/12/2003.

(6) The termination order dated 23/04/2008 in our considered opinion is flawed for several reasons. Firstly, it gives substantially the same reasons as the order dated 01/01/2001, whereby punishments in the nature of making period of her absence

from duty as without pay and stopping of two increments were imposed upon the petitioner. This amounts to nothing but giving of second punishment to the petitioner for the same misconduct. Secondly, it has been issued without giving of any opportunity of hearing to the petitioner, which is not disputed. Thirdly, it could not have been issued with retrospective effect so as to go back to a period which was about slightly more than four years prior to January, 2008 for snapping of employer – employee relationship, as such termination of relationship is unknown to law. Fourthly, it could not have been issued after the voluntary retirement application of the petitioner had been deemed to be accepted as per Rule 66 of Maharashtra Civil Services (Pension) Rules, a detailed dissension about which is made in ensuing paragraph. Thus, we find that the termination order dated 23/04/2008 cannot be sustained in the eye of law.

(7) The other impugned order rejecting the application of voluntary retirement of the petitioner passed on 15/01/2001, can also not be found to be legal as the period of 90 days as prescribed under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 expired in the present case on 14/01/2001. As per the proviso to Rule 66(2), whenever the rejection of the voluntary retirement application

is not communicated before the expiry of the period of voluntary retirement notice, the retirement becomes effective from the date of the expiry of the prescribed period, which is 90 days. Therefore, even the other impugned order, dated 15/01/2001, rejecting the voluntary retirement application of the petitioner is against the provisions contained in Rule 66 of Maharashtra Civil Services (Pension) Rules.

(8) All the above referred aspects, it is seen from the judgment and order of the Tribunal, are not appropriately considered, which has resulted in causing of injustice to the petitioner. It is further seen that the Tribunal has exceeded its jurisdiction when it modified the termination order making it effective from 23/04/2008, instead of the original date of 07/12/2003. If the Tribunal was of the view that the order dated 23/04/2008 could not have been retrospectively issued, the Tribunal ought to have quashed and set aside the order to the extent of its illegality and remanded the matter back to the respondent No.3 for passing appropriate order in the matter, which it has not done.

(9) In the result, the petition is allowed.

(10) The impugned judgment and order passed by the

Tribunal and the impugned orders passed by the respondents are hereby quashed and set aside.

(11) It is declared that voluntary retirement application of the petitioner is deemed to be accepted.

(12) The respondents are directed to pay the retiral benefits, which may be due and payable to the petitioner in accordance with law, within a period of three months from the date of this order.

Rule accordingly. No costs.

[ANIL S. KILOR]

[SUNIL B. SHUKRE]

KOLHE/P.A.