

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

915 WRIT PETITION NO.2066 OF 2022

DINESH SURESH DEORE

VERSUS

THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner: Mr. Ambar S. Barlota

ASG for Respondent Nos.1 to 4: Mr. A. G. Talhar

AGP for Respondent/State: Mr. S. P. Tiwari

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 03rd MARCH, 2022

PER COURT:

1. Mr. Barlota, learned Counsel for the Petitioner submits that the Respondent / Company had introduced company owned company operated retail outlet. The Seniority List was prepared for allotment of temporary COCOs in the State of Maharashtra. The name of Respondent No.5 was shown at Serial No.3 and the name of the Petitioner was shown at Serial No. 10. The Letter of Intent in favour of Respondent No.5 is dated 18.01.2006 and the Letter of Intent in favour of the Petitioner is dated 26.05.2018. The learned Counsel submits that the Letter of Intent was sought to be issued to the Petitioner in the year-2004 itself but because of one compliant and a Petition filed in

this Court the matter was delayed. The land was also not available. The delay is not on the part of the Petitioner. The seniority of the Petitioner should date back to the year-2004, as such, the Petitioner would be senior to Respondent No.5.

2. The learned Counsel further submits that the Company required a person to tender an undertaking if the candidate is in service then he shall resign and further he will not draw any pay, salary, allowances, emoluments. The learned Counsel submits that Respondent No.5 did not resign from service but had tendered an application for voluntary retirement. The voluntary retirement was not contemplated. The company required candidate to tender resignation. By resignation a person forfeits all the retiral benefits except gratuity and as such would also not be entitled to get emolument by way of pension / retiral benefits. The learned Counsel relying upon the definition of emoluments under Rule 9(15) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (*hereinafter*

referred to as 'Rules-1981') submits that pension would form part of emoluments. In view of that also the Petitioner is not entitled to be considered for the said retail outlet.

3. The Petitioner was issued with the Letter of Intent in the year-2018 and Respondent No.5 is issued with the Letter of Intent in the year-2006 may be the Petitioner was not at fault as the litigation was in progress. But the fact remains that the Petitioner was issued with the Letter of Intent in the year-2018, as such Respondent No.5 is senior to the Petitioner. The Company require a candidate to submit undertaking that the candidate has resigned from employment if he is employed and obtain the Letter of acceptance from the old employer. Respondent No.5, according to the Petitioner was in service when the application was made. Respondent No.5 under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (*hereinafter referred to as 'Rules-1982'*) tender notice of voluntary retirement. If a person

voluntarily retired said person is entitled for pension and other retiral benefits.

4. A person is required to resign from service so that he is no longer in employment. The purpose of obtaining resignation of a candidate who is in employment is that while running the retail outlet he should not be in employment of any other employer and should devote his entire time to the retail outlet. The Rules-1982 contain a provision for voluntary retirement if a person has completed stipulated years of service. The effect of voluntary retirement and it's acceptance by the employer is that a person ceases to be in employment after the notice period is over. The effect of notice of voluntary retirement if accepted is that the employee ceases to be in employment and as such is not in employment. The purpose for which the resignation is sought by the Company if the candidate is in employment is fructified even by tendering notice of voluntary retirement and acceptance of it by the employer.

5. It is submitted that Respondent No.5 had given an undertaking that Respondent No.5 would not take up any employment nor will draw any salary, allowances or emoluments. The definition of emoluments is relied by the learned Counsel for the Petitioner viz. Rule 9(15) of the Rules-1981 is limited for the purpose of Rules in the Maharashtra Civil Services (Occupation of Government Residences) Rules. Pension as is said is not a bounty. Receiving pension after completing a particular number of service or upon superannuation is a necessary consequence. It cannot be said that the candidate is drawing income from any employment.

6. In the light of above, the Writ Petition is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

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