

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5359 OF 2023

Sanjeevkumar Baburao wadikar

....Petitioner

V/S

The State of Maharashtra & Ors.

....Respondents

...

Mr. Vishwajit P. Sawant, Senior Advocate a/w Mr. Nikhil Patil, Mr. Shekhar V. Mane i/b Mr. Prabhakar M. Jadhav for the Petitioner.

Mr. B.V. Samant, AGP for Respondents-State.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 18 APRIL 2023.

P.C.:

1 The Petitioner is working as Motor Vehicle Inspector, Regional Transportation Office, Solapur. On or about 27 December 2022 the Petitioner gave notice to the Respondent for voluntary retirement. No communication is received by the Petitioner within three months. The learned Senior Advocate for the Petitioner submits that the Petitioner is deemed to have retired upon completion of three months. The learned Counsel submits that he had moved this Court urgently as the Petitioner wants to contest election of Karnataka Legislative Assembly.

2 Mr. Samant, the learned AGP submits that a criminal case under the Prevention of Corruption Act, 1988 is pending against the Petitioner. The

Departmental Enquiry is also initiated against the Petitioner and the same is pending. In view of that the Petitioner is not entitled for the benefit of deemed provision. The learned AGP refers to sub section 2 of section 27 of the Maharashtra State Service (Pension) Rules.

3 We have considered the submissions.

4 It is not disputed by the learned AGP that no communication is made to the Petitioner refusing to grant permission for retirement before the expiry of the period specified in the notice.

5 Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 reads thus:

“66. Retirement on completion of 20 years qualifying service.

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

6 The Petitioner has given notice on 27 December 2022. The receipt of the said notice is not denied by the Respondent. It is also admitted that the

Appointing Authority has not refused to grant permission for retirement before the expiry of three months. In light of that the Petitioner would be entitled for the benefit of proviso to sub rule 2 of Rule 66 of the Maharashtra Civil Services (Pension) Rules. The retirement shall become effective after completion of 90 days of the service of notice of voluntary retirement. The Petitioner will be deemed to have voluntarily retired on and from 28 March 2023.

7 Sub rule 2 of Rule 27 of the Maharashtra Civil Services (Pension) Rules, operates in a different sphere. In case the Departmental Enquiry is pending it will be deemed to be continued and the same can be concluded even after Petitioner's retirement as if he continued in service. The voluntary retirement of the Petitioner will not have any effect on the Departmental Enquiry initiated by the Respondent and pending against the Petitioner, the same may be continued. Petitioner thus stood retired from service w.e.f. 28 March 2023.

8 The Respondent shall issue the relieving letter to the Petitioner forthwith.

9 Rule accordingly made absolute. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)