

Gaikwad RD

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8988 OF 2021

MAHADEO DATTATRAYA BHOSALE,
Age: 47 years, Occ: Nil; R/o. Mauli Niwas,
Behind Shah Dharsi Petrol Pump,
Malshiras, Tal-Malshiras, Dist-Solapur

...Petitioner

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA**
- 2. CHIEF EXECUTIVE OFFICER,**
Solapur Zilla Parishad, Solapur 413 001.
- 3. EDUCATION OFFICER**
(PRIMARY),
Solapur Zilla Parishad, Solapur 413 001.
- 4. DIVISION EDUCATION OFFICER,**
Panchayat Samiti, Malshiras,
Dist-Solapur 413001.
- 5. BLOCK DEVELOPMENT**
OFFICER,
Panchayat Samiti Malshiras,

Dist-Solapur 413001.

...Respondents

APPEARANCES

FOR THE PETITIONER Ms Preeti Walimbe.

FOR RESPONDENT Mr VM Mali, AGP.

NO.1- STATE

**FOR RESPONDENT NOS. Mr Anand S Kulkarni.
2 TO 5.**

**CORAM : G.S.Patel &
 Neela Gokhale, JJ.**

DATED : 15th March 2023

ORAL JUDGMENT (Per GS Patel J):

1. A teacher in government service struggles for seven years to retire from that post. His application for voluntary retirement is of 2016. The present record paints before us an utterly dismal picture and of a complete failure of even a minimal regard to procedural due process, by which we mean non-arbitrariness and fairness in administrative action. It is true that the factual background has had many twists and turns, but these should not blind us to essential facts. It is not as if this Petitioner mischievously or fraudulently sought to retire under the Voluntary Retirement Scheme (“VRS”).

He was, he says, driven to that by circumstances entirely beyond his control. It should have been a routine application, processed routinely. Instead, for the last seven years, a matter of voluntary retirement has been met with the most obdurate opposition and refusal. We have considered the record and we find no valid or tenable reason for this continued opposition. At the broadest level, if an application for voluntary retirement can usually be refused only if the applicant is not qualified to apply for VRS. VRS has certain conditions of eligibility because, in distinction to resignation, VRS has certain benefits. If a person seeking voluntary retirement is indeed of value to the institution, he is often persuaded to withdraw that application and to continue in employment where his services are in fact required. In this case, nobody has said that the Petitioner is not eligible to apply for VRS. Nobody has asked him to continue in service. He is not even being denied voluntary retirement. For seven long years, he was told only one thing: that his voluntary retirement application is under consideration. In that delay itself lies monumental injustice. And then, after a 2019 order of this Court, his application was rejected on grounds that are, as we shall presently see, entirely untenable.

2. The Petitioner holds a D.Ed., a B.A. and B.Ed. in English. On 26th September 1995, he was appointed as a teacher at Khed Bhose following the criteria prescribed by the Zilla Parishad, Solapur. In

2001, he was transferred to the Zilla Parishad School in Malshiras, Bhamb Taluka, District Solapur. Two years later, in 2003 he was transferred to the Zilla Parishad School at Hanuman Nagar, Kacharewadi and in 2006 to the Adarsh Kanyashala in Malshiras. In 2011, he was promoted to the post of a graduate teacher at the Zilla Parishad School in Karande. He had thus worked for a total of 21 years and, he says, there was no blemish on his record until then.

3. While he was an Assistant Teacher at Hanuman Nagar, the Petitioner's mother was detected with a gastric medical issue. She was admitted to hospital in Pune for treatment. There, it was found that she was suffering from cancer. Treatment began in 2004. The Petitioner bore the expenses of this medical treatment, and the costs were significant: about Rs.1,15,160/- according to the Petitioner. The Petitioner submitted the medical bills for this treatment to the Education Officer through the authorities concerned, seeking reimbursement. That claim for reimbursement was partly allowed to the amount of Rs.94,494/-. The claim was supported by medical bills and was submitted following the prescribed procedure and in accordance with the Rules.

4. It seems that other persons had made submissions of medical bills which were irregular or fraudulent. Three or four years later, in 2008, the Solapur Zilla Parishad and its officers including the

Divisional Education Officer and the Block Development Officer began threatening teachers with recovery, and this included the Petitioner. Some of the other teachers, realising that they had no case, made the repayment. The Petitioner refused because he had submitted his mother's medical bills and maintained even then, as he does now, that the submission and the reimbursement were entirely proper, justified and according to law. Even up to 2021, there is no case made out either here in these papers or in the impugned communication to which we will presently turn about any illegal gratification or illegal or unlawful or irregular obtaining of medical reimbursement.

5. What did happen is that by an order of 5th September 2013 — the reimbursement claim goes back to 2004 and 2005 — the Respondents stopped the Petitioner's salary and started a deduction of Rs.7,000/- per month from it. The Petitioner filed a Regular Civil Suit No.16 of 2008 before the Civil Judge, Senior Division in Malshiras. He sought a stay of the illegal recovery. That suit was dismissed on 17th September 2012. The Petitioner filed a Regular Civil Appeal No.63 of 2012. That Appeal was allowed with costs on 11th September 2017. The original decree was set aside inter alia holding that the recovery proceeding by the defendants for reimbursement of the medical bills was illegal. The defendants to

the suit were directed and decreed to pay Rs.28,000/- to the Petitioner with interest at 6% p.a.

6. This litigation result triggered a transfer order of 16th June 2018 issued by the Chief Executive Officer (“CEO”) of Solapur Zilla Parishad. The Petitioner complained on 21st June 2018.

7. The defendants to the suit (the respondents to the First Appeal) filed Second Appeal No.683 of 2018 before this Court. That Second Appeal was dismissed by this Court on 13th January 2020. That order also disposed of a Civil Application for interim relief.

8. By then, the Petitioner had put his appellate decree into execution on 15th November 2017. The allegation in paragraph 9 is that since the Petitioner did not withdraw these darkhast proceedings, there was an incident which the Petitioner attributes to the Respondents that led to the filing of an NC No.301 of 2014. The Petitioner also says that there was an attempt made on his life. The Respondents again tried to stop the Petitioner’s salary, provident fund, and also attempted to initiate criminal proceedings against him. This led to the Petitioner filing an FIR No.159 of 2016.

9. This is the background in which on 23rd September 2016 the Petitioner filed an application for voluntary retirement under the

VRS scheme. We pause here for a moment to reject out of hand a submission made on behalf of the Respondents before us that the Petitioner's VRS application was first made on 22nd July 2016 but was found to be irregular and that his revised application was of 23rd September 2016. We simply do not know what to make of this submission because the Petition itself does *not* claim that the VRS application was of 22nd July 2016. Instead, in paragraph 10, it proceeds on the footing that the VRS application is the rectified application of 23rd September 2016. Therefore, this is a meaningless strawman argument, something raised to meet a case never made.

10. That VRS application of 23rd September 2016 found its way through Respondent No. 4 to , Respondent No. 5 and then to Respondent No. 2 and Respondent No. 3.

11. According to the Petitioner his harassment did not stop. After the VRS application, the CEO of the Zilla Parishad issued a show cause notice to the Petitioner for some alleged misconduct on 1st October 2016. The Petitioner had not been in service since the date of his VRS application. His claim has not been settled. The Petitioner sent a reminder on 28th May 2018 and 7th December 2020. There was no reply to these. The VRS application remained undecided. Finally, the Petitioner was driven to filing Writ Petition

No.1718 of 2021 in this Court. A copy of the order on that Writ Petition of 16th September 2021 is at page 74 at Exhibit 'L'. The contesting Respondents Nos. 2 to 5 did not appear at all, though served. No Affidavit in Reply was entered either. The Court directed Respondents No. 2 to 5 to decide the Petitioner's VRS application within four weeks from the date of communication of that order. The Writ Petition was disposed of in these terms.

12. After that order was communicated, the VRS application was said 'to have not been accepted' by an impugned order dated 13th October 2021 a copy of which is at Exhibit 'N' at page 77.

13. We have heard Ms Walimbe at some length. The Petitioner is in Court. Ms Walimbe has presented the case as concisely and as dispassionately as possible. But there is no gainsaying that the Petitioner has suffered and is in fact under extreme stress.

14. With Ms Walimbe's assistance we have seen the impugned order at page 77. There is first a reference to the High Court order of 16th September 2021 and then there are three reasons set out at page 77. The first reason is that before putting in his VRS application, the Petitioner did not give notice of three months. That is true. He did not. But that is surely not a reason to refuse the VRS application. At best, it means that the Petitioner would have to forego three

months' salary in lieu of notice. This is what would be done in any contract of service even if there was a peremptory resignation from service. Ms Walimbe has taken instructions from the Petitioner. She states that he is not pressing a claim for three months' salary in view of the requirement of giving notice.

15. The second reason given was that in 2014, i.e., well before the VRS application was submitted, the Petitioner had been imposed with a penalty of a stoppage of two increments. The Petitioner says that indeed this is so. He had been handed down this punishment and he accepted it. He has not challenged it. His present Petition contains no challenge to it at all and he does not assail this ground as being factually incorrect. But Ms Walimbe maintains, and we think quite correctly, that this is not a reason to refuse a VRS. It may have an impact on the computation of the last drawn salary, but that is all.

16. The third ground is perhaps the most untenable. It tells us that since 23rd July 2016 the Petitioner has been absent and that there is an inquiry pending about alleged "absenteeism". Now this date of 23rd July 2016 is not coincidence. It relates back to that argument that we rejected earlier namely that the Petitioner's first VRS application, said to be irregular, was of 22nd July 2016. Once he put in that application, he stopped attending service and the very next day, i.e., 23rd July 2016 he stood accused of absenteeism. There are

so many difficulties with the Respondents approach in this, that it is hard to know where to begin. The whole case of absenteeism is entirely without merit. It is clearly done to find some mechanism not to refuse the VRS application but merely to keep it pending for we are now told that the Petitioner “is not cooperating”. In a case of absenteeism initiated one day after the initial submission of a VRS application, there is no question of any “cooperation”.

17. Our attention is invited to the communications of 19th November 2016 and of 24th November 2016 at pages 130 and 131 containing a rejection of the VRS application by the Education Officer. Nothing can turn on that now. The impugned order does not reference these two communications. And second, we do not know why we have been shown previous orders of November 2016, both being much prior to order dated 16th September 2021 passed by this High Court, directing the Respondents to consider the Petitioner’s application for VRS. Nobody has shown us that any attempt was made to file a Petition for review or recall of the 16th September 2021 order in any Court or any forum. That High Court order attained finality. This attempt is therefore to justify the conduct by going back to an order prior to 16th September 2021. It is an exercise in futility and without any substance.

18. We are unable to see any plausible defence to this Writ Petition. It fails every single test in judicial review of administrative action. It fails the well established Wednesbury unreasonable test. It meets the requirements of unreasonableness as enunciated by *Diplock LJ* in *Council of Civil Service Unions v Minister for the Civil Service*¹ (“*CCSU*”) that it is a pattern of conduct that is so outrageous in its defiance of logic or moral standard as to be entirely unsustainable. If one hews to the more latterly emergent doctrine of proportionality, then surely this action or inaction by the Respondents must fail that as well. Not deciding an application one way or the other for seven years and then finally saying that it cannot be accepted since there is an enquiry about absenteeism, one initiated a day after the first filing of a VRS application is, by any standards, a course of conduct and a result that are entirely disproportionate. As the Supreme Court itself noted, the proportionality principle is a test of whether the decision-maker has achieved the correct balance: *Chairman, All India Railway Recruitment Board & Anr v K Shyam Kumar & Ors.*² That doctrine requires that a balance be struck.

19. It is impossible to find a reason to justify the conduct of the Respondents or to hold that their actions are not disproportionate or unreasonable. What makes the result utterly outrageous is that every

¹ *Council Of Civil Service Unions & Ors v Minister for the Civil Service*, [1983] UKHL 6; [1984] 3 All ER 935 : [1984] 3 WLR 1174.

² (2010) 6 SCC 614.

single one of these reasons in the impugned order at page 77 were to the knowledge of the Respondents on 23rd July 2016. They did not come as news. They were not even presented before the previous Division Bench on 16th September 2021. The attempt is now to rake up old, stale, and dead issues and to take into account totally irrelevant factors such as the withholding of two months' increment and to unreasonably invoke questions like the failure to give notice. Even on that, the approach is untenable because all that needed to be said was that the VRS would take effect not from 23rd July 2016 but from a date three months later. Even this question is no longer open now that Ms Walimbe has instructions to state that there is no claim being made for three months in lieu of notice. The absenteeism ground is clearly an afterthought and ex-facie appears to us to be motivated.

20. More interestingly what is notable in the impugned order is what is not invoked. There is no mention here of any irregular or illegal or fraudulent reimbursement claim; there cannot be. The Petitioner had assailed that and succeeded all the way to a Second Appeal before this Court.

21. It would not be going too far to arrive at an inevitable conclusion that the actions of the Respondents are indeed vindictive but we are not required to return any such finding. The test is whether they can

withstand judicial scrutiny under Article 14 of the Constitution of India as actions that are demonstrably fair, non-arbitrary and reasonable. They are not and we have returned our finding on that aspect of the matter.

22. Prayers (b) and (c) in the Petition read thus:

“b. that the Hon’ble Court may be pleased to call the record and proceedings from the office of the Respondent No. 2 to 5 in respect of impugned order dated 13/10/2021 and after verifying the same quash and set aside the impugned order dated 13/10/2021 and Petitioners V.R.S. Application dated 23/09/2016, 28/05/2018, 7/12/2020 may be allowed;

c. that the Hon’ble Court may be pleased to direct the Respondent No. 2 to 5 to pay the entire claim of the Petitioner within period of four weeks from the date of the order, in alternate direct the Respondent No. 2 to 5 to pay sum of Rs. 12,00,000/- within period of four weeks from the date of order.”

23. We make Rule absolute in terms of prayer clause (b). We also make rule partly absolute in terms of the first part of prayer clause (c). Except for the period of 90 days’ pay, the VRS claim as finally computed (even allowing for the previous withholding of two increments) is to be paid by the Respondents to the Petitioner. The amount is to be paid to the Petitioner on or before 31st March 2023.

24. Although we are disposing of the Petition in this regard, we will list the matter on 5th April 2023 to monitor compliance.

25. We put the Respondents to notice that if the amount is not paid by 31st March 2023, then, irrespective of whether Ms Walimbe initiates any further action or not, we ourselves will consider *suo motu* initiating proceedings to enforce our order.

26. We would be remiss if we did not note the exemplary manner in which Ms Walimbe has conducted her case: with admirable clarity, precision, compactness and complete fairness.

27. The Petition is disposed of in these terms. No costs.

28. List the Petition for compliance on 5th April 2023.

(Neela Gokhale, J)

(G. S. Patel, J)

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