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

909 WRIT PETITION NO. 4177 OF 2024

Smt. Varsha Madhukar Kalyankar,
Age: 60 years, Occu: Nil,
R/o. : 13, Kasliwal Marval,
Beed Bypass Road, Aurangabad

....PETITIONER

VERSUS

01. The State of Maharashtra,
Through its Secretary,
Public health Department,
Mantralaya, Mumbai

02. The Deputy Director of Health Services,
Aurangabad Division,
Near Baba Petrol Pump,
Aurangabad

03. The District Surgeon,
General Hospital, V.I.P. Road,
Near Amkhas Maidan, Aurangabad

04. The Medical Superintendent,
Rural Hospital, Pachod, Tq: Pachod,
Dist. Aurangabad

05. The Director of Health Services,
Arogya Bhavan, St. George Hospital
Compound, Mumbai

....RESPONDENTS

....

Mr Uttam B. Bondar, Advocate for Petitioner
Mr S. K. Tambe, A.G.P. for Respondents/State

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**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 30th July, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for the respective sides.

2. The Petitioner is before us being aggrieved by the order dated 28/02/2024, passed by the learned Division Bench of the Maharashtra Administrative Tribunal, Chhatrapati Sambhajnagar (for short 'the Tribunal'), rejecting Misc. Application No.14/2021 in Original Application (St.) No.1471/2020, by which, the Tribunal has declined to condone the delay of nine years.

3. The sequence of events in this matter are relevant for deciding the issue of condonation of delay, keeping in mind, as to whether the Petitioner has an arguable pension case on its merits. More importantly, if the delay is not condoned, whether the

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Petitioner, who was a lady medical Officer, would be deprived of pension for her lifetime.

4. The dates and sequence of events are as under :-

(a) The Petitioner joined as a 'Medical Officer' on a bond contract, on 07/07/1988.

(b) The Petitioner's services were regularized as a 'Medical Officer' w.e.f. 01/02/1998, vide the order dated 31/08/1999.

(c) The technical breaks in the bond contractual services of the Petitioner, along with similarly situated candidates, were condoned by the concerned Authorities by an order dated 26/07/2004 and her services were regularized w.e.f. 07/07/1988.

(d) The Petitioner could not report for duties from 13/08/2010 on account of family exigencies.

(e) The Petitioner made an application for seeking voluntary retirement after having completed 20 years of

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qualifying service for pension, on 12/08/2012. She had completed qualifying service of 20 years on 06/07/2008.

(f) She entered the prescribed Form for seeking voluntary retirement, on 04/09/2012.

(g) There was no communication from the Employer in any manner, whatsoever, which is an admitted position.

(h) She again tendered a reminder on 23/01/2013, reminding the Employer of her voluntary employment application.

(i) On 03/02/2014, she tendered one more reminder to the Competent Authority.

(j) On 19/12/2014, she again reminded the Employer of the format application dated 04/09/2012.

(k) On 23/03/2015, she once again tendered a reminder referring to all earlier five communications.

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(l) On 25/09/2019, she again tendered a detailed application running into five pages, by referring to the chronological dates and events.

(m) Since pension was not being paid to her, she moved Original Application (St.) No.1471/2020 before the learned Tribunal at Chhatrapati Sambhajnagar along with an application for condonation of delay bearing Misc. Application No.14/2021. This was preceded by Writ Petition No.3241/2020, filed before the Division Bench of this Court, which ordered on 26/02/2020, that the Petitioner can avail of a remedy before the learned Tribunal.

(n) By the impugned order dated 28/02/2024, the learned Division Bench of the Tribunal rejected Misc. Application No.14/2021 and declined to condone the delay.

5. The learned A.G.P. has vehemently opposed this Writ Petition. He places reliance upon the affidavit-in-reply filed by the Employers/State before the learned Tribunal, as well as the affidavit-in-reply filed before this Court by Dr. Rahul Maruti

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Chavan, In-charge Chief Administrative Officer, Office of the Deputy Director, Health Service, Chhatrapati Sambhajanagar. He submits that the Petitioner's case is hopeless and deserves to be rejected with exemplary costs. The Petitioner had voluntarily remained absent after August 2010. Though it is conceded that the Application for voluntary retirement was not responded to by the Department, he submits on the basis of the affidavits filed before the Tribunal and before this Court, that, no response was necessary since the Petitioner was remaining absent.

6. It is trite law that, while deciding the application for condonation of delay, the Court has to take a pragmatic view and refrain from adopting a pedantic approach. So also, the Court has to assess, as to whether oblique motives can be attributed to the conduct of the Applicant. Similarly, it also has to be seen, as to whether delay can be termed as being deliberate and inordinate. It also has to be considered that, if oblique motive or a deliberate act or a mischievous conduct, is not attributed to the conduct of an Applicant, whether refusal to condone the delay would deprive the Petitioner, of a right which is crystallized in law.

7. The strenuous contention of the learned A.G.P. that the Petitioner is legally obliged to explain the delay of each day, is unsustainable in the light of the law laid down by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag v/s Mst. Katiji, AIR 1987 SC 1353, Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649, and Pathapati Subba Reddy (Died) by L.Rs. and others Vs. The Special Deputy Collector (LA), [(2024) 4 SCR 241]**.

8. It is undisputed that, there has not been any allegation against the Petitioner that, she was behaving mischievously or an oblique motive can be attributed to her conduct. It is also evident that, she had not deliberately behaved in a particular manner, which would legally defeat her claim. The Applications tendered by her speak for themselves. No doubt, she was absent on account of family exigencies in between August 2010 to August 2012. However, the Employer neither initiated a Departmental Enquiry/Proceedings for unauthorized absenteeism, nor has the

Management taken a stand that the Petitioner had voluntarily abandoned her employment. This issue is covered by the Judgment delivered by the Hon'ble Supreme Court in **Novartis India Ltd., Vs. State of West Bengal and others, [(2009) 3 SCC 124] = [AIR 2008 SC (Suppl) 836]**.

9. The learned Tribunal has concluded that the delay in between 2015 and 2019 has not been properly explained. Be that as it may, the Petitioner has been persistent in her request for acceptance of the voluntary retirement application from 2012 to 2015 and 2019 on-wards. Even if the intervening period of 3 to 4 years is ignored, she has been after the Employer for acceptance of the voluntary retirement application.

10. Though we are not required to look into the merits of the matter, *prima facie*, it can be assessed, as to whether any purpose would be served by condoning the delay and as to whether the Petitioner has an arguable case on merits. In short, if the condonation of delay is purposeless, we may not exercise our discretionary powers. But if there is some hope for the Petitioner on merits, it would be a worthy exercise to deal with the

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application for condonation of delay by adopting a pragmatic approach. For this reason, we are referring to Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under :-

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

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

(1A). - The approved War Service or Military Service rendered by a Government servant before entering civil service is allowed to be counted for the purpose of pension under specific rules / orders governing the same. This service will be considered qualifying service for the purpose of sub-rule (1).

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

Provided that, before accepting a notice of voluntary retirement of Government servant under sub-rule (1) above, the appointing authority shall first satisfy himself that he has completed twenty years of qualifying service on the date of giving the notice. In any case, notice is given before completion of twenty years of qualifying service and the period of notice ends after completion of twenty years of qualifying service, notice should not be accepted.

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Provided further 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.

(4) (a) [A Government servant referred to in sub-rule (1) may make a] request in writing the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority, may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(5) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(6) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the pay as defined under rules 60 and 61 and the

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increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(7) This rule shall not apply to a Government servant who-

(a) retires when he is declared surplus,

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.”

11. It is undisputed that the Petitioner had tendered an application dated 04/09/2012, in the prescribed format, seeking voluntary retirement after completing 22 years in service. It is also undisputed that though she was absent from August, 2010, due to family exigencies, the employer had not initiated a disciplinary proceeding against her. In this backdrop, the failure of the Employer to respond to her application over a period of three months, brings into play the deeming fiction of law, by which, her voluntary retirement application stood allowed. If this is the legal position, the Petitioner can legitimately claim that, her voluntary retirement application is deemed to be allowed, post 04/12/2012. It may have happened that the Petitioner was not properly advised

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or may not have taken any legal advise, which resulted in the further chronological events, as recorded above.

12. We also wish to look at the fact, in the backdrop of the above situation, that the Petitioner would be deprived of pension for her old age and during her lifetime, on account of the refusal to condone the delay. Equities can be balanced by ordering that, if the Petitioner eventually succeeds in proving before the learned Tribunal that, her application was deemed to be allowed on 04/12/2012, and if it is proved that she is entitled for pension, she can be deprived of the interest component from 2012, when she became eligible for the pension, till the date she filed the application for condonation of delay before the Tribunal.

13. The learned Advocate for the Petitioner makes a statement on instructions that the Petitioner has not received salary for the period of her absence and she concedes that the same may be treated as leave without pay and she would also not claim interest on the pension amount till she file the proceeding before the Tribunal. Her leave encashment, if any, may also be adjusted against her leave without salary.

14. We have referred to the judgments in **Collector, Land Acquisition, Anantnag** (supra), **Esha Bhattacharjee** (supra) and **Pathapati Subba Reddy** (supra). It is trite law, taking into account the several judgments considered in **Esha Bhattacharjee** (supra) and **Pathapati Subba Reddy** (supra) that, a pragmatic approach is to be adopted in considering sufficiency of reasons for explaining the delay. A justice oriented approach should be adopted with the intention of doing substantial justice in peculiar matters, as like the present one in hand, wherein the Petitioner would be deprived of pension for life if the delay is not condoned in the backdrop of Rule 66 of the 1982 Rules. A pedantic view would jettison substantial justice. We are, therefore, taking a holistic view in this matter.

15. In view of the above, **this Writ Petition is allowed.** The impugned order of the learned Tribunal, dated 28/02/2024, is quashed and set aside. Misc. Application No.14/2021, stands allowed.

16. The learned Tribunal may note that, if the Petitioner succeeds in proving the case of deemed acceptance of her

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voluntary retirement application and eligibility for pension, she would not be entitled for the interest component on the arrears of pension. The pension would be calculated from 04/12/2012. However, the last drawn salary of the Petitioner shall be based on the average drawn from the salary paid to her for the months of June, July and August, 2008, for calculating the pension component and retiral benefits, if still unpaid.

17. Considering the peculiar facts as above, we would request the learned Tribunal to give precedence to Original Application Stamp No.1471/2020, for an early decision.

18. Rule is made absolute in above terms. No order as to costs.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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