

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.684 OF 2019

1. The State of Maharashtra
Through Principal Secretary
Urban Development Department
Having office at Mantralaya
Mumbai 400 032.
2. The Principal Secretary to Government
General Administration Department
Mantralaya, Mumbai 400 032. ...Petitioners

Versus

Smt. Mangal Prakash Mhapankar
Age 58 years, occ: Nil,
Ex.Assistant, Worked in Urban Development
Department, Mantralaya,
Mumbai – 400 032, R/o 501,
Suyog Apartments, Liberty Garden Road No.3,
Malad (W), Mumbai – 64. ...Respondent

Mr. B.V. Samant, Addl.G.P. a/w Mr. M.M. Pable, AGP for the Petitioner-State.

Mr. Gaurav A. Bandiwadekar i/by Mr. Bhushan A. Bandiwadekar for the Respondent.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 6th March 2024

Date on which the Judgment is pronounced : 14th March 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr. Bandiwadekar, learned counsel waives service of notice for Respondent. By consent of the parties, the writ petition is heard finally.

2. By this Writ Petition under Article 226 and 227 of the Constitution of India, the Petitioner No.1-State (Original Respondent) has challenged the order of the Maharashtra Administrative Tribunal (for short “Tribunal”) whereby the Original Application (O.A.) No.46 of 2017 filed by the Respondent (original applicant) was allowed and the order of compulsory retirement passed by the Petitioner No.1-State was quashed.

3. Brief facts are as under:-

- (i) In 1984, the Respondent joined as Clerk-cum-Typist with the Petitioner No.1-State. Subsequently, she was promoted to the post of Assistant. The Respondent was born on 30th June 1960 and reach superannuation age on 30th June 2018.
- (ii) On 30th November 2015, the Petitioner No.1-State ordered premature retirement of the Respondent under Rule 10(4)(b) of the Maharashtra Civil Services (Pension) Rules 1982. The said order of compulsory retirement was challenged by the Respondent by filing O.A. No.46 of 2017 before the Tribunal.
- (iii) The Tribunal vide its order dated 10th August 2018 allowed the O.A. by observing that the impugned order dated 30th November 2015 was passed arbitrarily and in violation of constitutional

guarantee of fairness. The Tribunal further observed that the impugned order was based on surmises and conjecture and, therefore, suffered from illegality being contrary to the requirement laid down by the rules. It is on this backdrop that the Petitioner No.1-State is before us today assailing the order of the Tribunal.

4. The Petitioner No.1-State submitted that the Tribunal has not considered the letters written by the Respondent wherein she herself admitted about various physical ailments while refusing to join the office at Kandivali, even when she was staying at Malad which was close to her residence. The Petitioner No.1-State further submitted that in the ACR report, it is stated that she used to come late in the office and used to spend more time for refreshment, lunch, etc. and, therefore, she was spending less time on her work. The Petitioner No.1-State submitted that under Rule 10(4)(b), it is the opinion of Petitioner No.1-State which forms the basis for compulsory retirement and the phrase “public interest” referred to in the said rule should be considered in the larger contexts to cover dereliction of the duty by not being punctual in the office. The Petitioner No.1-State further submitted that the Respondent has accepted the compulsory retirement and availed all the retirement benefits and it is only thereafter that she challenged the retirement order. The Petitioner No.1-State, therefore, submitted that

this conduct of the Respondent ought to have been considered by the Tribunal while setting aside the compulsory retirement order. The Petitioner No.1-State, therefore, submitted that the impugned order of the Tribunal allowing the O.A. should be set aside.

5. The Respondent supported the order of the Tribunal and submitted that the Petitioners were not justified in passing the compulsory retirement order even when she was physically fit, her integrity was good, etc. The Respondent further submitted that she accepted the retirement benefit under duress and, therefore, same cannot be held against her in assailing the compulsory retirement order. The Respondent further submitted that the said order is disproportionate even if the contention of Petitioner No.1-State is to be accepted. The Respondent, therefore, prayed for dismissal of the writ petition.

6. We have heard learned counsel for the Petitioners and the Respondent and with their assistance have perused the records filed alongwith the petition.

7. This petition can be disposed of on the short point whether the Respondent can challenge the order of the compulsory retirement after having accepted the same and received the retirement benefits. The Petitioner in their reply filed before the Tribunal have specifically

taken a plea that the Respondent has accepted the compulsory retirement order and all the retirement benefits were also disbursed and, therefore, the Respondent cannot be permitted to challenge the compulsory retirement order. The Petitioner-State took us through dates and events in support of its submission that by conduct the Respondent has accepted the retirement and, therefore, could not have challenged the order. The relevant dates are as under:-

Sr. No.	Date	Events
i	30.11.2015	Order was passed for compulsory retirement of Respondent from 29.02.2016.
ii	23.12.2015	Representation was given by Respondent for Compulsory Retirement.
iii	06.02.2016	Decision was taken on the Representation of the Respondent and the same was rejected.
iv	01.08.2016	Respondent was compulsorily retired from service.
v	19.08.2016	Respondent gave letter and accepted retirement.
vi	22.08.2016	Respondent filled in the Application/Form for pension purpose.
vii	13.10.2016	GIS of Rs.1,16,025/- was paid to the Respondent.
viii	21.10.2016	Earned Leave Encashment of Rs.1,96,298 was paid to the Respondent.
ix	16.11.2016	Provident Fund of Rs.24,58,300/-
x	03.01.2017	Regular pension of the Respondent started.
xi	24.01.2017	Gratuity of Rs.4,00,888/-
xii	16 th January, 2017	Respondent filed Original Application No.46/2017 challenging the Order dated 30.11.2015 and Order dated 01.08.2016.

8. In our view, there is no material on record to show that the Respondents accepted the retirement benefits under protest except a bare averment that it was under duress. The conduct of the Respondent

as stated above clearly demonstrates that the compulsory retirement order was accepted by her and she applied for various retirement benefits which the Petitioner No.1-State has paid. Therefore, after having accepted the retirement order and availed the retirement benefit, it would not be proper for Respondent to contend that the retirement order was not in accordance with the rules. It is also important to note that she was to retire at the age of 58 on 30th June 2018. As held in *State Gujarat Vs. Umedbhai M. Patel*¹, an order compulsory retirement is not treated as punishment. We are of the view that since the Respondent accepted the compulsory retirement order and availed the retirement benefit, the Tribunal ought not to have permitted the Respondent to challenge the order of retirement. This ground was taken by Petitioner No.1-state before the Tribunal but the Tribunal did not consider the same. We may refer to the decision of Nagpur Bench of this Court to which one of us was a Member (A. S. Chandurkar, J.) in Writ Petition No.1770 of 2021 in the case of *Sadiq Shafiq Qureshi Vs. Union Bank of India & Ors*. After referring to the judgment in *Punjab National Bank Vs. Vivenderkumar Goel*², the co-ordinate bench of this Court observed that if an employee has received various retirement benefits and is also receiving regular monthly pension, he cannot be permitted to withdraw his application seeking permission to voluntarily retire from service after availing the

1 (2001) 3 SCC 314

2 (2004) 2 SCC 193

retirement benefits. In our view, the ratio of this decision squarely applies to the facts of the present case. In our view, the Tribunal ought not to have permitted the Respondent's challenge to the compulsory retirement order in view of the principle of approbate and reprobate.

9. In view of above reasons, the impugned order of the Tribunal dated 10th August 2018 is set aside.

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

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]