

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15232 OF 2024
ALONGWITH
INTERIM APPLICATION (ST.) NO. 32125 OF 2024

Rohan Nimbaji Borse }Petitioner

: **Versus** :

State of Maharashtra, through

The Dept. of Public Health and Ors. }....Respondents

Mr. Vineet Naik, Senior Advocate a/w. Ms. V.M. Thorat (through V.C.) and
Pooja Thorat a/w. Mr. Amar Bodke, for the Petitioner.

Ms. Neha Bhide, Government Pleader with Mr. B.V. Samant, Addl.
Government Pleader with Mrs. V.R. Raje, AGP for State.

Mr. Vikramjeet Garewal (through V.C.) i/by. Mr. Ajinkya Udane, for the
Applicant-Intervenor.

CORAM : **SANDEEP V. MARNE, &**
 SMT. MANJUSHA A. DESHPANDE, JJ.
 (Vacation Court)

Dated : **29 October 2024.**

P.C. :

1) Leave granted to amend the petition to incorporate challenge to the order dated 28 October 2024. Amendment to be carried out forthwith. Re-verification dispensed with.

2) Petitioner is working as a Medical Officer, Class-2, Group-A in the State Government service and has alternative and equally efficacious remedy of filing Original Application before the Maharashtra Administrative Tribunal under the provisions of Administrative Tribunals Act, 1985. In ordinary course, we would have been loathe in entertaining the present petition in the light of availability of alternate remedy and in view of law expounded by the Apex Court in Constitution Bench judgment in **L. Chandra Kumar Versus. Union of India and Ors.**¹. However, considering the extreme urgency involved in the present case, we are inclined to entertain the present petition. It appears that the present petition was moved before this Court on 25 October 2024, when instead of relegating the Petitioner to the alternate remedy before the Tribunal, this Court directed the State Government to take decision on Petitioner's resignation and to communicate the same to him by 4 p.m. on 28 October 2024. By order dated 28 October 2024, Petitioner's resignation has been rejected. Petitioner is desirous of contesting the upcoming Assembly Elections and the last date for filling up the nominations is 29 October 2024. In that view of the matter, it would be imprudent to now relegate the Petitioner to the alternate remedy of Maharashtra Administrative Tribunal. It also appears that the Vacation Court is unavailable for relegating Petitioner to alternate remedy. It is on account of these extraordinary circumstances of the case that we are entertaining the present petition by way of an exception.

3) The petition was initially filed with a grievance that the application submitted by the Petitioner on 21 October 2024 tendering resignation was not being decided. When the petition was moved before this Court on 25 October 2024, following order was passed :

¹ (1997) 3 SCC 261

1. The above Writ Petition is filed seeking a direction to Respondent No.2 to forthwith accept the Petitioner's resignation and issue a relieving order with immediate effect. This relief is sought on the basis that the Petitioner is a Government employee (Medical Officer (Group "A")), and until his resignation is accepted, he cannot contest the upcoming Maharashtra State Legislative Assembly Elections, which were notified on 15th October, 2024.

2. According to the Petitioner, he has tendered his resignation to the Competent Authority on 21st October, 2024. In the petition, the Petitioner has also annexed documents of certain authorities, namely, that of the District Civil Surgeon of Nashik, the Deputy Director, Health Services, Nashik Circle, Nashik and the Joint Director, Department of Public Health, Mumbai which state that there is no departmental enquiry pending or proposed against the Petitioner. However, it appears that there is some complaint which is pending and which we are told across the bar, is of the year 2018 or 2019. We are also shown a letter dated 22nd October, 2024, in which, the Deputy Director, Health Services, Nashik Circle, Nashik has exonerated the Petitioner and recommended that the aforesaid complaint be closed. Though the said letter does not form part of the record, the same has been tendered to the Court and a copy of the same has also been handed over to the learned Addl. Government Pleader. It is also not in dispute that one month's pay has been deposited by the Petitioner in the treasury in lieu of the notice of one month before resignation.

3. It is the grievance of the Petitioner, that despite all this compliance, the Respondents have not taken any decision on the resignation of the Petitioner who wants to contest the upcoming Maharashtra State Legislative Assembly Elections and for which the Petitioner has to file his nomination by 3:00 p.m. on 29th October, 2024.

4. Considering these peculiar circumstances, we direct the Respondents to take a decision on the resignation letter submitted by the Petitioner as expeditiously as possible and in any event on or before 28th October, 2024 by 4:00 p.m. and inform the Petitioner of the same.

5. Considering these peculiar circumstances, we direct the Respondents to take a decision on the resignation letter submitted by the Petitioner as expeditiously as possible and in any event on or before 28th October, 2024 by 4:00 p.m. and inform the Petitioner of the same.

6. Since the aforesaid order has been dictated in Open Court, the learned Addl. Government Pleader will inform the concerned Respondents of this order without waiting for the copy to be uploaded on the High Court Server.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

4) On 28 October 2024, the Respondent-State Government has rejected the resignation tendered by the Petitioner. The order dated 28 October 2024 reads thus :

प्रति
डॉ. निंबाजी बोरसे
वैद्यकीय अधिकारी गट-अ,
जिल्हा रुग्णालय नाशिक.

विषय :-राजीनाम्याबाबत

डॉक्टर रोहन निंबाजी बोरसे वैद्यकीय अधिकारी गट-अ

संदर्भ:- १. आयुक्त, आरोग्य सेवा आयुक्तलय, मुंबई यांचे पत्र क्र.आसेआ/२ब/टे-४/राजीनामा/डॉ.रोहन बोरसे/१५३९/२४, दि.२२.१०.२०२४
२.डॉ. रोहन निंबाजी बोरसे, वैद्यकीय अधिकारी गट-अ यांचा अर्ज दिनांक २१. १०. २०२४.
३. शा.नि.सा.प्र.वि.क्र.एसआरव्ही -१०९२/१०३३/प्र.क्र .३३/९२/८, दि. ०२. १२. १९९७

संदर्भादिन क्र.१ येथील प्रस्तावास अनुसरून कळविण्यात येते की, आपण दि.२१.१०. २०२४. च्या अर्जावये एक महिन्याची पूर्व सूचना न देता एक महिन्याचे मूल वेतन शासकीय तिजोरीत भरणा करून राजीनामा तात्काळ मंजूर करण्याची विनंती केली आहे

तथापि आपल्या विरुद्ध खाली नमूद केल्यानुसार गंभीर स्वरूपाच्या तक्रारी प्रलंबित आहेत:-

अ.क्र.	तक्रारदाराचे नाव	तक्रारीचे स्वरूप
1	श्री शांताराम पू सरोदे	तक्रारदार यांच्या पुतणीच्या मृतदेह व्हिसेरा राखून ठेवला नाही. तसेच मृत्यूचे काळ निश्चित कारण ठरविण्यासाठी रासायन प्रयोगशाळेकडे अंतिम अहवाला करिता हेतू पुरस्कार पाठविला नसल्याने सदर मृतदेहाचे पोस्ट मॉर्टम करणारे नांदगाव ग्रामीण रुग्णालय जिल्हा नाशिक येथील डॉक्टर बोरसे यांच्याकडून शवविच्छेदनाच्या अहवालाची मागणी करून विभागीय चौकशी करण्याची मागणी केली आहे
2	श्रीमती वत्सला शंकर पवार व श्री. अभिषेक अ. विघे	तक्रारदार यांच्या मुलीच्या मृतदेह विहिरीत आढळला होता. सदर मृतदेहाचे पोस्टमॉर्टम करणारे नांदगाव ग्रामीण रुग्णालय जिल्हा नाशिक येथील डॉक्टर बोरसे यांनी दिलेला पी.एम. रिपोर्ट संशयास्पद असल्याची तक्रार करून त्यात त्यांची सखोल चौकशी करून कारवाई करून त्यांच्यावर बडतर्फ करण्याची मागणी केली आहे.
3	श्री अभिषेक अ. विघे	तक्रारदार यांनी डॉक्टर बोरसे यांनी सर्पदंश रुग्ण, विंचू दंश रुग्ण व श्वान दंश रुग्ण यांची रजिस्टर मध्ये खोटी नोंद करून भ्रष्टाचार केल्याबाबत

आपल्याविरुद्ध तक्रारी प्रलंबित असताना सदर तक्रारीबाबत सविस्तर चौकशी करून योग्य ती शहानिशा न करता आपल्या राजीनामा नामंजूर केल्यास आपणास योग्य ती संधी दिली नाही असे समजले जाऊन ते नैसर्गिक न्यायतत्त्वाच्या विरुद्ध होईल. तसेच आपला राजीनामा मंजूर केल्यास व तदनंतर उक्त प्रलंबित तक्रारीत तथ्य असल्याचे आढळून आल्यास आपला राजीनामा मंजूर केल्याने शासनाची प्रतिमा मलीन होऊन तक्रारदारास न्याय न दिल्याने सार्वजनिक हितास बाधा पोहोचेल.

आपण सदर राजीनामा सार्वत्रिक आणि विधानसभा निवडणूक-2024 लढविण्याकरता देत आहात, याबाबत शासनास कोणतीही पूर्वकल्पना नव्हती. सदर बाब आपल्या वकिलाने दि. २२.१०.२०२४ रोजी शासनास दिलेल्या रीट याचिका संदर्भातील नोटीशीमुळे निदर्शनास आली आहे त्यामुळे आपल्या विरुद्ध प्रलंबित असलेल्या तक्रारीबाबत चौकशी करण्यास पुरेसा अवधी न मिळाल्याने राजीनामेबाबत सांगपांग विचार करून तात्काळ यथोचित निर्णय घेणे शक्य होणार नाही.

शासन निर्णय, सामान्य प्रशासन विभाग, दि. ०२.१२. १९९७ मधील परिच्छेद २ (अ) (४) मध्ये सक्षम प्राधिकार्याने राजीनामा स्वीकृती/ अस्वीकृती बाबतचा अंतिम निर्णय संबंधित शासकीय अधिकाऱ्याला, त्याने राजीनामा सादर केल्याच्या

दिनांकापासून एक महिन्याचा अवधी पूर्ण होण्याच्या आत कळविण्याची तरतूद आहे आपण २२.१०.२०२४ रोजी राजीनाम्याची नोटीस दिलेली आहे या बाबी विचारात घेता, आपल्या विरुद्धच्या प्रलंबित तक्रारीचे गांभीर्य पाहता सद्यस्थितीत आजच्या तारखेला आपला राजीनामा स्वीकारता येत नाही.

सदर बाब आपण सक्षम प्राधिकाऱ्याच्या मान्यतेने कळविण्यात येत आहे.

(सं. धों.डगळे)

अवर. सचिव , महाराष्ट्र शासन

5) Mr. Naik, the learned Senior Advocate appearing for the Petitioner would rely upon the guidelines issued by the General Health Department of the State Government relating to acceptance of resignation of Government Servant. Under para-2(a)(5) of the said Guidelines, Government Servant needs to issue notice of one month before tendering resignation or to offer payment of wages of one month in lieu of such notice. Under Clause 2(a)(11) of the guidelines, the resignation can be accepted only in the following four eventualities :

(i)if there are no dues payable by the Government Officer/Employee to the Government.

(ii)if he is not under suspension.

(iii)if there is no Departmental Enquiry pending/proposed against him.

(iv)if he has tendered resignation with one month's notice in advance or deposited the amount of wages of one month in lieu of such notice.

6) Clause-2(a)(11) of the Guidelines dated 2 December 1997 reads thus :

(11) सक्षम प्राधिकाऱ्याला शासकीय अधिकाऱ्याचे/ कर्मचाऱ्यांचे राजीनामा पत्र प्राप्त होताच, त्यांनी त्याबाबतची कार्यवाही प्राधान्याने सुरु करावी आणि राजीनामा स्वीकारण्याच्या प्रकरणी विहित अटींची पूर्तता होत असल्यास, सदरहू राजीनामा स्वीकृतीचे आदेश योग्य त्या स्तरावर तात्काळ निर्गमित करण्यात यावेत.

(अ) शासकीय अधिकाऱ्याकडून /कर्मचाऱ्याकडून शासनास कोणत्याही प्रकारचे येणे नसेल,

(ब) त्यास निलंबित करण्यात आले नसेल,

(क) त्याच्याविरुद्ध कोणतीही विभागीय चौकशी प्रलंबित प्रस्तावित नसेल,

(ड) त्याने एक महिन्याची पूर्व सूचना देऊन राजीनामा दिला असेल किंवा किंवा पूर्वसूचने ऐवजी एक महिन्याच्या मूळ वेतनाची रक्कम शासनाकडे जमा केली असेल.

उपरोक्त (अ) ते (क) येथील अटींची पूर्तता होत असेल परंतु संबंधिताने राजीनामा पत्र देण्याबाबतची एक महिन्याची पूर्वसूचना दिलेली नसेल तर पूर्वसूचने पूर्वसूचनेसाठी जेवढा कालावधी कमी पडत असेल त्या कालावधीच्या प्रमाणात वेतनाची रक्कम जमा करण्याबाबत शासकीय अधिकाऱ्याला/ कर्मचाऱ्याला सांगण्यात यावे व आवश्यक ती रक्कम जमा केल्या नंतर राजीनामा तात्काळ स्वीकारण्यात यावा.

ज्या प्रकरणी पूर्वसूचने ऐवजी एक महिन्याच्या वेतनाची रक्कम जमा करण्यात आली नसेल, अशा प्रकरणी पूर्वसूचनेचा एक महिन्याचा कालावधी पूर्ण झाल्यानंतर राजीनामा तात्काळ स्वीकारण्यात यावा.

7) There is no dispute to the position that though the Petitioner has not given notice of one month, he expressed willingness to deposit wages for one month by his notice dated 21 October 2024. By challan dated 21 October 2024, it appears that the Petitioner has deposited an amount of Rs.65,000/- in the Government Treasury towards wages for one month.

8) There is also no dispute to the position that the Petitioner is not under suspension. No Departmental Enquiry is pending against him as of today. The only issue which is sought to be highlighted by Ms. Bhide, the learned Government Pleader is that several complaints are pending against the Petitioner, which are still under

consideration. Three such complaints are referred in the order dated 28 October 2024. Ms. Bhide has placed before us, the relevant file notings under which resignation of the Petitioner has been processed. The said file notings would indicate that the complaint of Mr. Shantaram P. Sarode was submitted on 3 January 2018 and the Directorate had summoned report by letters dated 23 March 2018 and 21 January 2019 but the Report is still awaited. So far as complaint of Smt. Vatsala Shankar Pawar (14 March 2018) and Abhishek Ashok Vighe (3 December 2020) are concerned, it appears that a Report was called for by the Government by letter dated 20 June 2021 and the Directorate has received Report dated 17 March 2023 stating that there is no *prima-facie* substance in the allegations levelled against him. The said report received on 17 March 2023 has been placed before the Competent Authority on 6 August 2024 for taking appropriate decision. However, no decision has yet been taken. So far as the third complaint of Abhishek A. Vighe dated 30 May 2018 is concerned, the file notings would show that the Government has called for report from the Directorate on 5 January 2024 and the Report is still awaited.

9) Perusal of the file notings would indicate that no substance is found in one out of the three complaints and so far as the balance two complaints are concerned, though the same pertain to the year 2018, the State Government or the Directorate have not taken any decision for initiation of disciplinary enquiry against the Petitioner during past six long years.

10) Mr. Naik would invite our attention to the three Certificates issued by the District Surgeon, Nashik certifying that no

Departmental Enquiry is pending or proposed against the Petitioner and that there are no government dues from the Petitioner. Ms. Bhide would submit that the said Certificate is issued by the District Health Officer and that the Competent Authority for accepting the resignation of the Petitioner is the State Government. However, perusal of the order dated 28 October 2024 rejecting the resignation would indicate that no specific finding is recorded therein that the Government has decided to conduct any disciplinary enquiry against the Petitioner in any of the three complaints. There is no positive finding in the order dated 28 October 2024 that any Disciplinary Enquiry is proposed against the Petitioner. In our view, therefore the case of the Petitioner is fully covered by Clause-2(a)(11) of the Guidelines dated 2 December 1997 as there is nothing on record to indicate that any disciplinary enquiry is proposed against the Petitioner. In our view, therefore the decision of the State Government rejecting the resignation of the Petitioner is misplaced.

11) The Petitioner is desirous of contesting the ensuing Assembly Elections and for that purpose has tendered resignation on 21 October 2024. Ms. Bhide, would highlight the point in the resignation letter dated 21 October 2024, Petitioner did not disclose the reason of contesting the election. In our view, it is not necessary for a Government Servant to indicate the reason for tendering the resignation. Petitioner has put in over 10 years of service and is desirous of forgoing all the service related benefits in respect of the services already rendered by him. This is not a case involving voluntary retirement where the Government will have to pay any retiral or other benefits to the Petitioner. On account of his resignation, the Petitioner would not be entitled to any benefits from the State Government. In that view of the matter, resignation cannot

be put on the same pedestal as that of voluntary retirement. Since all four conditions prescribed in Clause-2(a)(11) of the Guidelines dated 2 December 1997 are satisfied in the present case, we do not see any reason why the Government could have rejected the resignation of the Petitioner.

12) The petition accordingly succeeds. The order dated 28 October 2024 is set aside. Petitioner's resignation tendered vide letter dated 21 October 2024 shall be deemed to have been accepted. The Respondent shall issue necessary relieving orders in respect of the Petitioner forthwith. It is also clarified that the order dated 28 October 2024 shall not come in the way of the Petitioner filling his nomination for the upcoming Assembly Elections.

13) It is however clarified that nothing observed in this order shall come in the way of the State Government in taking appropriate action on the basis of the complaints against the Petitioner as permissible in law. It is also clarified that the Petitioner shall not be entitled to withdraw the resignation in future.

14) With the above directions, the Writ Petition is **allowed and disposed of**. All Interim Applications pending therein also stand disposed of.

15) The order is dictated in the presence of the learned counsel appearing for the Respondents who shall forthwith communicate this order to the concerned authorities.

[SMT. MANJUSHA A. DESHPANDE, J.]

[SANDEEP V. MARNE, J.]