



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2465 OF 2025

Dr. Mahananda Mahadev Jaybhave-Munde

Age: 51 years, Occu: Presently household,
R/o. Laxmi Bagh Colony,
Near Government Guest House,
Nagar Road, Beed.

...PETITIONER

VERSUS

- 1] **The State of Maharashtra**
Through Its Principal Secretary,
Public Health Department,
10th Floor, GT Hospital Compound,
Mantralaya, Mumbai.
- 2] **The Commissioner,**
Public Health Department,
Arogya Bhavan, Saint George Hospitals
Compound, Mumbai- 400 001.
- 3] **The Director,**
Public Health Department,
Arogya Bhavan, Saint George Hospitals,
Compound, Mumbai- 400 001.
- 4] **The Deputy Director of Health Services,**
Chhatrapati Sambhajanagar Region,
Chhatrapati Sambhajanagar.

...RESPONDENTS

.....

Mr. Santosh S. Jadhavar, Advocate for the Petitioner.

Mr. P. K. Lakhotiya, AGP for Respondent Nos. 1 to 4-State.

.....

CORAM : KISHORE C. SANT &
ABASAHEB D. SHINDE, J J.

RESERVED ON : 18th NOVEMBER 2025.

PRONOUNCED ON : 25th NOVEMBER 2025.

JUDGMENT :- [PER KISHORE C. SANT, J.]

1. Heard Mr. Jadhavar, the learned Advocate for the Petitioner, and Mr. Lakhotiya, the learned AGP for Respondent Nos. 1 to 4 -State.
2. **Rule.** Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal.
3. The petitioner has challenged the Judgment and Order dated 29th January 2025, passed by the learned Member, Maharashtra Administrative Tribunal, (for short "Tribunal"), Mumbai, Bench at Aurangabad, in Original Application No.586 of 2024.
4. The learned Member, Maharashtra Administrative Tribunal, by way of impugned Judgment and Order, was pleased to dismiss the Original

Application filed by the petitioner. Respondent Nos. 1 to 4 are the State and its Authorities.

5. The facts in short, giving rise to the present writ petition, are that the petitioner joined the services of the Respondents as a Medical Officer on 22nd June 2002. She lost her husband due to a heart attack. On 31st January 2023, being a single parent, she filed an application seeking earned leave for the period from 27th February 2023 to 17th March 2023 for the examination of her daughter. The said leave was not sanctioned, looking to the responsibilities attached to her post. The petitioner gave notice for voluntary retirement on 5th April 2023 to take effect from 4th July 2023. The reasons stated in the application were that she had lost her husband due to a heart attack and that she suffers from hypertension, hyperlipidemia with IBS. On 17th April 2023, she changed her mind and prayed that her application seeking voluntary retirement be allowed to be withdrawn. On 2nd May 2023, the Joint Secretary, State Government directed Respondent No.3 – Director of Public Health Department, to send a detailed proposal of retirement alongwith an

opinion on her application. By communication dated 30th June 2023 by the Joint Secretary, State Government informed the petitioner that since her services were required by the State, her notice of resignation was not accepted. However, by another communication dated 4th July 2023, her resignation came to be accepted. The petitioner thus stood retired from 4th July 2023. Till this stage, there is no dispute.

6. The petitioner, however, subsequently, after four months of retirement i.e. on 20th November 2023 wrote an application to the Principal Secretary, Public Health Department, Mantralaya, Mumbai, stating that she had filed an application for voluntary retirement under depression. She stated that she was suffering from depression as she was required to stay away from her children and also due to health reasons. She also stated that she had not accepted any other job. She had not started private practice. On this letter, the Chief Administrative Officer, Health Services Commissionerate, Mumbai, informed that there is no provision of taking back a person into service after resignation is accepted and acted upon, by referring Rules 66(1)(2)(3)(4)(5) of the

Maharashtra Civil Services (Pension) Rules, 1986 (hereinafter referred to as “Pension Rules”), and directed the Deputy Director of Health Services, Chh. Sambhajnagar, to inform the petitioner that it was not possible to take her back in service after voluntary retirement.

7. The petitioner thereafter approached Maharashtra Administrative Tribunal, Aurangabad by filing an Application. It is prayed that it be held and declared that the order dated 4th July 2023 is illegal and arbitrary, as it was passed without considering the withdrawal of voluntary retirement notice dated 5th April 2023 by her application dated 17th April 2024.

8. The learned Member (J.) of the Tribunal dismissed the Original Application vide order dated 29th January 2025 by considering Rule 66 Sub-Rule (5) of the Pension Rules. The learned Member also considered various judgments. Being aggrieved by this Order, the Petitioner has approached this Court.

9. Mr. Jadhavar, the learned Advocate for the petitioner, vehemently argued that while dismissing the Original Application, the learned Member did not properly consider the provisions. His main argument before this Court is that, in view of provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as “Disabilities Act”), the authorities ought to have considered that the petitioner was suffering from mental disability and ought not to have accepted the resignation. Section 2(5) of the Disabilities Act includes the mental illness. Since the application was filed when the petitioner was not in a fit state of mind, the authorities ought to have protected her services. His further argument is that the learned Member did not consider Rule 41 of the Maharashtra Civil Services (Leave) Rules, 1981. He submits that the provisions of Disabilities Act are special provisions and those will prevail upon the general statute i.e. Maharashtra Civil Services (Pension) Rules. From the facts of giving resignation, withdrawing the same after few days and again making a request by the petitioner would show that she was under disturbed mental condition. Being authorities

from the Health Department, they ought to have noticed all these things. The authorities, therefore, should have refrained from accepting the resignation.

10. In support of his submissions, the learned Advocate for the petitioner relied upon the following judgments.

- (i) *Bhagwan Dass Vs. Punjab State Electricity Board*¹;
- (ii) *Kunal Singh Vs. Union of Indian and Anr.*²;
- (iii) *Geetaben Ratilal Patel Vs. District Primary Education Officer*³;

11. Mr. Lakhotiya, the learned AGP for Respondents-State vehemently opposes the petition. He submits that the petitioner has now developed a new case and is seeking protection under Section 20 of the Disabilities Act. This was not her case before the Tribunal in the Original Application. The learned Member of the Tribunal has rightly passed the order. The judgments cited by the petitioner are not applicable since in

1 AIR 2008 SC 990
2 AIR 2003 SC 1623
3 AIR 2013 SC 3092

those judgments, from the beginning, it was a case that the employees therein were suffering from disabilities, and it was on record. In the present case, the case of disability is made out after four months of retirement. Once the employee stands retired, there is no question of setting the clock back. There is no ground raised that any procedural lapse is there in accepting the resignation. He submits that, by now, the petitioner has withdrawn all service benefits like GPF, Leave Encashment etc. The petitioner is thus now estopped from claiming continuance in service. The learned AGP further submits that, at no point of time, the petitioner has ever produced any material in support of her contention that she has acquired a disability, except the averments in the petition. He therefore prays for dismissal of the writ petition.

12. In support of his submission, the learned AGP relied upon the judgment in the case of ***Gajanan s/o. Siddappa Maitri Vs. The Union of India and Ors.*** passed by this Court in Writ Petition No.2442/2019 decided on 26.04.2019.

13. In the case of ***Bhagwan Dass*** (supra), the appellant therein was an employee of Punjab State Electricity Board. The employee became blind while in service. An application was made requesting the Board to retire the employee from service. A certificate was also issued to that effect by the Civil Surgeon. His services were terminated on the ground of acquiring disability while in service. It was held that in view of Section 47 of the Disabilities Act, the Board could not have allowed the employee to retire from service on the ground that he is unfit to work. The appellant therein had sought to explain his absence from duty. He even requested that his wife be employed in his place. The Hon'ble Apex Court held that the authorities though were aware of the provision of Section 47, acted in insensitive manner and allowed the appeal of the appellant.

14. In the case of ***Kunal Singh*** (supra), the Hon'ble Apex Court observed that the fact that the appellant acquired 'disability' within the meaning of Section 2(i) of the Disabilities Act as his left leg was amputated on account of gangrene while in service is undisputed.

Because of this, he was invalidated from service by the respondent on the report of the Medical Board, as he became permanently incapacitated for further service. Writ Petition filed in the High Court came to be dismissed. The Hon'ble Apex Court noticed that no argument was advanced on the basis of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. A specific ground was raised in the Special Leave Petition. The Hon'ble Apex Court accepted the case of the appellant therein and allowed the appeal. The termination of the appellant came to be set aside. It was directed to give him an appointment and to place him on any other suitable job.

15. In the case of ***Geetaben Ratilal Patel*** (supra), the Hon'ble Apex Court held that the employee therein proceeded on medical leave without producing any type of leave report. She was absent unauthorisedly without producing any leave report even thereafter. A notice was therefore issued calling for an explanation for her absence. No explanation was received to the notice dated 31st December 1999.

The employee directly joined the duties on 25th November 2000. She again went on leave without pay. Thereafter she was served with a charge-sheet and explanation was called. Neither any explanation nor any medical report was submitted. The matter was thereafter referred to higher authorities. A final notice was issued calling for explanation for continuous absence. Thereafter she was dismissed from service. For about three years, no action was taken by appellant. It was thereafter that she filed an application before the Commissioner under Section 62 of the Disabilities Act challenging the dismissal order being violative of Section 47(1) of the Disabilities Act. It was brought on record that she was suffering from mental depression which resulted in 40% to 70% mental disability. A certificate issued to that effect by the Medical Board was also produced before the Commissioner. The Commissioner on such report held the order to be void. The Management challenged the said order by filing writ petition in the High Court. The learned Single Judge allowed the Special Civil Application. In an appeal, the Division Bench affirmed the order passed by the learned Single Judge. The order of the

Division Bench was assailed before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the Appeal considering the provisions of Section 47 of the Disabilities Act.

16. In the case of ***Gajanan s/o. Siddappa Maitri*** (supra), a question was as to whether an employee is entitled to withdraw his notice of voluntary retirement after the intended date of retirement specified in the notice. This Court considered the provisions of Central Civil Services (Pension) Rules. In that case, a notice of voluntary retirement from intended date was given. It was not withdrawn till such intended date. After the retirement/resignation was accepted and had come into force, a petition was thereafter filed seeking relief that the voluntary retirement notice be cancelled. This Court considered that the government employees will have *locus poenitentiae* to withdraw his request for voluntary retirement only before the intended date of retirement and not thereafter. It is also held that the relationship of employer and employee is governed by statutory Rules. The statutory Rules would thus bind the parties. No deviation can be permitted from

the Rule.

17. In the present case, the facts are undisputed. It is rightly submitted by the learned AGP that except her averment in the petition, she has not produced any material to show that she was suffering from any mental disability. It is only the case that after her voluntary resignation was accepted, one friend of her found abnormal behavior of the petitioner and took her to psychiatric and it is thereupon the psychiatric gave opinion that she is suffering from death depression. However, no such certificate is produced on record. It is also a matter of record that before the Tribunal, no such ground of disability was raised. For the first time, such ground is raised in this writ petition. It is further seen that the resignation was rightly accepted by following due procedure from the intended date. Notice of three months was given on 5th April 2023. The resignation was accepted from 4th July 2023. No illegality is committed.

18. By way of writ petition, the petitioner is seeking something which is against the Rules by making out a different case in the writ petition for

the first time. No illegality is pointed out on the part of the authorities in accepting the voluntary resignation. It is only urged that the authorities should have noticed abnormal behavior of the petitioner and should have come to the conclusion that the petitioner is suffering from mental disability. At the same time, as a matter of fact, till now, no such material is produced even before this Court.

19. In the case of ***State of U.P. and Ors. Vs. Harish Chandra and Ors.***⁴, the Hon'ble Apex Court held that the writ jurisdiction cannot be used to direct the authorities to act in violation of the Rules or against the law. It was a matter of recruitment. The select list was prepared and some of the candidates were placed on the waiting list. It was the case that the waiting list exhausted on completion of one year. Rule 26 of the U.P. Sub-ordinate Officers Clerical Staff (Direct Recruitment) Rules, 1985, reads as under:

“26. Appointment by appointing authority. - The select list referred to in sub-rules (b) and (7) of Rule 23 shall be forwarded by the Selection Committees to the appointing authority mentioning the aggregate marks obtained at the selection by each candidates. The

4 (1996) 9 SCC 309

name of general and reserve candidates shall be arranged by the appointing authority in a common list according to the merit of the candidates and the appointment shall be offered in the order in which the names are arranged in the list shall hold good for a period of one year from the date of selection."

20. It was a case before the High Court that the waiting list would not expire after a period of one year and appointment was sought for a person from waiting list. The High Court held that the list would not expire after a period of one year which was also held to be erroneous on the face of it. Thus, this Court finds that allowing the writ petition would amount to directing the authorities to act against the Rule, which is not permissible.

21. One more aspect needs to be considered that if it was really a case of disability of the petitioner then she ought to have approached the Commissioner under Disabilities Act. It is the Commissioner who has power under the said Act to grant appropriate relief. Not approaching the Commissioner at the first instance also shows that the theory of disability is developed only after losing before MAT. For this reason also, it is clear that this is not a case under the Disabilities Act.

22. For all the reasons recorded herein, this Court finds it difficult to allow the writ petition. Hence, the following order:

ORDER

- (i) Writ Petition stands dismissed with no order as to costs.
- (ii) Rule stands discharged.

[ABASAHEB D. SHINDE, J.]

[KISHORE C. SANT, J.]

D.A.Ethape