

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.626 OF 2024

Pradeep Mukund Bhagwat
V/S

....Petitioner

Deputy Chief Engineer
(Storm Water Drain) City & Ors.

....Respondents

Mr. Anilkumar Patil with Mr. Digvijay A. Patil *for the Petitioner.*

Ms. Rupali Adhate i/b Ms. Komal Punjabi *for Respondent Nos.1 to 4-MCGM.*

Ms. Pratibha Chowgale, Head Clerk (SWD Department) and Mr. Jitendra Gawli, Clerk (SWD Department) present in Court.

CORAM : S.M. MODAK &
SANDEEP V. MARNE, JJ.

DATE : 25 MARCH 2026.

ORDER:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for hearing and final disposal.

2. Petitioner has filed the present Petition under Article 226 of the Constitution of India challenging termination order dated 9 July 2020 and seeking a direction for grant of voluntary retirement in pursuance of application submitted on 1 November 2013. Petitioner has been terminated from service by order dated 9 July 2020 on account of

continuous absence for a period of exceeding five years under Regulation 27(i) of the Mumbai Municipal Corporation (Service) Regulations, 1989 [MMC (Service) Regulations].

3. Briefly stated, facts of the case are that the Petitioner was appointed in Municipal Service on 23 November 1987 as a Junior Engineer. In the year 2013, he was posted as Sub Engineer (SWD) Construction, City. Petitioner proceeded on leave from 10 March 2013 upto 10 April 2013 on medical grounds which was sanctioned. However, he failed to resume duties on 11 April 2013 and remained absent thereafter. By letter dated 28 May 2013 he was directed to resume duties. According to the Petitioner, he could not resume duties on account of his parents' severe illness as well as his own health problems. By further letter dated 18 June 2013, Petitioner was once again directed to resume duties. On 12 July 2013, the Petitioner submitted a letter explaining his absence and seeking guidance from the office. On 1 November 2013, Petitioner tendered application for voluntary retirement with effect from 1 February 2014 by issuing three months prior notice. By letter dated 12 November 2013 Petitioner was directed to deposit the records of work completed under his supervision at Sane Guruji Marg. He was given reminder on 14 November 2013. On 18 November 2013, Petitioner was informed that his application for voluntary retirement dated 1 November 2013 was kept pending on account of failure to report for duties and failure to submit the site records. On 3 December 2013, Petitioner submitted an application for updating his service record and once again requested for processing his application for voluntary retirement.

4. Thereafter several letters were issued to the Petitioner on 30 August 2014, 1 December 2014, 18 March 2015, 27 March 2015 and 7 April 2015 threatening initiation of disciplinary proceedings.

5. On 8 August 2018, Municipal Corporation issued show-cause notice to the Petitioner under Regulation 27(i) of the MMC (Service) Regulations, calling him upon to show-cause as to why his services shall not be terminated on account of absence for a period exceeding five years. Petitioner responded on 22 November 2018 stating that he had already submitted an application for voluntary retirement. Municipal Corporation issued letter dated 18 December 2018 to the Petitioner once again referring to failure on the part of the Petitioner to submit site record and keeping the voluntary retirement application in abeyance on that count. Finally by order dated 9 July 2020 the Deputy Chief Engineer proceeded to pass an order terminating the services of the Petitioner with retrospective effect from 11 April 2018 in exercise of powers under Regulation 27(i) of the MMC (Service) Regulations. Aggrieved by order dated 9 July 2020 the Petitioner has filed the present Petition.

6. Mr. Patil, the learned counsel appearing for the Petitioner submits that the Petitioner has been erroneously terminated from service when he had opted for voluntary retirement on 1 November 2013. That Petitioner was not in a position to attend duties due to ill health of his parents as well as his own ill health. That Petitioner had rendered over 26 years of service by the year 2013 and that impugned termination order results in completely wiping out his meritorious service. He

submits that the impugned order erroneously effects retrospective termination of Petitioner's service. He therefore prays for setting aside the impugned termination order and for grant of voluntary retirement so as to ensure that the Petitioner receives atleast pensionary benefits.

7. Ms. Rupali Adhate, the learned counsel appearing for Respondent-MCGM strenuously opposes the Petition submitting that the Petitioner is rightly terminated in view of provisions of Regulation 27(i) of the MMC (Service) Regulations. That under Regulation 27(i) of MMC (Service) Regulations there is automatic cessation of service after five years of absence. That Petitioner has remained unauthorizedly absent continuously from 11 April 2013 without any justification. That his application for voluntary retirement was kept pending on account of his failure to submit vital site records in respect of works carried out under his supervision. That the Municipal Corporation has already suffered immensely on account of actions of the Respondent. That since absence from work for five years is admitted, there is no warrant for interference in the termination order. She submits that voluntary retirement is not a matter of right and is always subject to approval by the Competent Authority. That in the present case there was a valid reason to not grant voluntary retirement to the Petitioner who had initially retained site records relating to the work carried out at the site. That the Petitioner has abandoned the services and has been rightly treated as terminated from 11 April 2018. She prays for dismissal of the Petition.

8. Rival contentions of the parties now fall for our consideration.

9. In the present case, Petitioner's absence from 11 April 2013 is not seriously disputed. Petitioner had proceeded on leave from 10 March 2013 to 10 April 2013 on medical grounds by submitting application dated 25 February 2013. However, he did not resume duties on 11 April 2013. After issuance of letters dated 28 May 2013 and 18 June 2013 Petitioner submitted response dated 12 July 2013 contending that his father underwent surgery of both eyes and he was required to look after him. He also cited the reason of his own ill health. Petitioner also attempted to justify his action in not applying for extension of leave. It is not that the explanation cited by the Petitioner in the letter dated 12 July 2013 is of acceptable nature. However, on 1 November 2013, Petitioner submitted an application for voluntary retirement by issuing three months notice that he desired to retire from 1 February 2014.

10. The Municipal Corporation did not decide the application for voluntary retirement submitted by the Petitioner on 1 November 2013 instead it gave following response to him on 18 November 2013:

“तसेच आपणास असे कळविण्यात येते की, आपण दुय्यम अभियंता (पर्जन्य जलवाहिन्या) म्हणून उप प्रमुख अभियंता (पर्जन्य जलवाहिन्या) शहर बांधकामे या विभागातील पर्जन्य जलवाहिन्यांच्या बांधकामाविषयक विविध कामांचे साईट इनचार्ज म्हणून कार्यरत होता. तथापि आपण सदर कामे पूर्ण झाल्यानंतरचे साईट रेकॉर्ड अजूनही कार्यालयात सादर केलेले नाहीत. याबाबत आपणास व्यक्तीशः कळवून तसेच वारंवार लिखित ज्ञाप देऊन सूचित करूनही आपण याबाबत कोणतीही कार्यवाही केली नाही. सदर बाब ही गंभीर स्वरूपाची असल्याने आपण कार्यालयात त्वरीत उपस्थित व्हावे. तसेच सोबत जोडलेल्या ज्ञापामध्ये नमूद केल्याप्रमाणे सर्व कामांचा साईट रेकॉर्ड कार्यालयात सादर करावा. वरील उपरोक्त नमूद केलेल्या कारणास्तव आपला दि. १.११.२०१३ रोजीचा स्वेच्छानिवृत्ती संबंधीचा अर्ज सध्या प्रलंबित ठेवण्यात येत आहे.”

11. Thus, the Municipal Commissioner chose to keep Petitioner's application for voluntary retirement pending on account of non-submission of site records relating to certain works carried out under his

supervision. An employee does not have the right to retire voluntarily. Voluntary retirement on completion of 20 years of service is subject to grant of approval by the Competent Authority. Ordinarily in cases where disciplinary enquiry is pending or contemplated against an employee, his/her request for voluntary retirement can be rejected. The voluntary retirement can also be rejected for reasons not attributable to the employee such as shortage of staff. In the present case however, no valid reason existed for rejection of Petitioner's application for voluntary retirement. No disciplinary proceedings were initiated or contemplated against the Petitioner as on 1 November 2013 (when he submitted the application) or even as on 1 February 2014 (on which date he desired to retire). As a matter of fact, no decision was taken on his request for voluntary retirement and his application was kept pending.

12. It is also not that the Petitioner remained non-traceable after submission of application dated 1 November 2013. He did submit another application dated 3 December 2013 stating that his service record was not upto date and that he was called upon to submit details of leave from 1 December 1996 upto December 2013. The Petitioner stated in his application dated 3 December 2013 that the pps in respect of the leave was forwarded on 17 February 1997. However, the Petitioner once again submitted the details of all leaves taken by him in various departments for the period December 1996 to December 2013. He requested for grant of voluntary retirement on 31 January 2014. However, no response was received to his letter dated 3 December 2013 and the Municipal Corporation maintained silence for about eight

months and thereafter started issuing letters/memos on 30 August 2014, 1 December 2014, 18 March 2015, 27 March 2015. Final memo was issued on 7 April 2015. This is how the Petitioner's application for voluntary retirement was erroneously kept pending and no decision was taken thereon.

13. If Petitioner had committed misconduct in not returning site records and in non-reporting for duty, Respondents ought to have initiated disciplinary enquiry against him. However, beyond issuing memos for period up to 7 April 2015, the Municipal Corporation failed to initiate any departmental enquiry against the Petitioner. After 7 April 2015, Municipal Corporation maintained silence for next three years and directly issued show-cause notice dated 8 August 2018 for termination of services under Regulation 27 (i) of the MMC (Service) Regulations. The Municipal Corporation thus adopted a short-cut method of terminating services of the Petitioner under Regulation 27(i) of the MMC (Service) Regulations rather than conducting disciplinary enquiry against him. Be that as it may. It is not necessary to dealt deeper in to this aspect.

14. Petitioner has rendered services from 23 November 1987 upto 10 March 2013. His services thus span for about 26 long years. The issue for consideration is whether Petitioner can be denied all benefits in respect of 26 years of his service. In the facts of the present case, especially when he did apply for voluntary retirement on 1 November 2013, the error committed by the Municipal Corporation in not deciding his application for voluntary retirement scheme would come to the rescue

of the Petition. Petitioner was fully eligible to retire voluntarily with effect from 1 February 2014. If his VRS application was decided and if he was granted retirement on 1 February 2014, he would have received all pensionary benefits in respect of past services rendered by him. Thus, non-decision of his application for voluntary retirement has some connection with unauthorized absence of the Petitioner. Considering the peculiar facts and circumstances of the present case, in our view, Petitioner can be treated as having retired voluntarily so that he does not lose pension and other retirement benefits in respect of 26 years of service rendered by him.

15. However, if voluntary retirement is now sanctioned to him from 1 February 2014, Municipal Corporation will have to bear the burden of paying him arrears of pension from 1 February 2014 onwards. Petitioner has been extremely negligent in the present case and considering his conduct, it would not be proper to reward him by paying arrears of pension from 1 February 2014. Instead, the impugned order of termination dated 9 July 2020 can be converted into voluntary retirement. This would save financial burden for the Municipal Corporation to pay arrears of pension from 1 February 2014 to 9 July 2020. Though Petitioner would be entitled to arrears of pension as well as other retirement benefits from 9 July 2020, we are not inclined to award any interest in favour of the Petitioner considering his negligent conduct. It is also clarified that this course of action is adopted considering unique facts and circumstances of the present case, which shall not be treated as precedent in any other case.

16. Petition accordingly succeeds partly and we proceed to pass the following order:

- i) Order dated 9 July 2020 is set aside.
- ii) Respondents shall treat Petitioner as having voluntarily retired on 9 July 2020.
- iii) Petitioner shall be paid pension and all retirement benefits on the basis of his voluntary retirement with effect from 9 July 2020.
- iv) Petitioner shall not be entitled to any interest on the amount of retirement benefits as well as on arrears of pension.
- v) All amounts resulting out of voluntary retirement with effect from 9 July 2020 shall be paid to the Petitioner within a period of three months.

17. Writ Petition is **partly allowed** in the above terms. Rule is made partly absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(S.M. MODAK, J.)