IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3635 OF 2020

Vithal s/o. Lingoji Kalyankar,
Age 56 years, Occ. Service,
Now kept under retirement
R/o. House No. 42, Vitta Nagar,
Taroda (bk), Nanded
Tq. & Dist. Nanded Nanded. .. **PETITIONER**

VERSUS

1) The Principal District Judge,
Nanded.

2) High Court of Judicature of
Bombay, through its Registrar,
Fort Bombay.

3) The State of Maharashtra
Through Secretary (Law and
Judiciary Dept), Mumbai. .. **RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner
Mrs. V.S. Chaudhari, AGP for the respondent-State
Mr. C.K. Shinde, Advocate for respondent nos.1 and 2

...

CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.

RESERVED ON : 06.05.2026

PRONOUNCED ON : 06.07.2026

JUDGMENT (PER VAISHALI PATIL-JADHAV, J) :

. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsel for the parties.

2. By this Petition, the petitioner, who was serving as a 'Senior Clerk' in the District Court at Nanded, has challenged the order dated 31.10.2018 passed by the learned Principal District Judge, Nanded, whereby the application dated 31.10.2018 preferred by the petitioner seeking withdrawal of his notice of voluntary retirement dated 01.08.2018 came to be rejected. The petitioner further seeks continuation in service with all consequential benefits by setting aside the said order.

3. Facts of the case, in brief, are as follows:

The petitioner entered into service in the Judiciary Department as a Class-III Government servant on the establishment of Nanded Judicial District on 06.06.1988 pursuant to District Court Office Order No.4728/1988 dated 27.05.1988. The petitioner served continuously without any interruption in Nanded Judicial District. He

passed the departmental examination. Considering his eligibility, annual confidential reports, satisfactory work/service record and seniority-cum-merit, the petitioner was promoted as Senior Clerk with effect from 01.06.2011 vide District Court Office Order dated 26.05.2011.

4. After rendering about 30 years of service, the petitioner decided to seek voluntary retirement owing to certain family problems by notice dated 01.08.2018, mentioning the intended date of retirement as 31.10.2018 after office hours. The said notice was accepted by respondent No.1 vide Office Order No.7332/2018 dated 28.09.2018 and the petitioner was permitted to proceed on voluntary retirement with effect from 31.10.2018 after office hours.

5. As the family problems were resolved, the petitioner submitted a written request to Respondent No.1 dated 31.10.2018 at 10.30 a.m. seeking permission to withdraw his notice of voluntary retirement dated 01.08.2018 and also sought recall of Office Order dated 28.09.2018.

6. Respondent No.1 rejected the request by order dated

31.10.2018, quoting Rule 65 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter `MCS (Pension) Rules, 1982') and assigning a reason that the request for withdrawal was required to be made before the intended date of retirement, with prior approval. The said order was received by the petitioner on 31.10.2018 at 5.30 p.m.

7. The petitioner was paid salary upto 31.10.2018 and continued to be in service till the retirement became effective after office hours on 31.10.2018. Petitioner is getting pension and received all pensionary benefits.

8. Heard learned counsel Mr. V.D. Salunkhe for the petitioner and learned counsel Mr. C.K. Shinde for the respondent Nos. 1 and 2. We have also gone through the documents relied upon by the petitioner and affidavit-in-reply filed by the respondents.

9. Learned counsel for the petitioner submitted that the impugned order dated 31.10.2018 rejecting the petitioner's request for withdrawal of his notice of voluntary retirement is arbitrary, illegal and contrary to Rule 66 of the MCS (Pension) Rules, 1982 . He submitted that though the petitioner sought withdrawal of the notice

on 31.10.2018 at 10.30 a.m., before his voluntary retirement became effective, the request was wrongly rejected on the ground that it was not made before the intended date of retirement and was without prior approval of appointing authority.

Learned counsel further submitted that no opportunity of hearing was granted before rejection of the request and no administrative inconvenience or prejudice was shown to justify such rejection. He also submitted that in a similar case the respondents had permitted withdrawal of voluntary retirement on the last date and, therefore, denial of similar treatment to the petitioner is arbitrary and discriminatory.

10. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgments in ***Balram Gupta Vs. Union of India*** reported in ***1987 AIR 2354***, ***J.N. Srivastava Vs. Union of India*** reported in ***AIR 1999 SC 1571***, ***Chandrakant B. Phatale Vs. District Judge & Ors.*** reported in ***2008 (Supp.) Bom.C.R. 81***, ***Poonam Garg Vs. IFCI Venture Capital Funds Ltd.*** reported in ***W.P.(C) 9304/2019 & C.M. No. 38360/2019.***

11. *Per contra* learned counsel appearing on behalf of the respondents supported the impugned order and submitted that the same is legal and in accordance with the provisions of the MCS (Pension) Rules, 1982. He submitted that though the petitioner invoked Rule 66, his case was in fact governed by Rule 65 as the petitioner has completed thirty years of qualifying service.

Relying upon Rule 65(3), learned counsel submits that a notice of voluntary retirement can be withdrawn only before the intended date of retirement and not before the retirement becomes effective. Once the intended date of retirement is arrived, the petitioner ceased to have any right to withdraw the notice.

Learned counsel further submits that Rule 13 defines a “day” as the period commencing from one midnight and ending with the next midnight. Therefore, as the intended date of retirement was 31.10.2018, the petitioner was required to seek withdrawal on or before 30.10.2018. Since the withdrawal application was submitted on 31.10.2018, it was beyond the period prescribed under Rule 65(3) and was rightly rejected. Hence, prayed for dismissal of the petition.

12. The question which arises for determination in the present petition is, what is the meaning of the term specific approval and intended date as prescribed/provided in Rule 65 (3) of MCS (Pension) Rules, 1982? If it is held that the petitioner's application is prior to the intended date then the further question is as to whether the petitioner is entitled for relief of continuation in service with all consequential benefits?

13. Before we decide these moot questions, it will be appropriate to refer to the definition of Day, Month and Rule 65 of the MCS (Pension) Rules, 1982 and various case laws on the subject:

> *(13)* ***Day*** *means the period beginning from one midnight and ending with the next midnight.*
>
> *(34)* ***Month*** *means a calendar month. In calculating a period expressed in terms of months and days complete calendar months, irrespective of the number of days in each, should first be calculated and the odd number of days calculated subsequently.*
>
> ***Instruction :-***
> *Calculations of period expressed in terms of months and days should be made as under :-*
>
> *(a) To calculate 3 months and 20 days on and from the 25th January, the following method should be adopted :-*

	Y.	M.	D.
25th January to 31st January	*0*	*0*	*7*
February to April	*0*	*3*	*0*
1st May to 13th May	*0*	*0*	*13*
	0	*3*	*20*

(b) The period commencing on 30th January and ending with 2nd March should be deemed as 1 month and 4 days, as indicated below :-

	Y.	M.	D.
30th January to 31st January	*0*	*0*	*2*
February	*0*	*1*	*0*
1st March to 2nd March	*0*	*0*	*2*
	0	*1*	*4*

65. Retirement on completion of 30 years qualifying service.

(1) At any time after a Government servant has completed thirty years' qualifying service, he may retire from service, or he may be required by the appointing authority to retire in the public interest:

Provided that-

(a) a Government servant shall give a notice in writing to the appointing authority [----] three months before the date on which he wishes to retire; or

(b) the appointing authority shall give a notice in writing [in from 32] to Government servant [----] three

months before the date on which he is required to retire in the public interest, or three months pay and allowances in lieu of such notice.

[Provided further that where the Government servant who gives notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:

Provided also that where a Government servant giving notice under clause (a) of the first proviso to this rule is placed under suspension after he has given notice of retirement as above, it shall be open to the appointing authority to withdraw permission, if already granted or, as the case may be, to withhold permission to such Government servant to retire voluntarily under this rule.]

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

(b) on receipt of a request under clause (a), the appointing authority 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.]

> *[(3)] A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the* ***specific approval of such authority****.*
> *Provided that the request for withdrawal shall be before the* ***intended*** *date of his retirement.*
>
> *[****Explanation****- For the purposes of this rule, the expression "appointing authority" means the authority which is competent to make appointments to the service or post from which the Government Servant retires or wants to retire;*
> *Provided that, where the appointing authority is the Government, the Secretary of the concerned Administrative Department shall be the appointing authority for the purposes of this rule".]*

14. A careful reading of the aforesaid rule would show that after completion of 30 years of service, a Government Employee can apply for voluntary retirement from service by giving three months' notice to the appointing authority. **Clause (b) of Rule 65** clearly mandates that notice of voluntary retirement given under clause (a) shall require acceptance by the appointing authority. If the appointing authority does not refuse to grant the permission to the voluntary 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 notice period. Sub-rule (2) clause (a) of the Rule provides that the appointing authority is vested with the power to dispense with the requirement of three months' notice, if curtailment of period of notice will not cause any administrative inconvenience, on the condition that the government servant shall not apply for commutation of part of his pension before the expiry of the period of notice of three months. By virtue of sub clause (3) of Rule 65, the government employee, who has elected to retire under Rule 65 and has given necessary notice to that effect, to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority. The proviso appended to clause (3) further mandates that the request for withdrawal shall be made before the intended date of retirement.

15. The Supreme Court in **Balram Gupta Vs. Union of India and another** [1987 (Supp) SCC 228 while considering Rule 48-A(4) of the Central Civil Services (Pension) Rules, 1972, which is a pari materia provision to Rule 65 of the MCS [Pension] Rules, 1982, has held that notice of voluntary retirement can be withdrawn at any time before retirement becomes effective notwithstanding any rule

providing for obtaining of specific approval of the concerned authority as condition precedent to withdrawal of notice. The Hon'ble Supreme Court has held that the authority is not entitled to refuse to grant approval for the withdrawal in absence of any reason showing disturbance in administrative set up or arrangement as a result of such withdrawal. Prior approval cannot be *ipse dixit* of the appointing authority.

16. In ***Arun Vs. The District and Sessions Judge & others*** (1993 (2) Mh.L.J. 1642), the validity of Rule 66 (5) of the MCS [Pension] Rules, 1982, which is substantially similar to Rule 65 (3), except that it prescribes the qualifying service requirement of 20 years instead of 30 years, was challenged. The Court, after referring to the case of ***Balram Gupta*** (supra) and other cases, in paras 10 and 16 has observed that :

> *"10. It is thus clear from the scheme of the above Rules that although under Rule 65 a right is created in both, the Government and the government servant relating to retirement of government servant on completion of thirty years' qualifying service with the benefit of retirement pension a unilateral right is created in favour of the government servant only of getting the benefit of retirement pension by voluntarily retiring on completion of 20 years qualifying service. When such a unilateral right*

to retirement benefit is sought to be conferred upon the government servant, certain restrictions are sought to be placed upon the said right. Sub-rules 2 and 5 of Rule 66 enact such restrictions so as to ensure that it is not used improperly. Sub-rule 2 of Rule 66, therefore, requires such notice of voluntary retirement to be accepted by the appointing authority so that in appropriate cases such as, for instance, where the notice of voluntary retirement under Rule 65 is sought to be given to escape the consequences of an enquiry into the misconduct or serious lapse committed by the government servant, the appointing authority may decline to accept his notice of voluntary retirement and proceed with the enquiry against him. As regards sub-rule 5 of Rule 66, it imposes a restriction on withdrawal of the notice of voluntary retirement before it becomes effective by requiring the specific approval of the appointing authority for the said purpose. Since the interpretation of sub rule 5 of Rule 66 is in issue in the instant writ petition in considering its validity also suffice it to say at this stage that the approval to the withdrawal of the notice of retirement can be withheld by the appointing authority for good and valid reasons.

16. If the requirement of stating good and valid reasons is by its interpretation incorporated under Rule 66(5) of the Pension Rules, it cannot be held that the said rule is still arbitrary, discriminatory and violative of Article 14 of the Constitution. By incorporating the requirement of stating reasons for withholding approval to the notice of retirement, Rule 66(5) of the Pension Rules can be read as to satisfy the constitutional requirement of 'reasonableness' which is a well settled rule of statutory construction to sustain the constitutionality of a Statute. We, thus reject the contention raised on behalf of the petitioner that Rule

66(5) of the Pension Rules is arbitrary, discriminatory and violative of Article 14 of the Constitution."

17. In the case of ***J.N.Srivastava Vs. Union of India and another*** [(1998) 9 SCC 559], after considering the decision in ***Balram Gupta*** [supra], Apex Court held that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. It was thus held that the employee was entitled to be reinstated with all incidental benefits.

18. The Supreme Court in the matter of **State of Himachal Pradesh and another Vs. Himachal Techno Engineers and another** [(2010) 12 SCC 210] while dealing with Section 34 (3) of the Arbitration and Conciliation Act, 1996, which also uses the term “three months”, held that the legislature did not intend that the period of three months used in sub-clause (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month and further held that when the period prescribed is three months from a specified date, the said period would expire in the

third month on the date corresponding to the date upon which the period starts.

19. In the present case, the order dated 31.10.2018 was passed by the learned Principal District Judge, Nanded whereby the permission to withdraw the notice was refused. Para 2 of the order is quoted below :

> *"I have gone through the application. It is the contention of the applicant that whatsoever the reason for his voluntary retirement were now solved, hence he wish to withdraw his application. As per Rule 66 (5) of M.C.S. (Pension) Rules, 1982, he is precluded from withdrawing his notice except with the specific approval of such authority. It is provided therein that the request for withdrawal shall be made before the intended date of his retirement. The proviso of clause is specific that the application for withdrawal of the notice shall be made before intended date of his retirement. The intended date of the retirement of the applicant and his application to withdraw the notice of voluntary retirement is the same. In view of the said proviso to the rule mentioned above, the application of the applicant cannot be considered."*

20. Coming to the facts of the instant case, in light of the

principles laid down by the Supreme Court in the above noted judgments, it was open for the petitioner to make request for withdrawing his notice of voluntary retirement before the effective date of retirement. It is clear that by virtue of Rule 65 of the MCS [Pension] Rules, 1982 the petitioner had served three months notice to the appointing authority on 01.08.2018 and the intended date of retirement would be 01.11.2018.

Thus, an employee who has given notice to retire under Rule 65 can withdraw voluntary retirement notice before the intended date of retirement and prior approval is not *ipse dixit* of the appointing authority. Prior approval will only mean that the appointing authority must give good and valid reasons for not granting approval to the withdrawal of notice of retirement. In the instant case, three months notice period started from 01.08.2018, the date on which the petitioner has given his application for voluntary retirement to the appointing authority. Three months notice as prescribed in Rule 65(a) of the MCS (Pension) Rules, 1982 ended on 01.11.2018 thus the intended date of his retirement would be with effect from 01.11.2018, therefore, he was required to submit

application for withdrawal on or before 31.10.2018. Admittedly, the petitioner had filed application for withdrawal of voluntary retirement on 31.10.2018 itself, whereas, the intended date of his voluntary retirement was 01.11.2018. Though, in his voluntary retirement application dated 01.08.2018, the petitioner has mentioned that he intends to retire after office hours on 31.10.2018, mentioning intended date as 31.10.2018 will not preclude the petitioner from withdrawing the application on 31.10.2018.

Considering this, the appointing authority ought not to have refused the application of voluntary retirement on the ground that the application was given on intended date i.e. which should have been given prior to 31.10.2018.

21. Therefore, in the light of various judgments discussed above and rule 65(3) and definition of month given in rule 2(34) of the MCS (Pension) Rules, 1982, notice of voluntary retirement can be withdrawn at any time before retirement becomes effective. Accordingly, the impugned order rejecting the request for withdrawal of application of voluntary retirement passed by the appointing authority is required to be set aside. In view of the above discussion,

the petitioner has withdrawn his application for voluntary retirement before the intended date of retirement that was 01.11.2018.

Even otherwise, the petitioner was to retire w.e.f. 31.10.2018 after office hours. Hence his retirement would have been effected after office hours and he has sought permission to withdraw his voluntary retirement application before his retirement became effective. In this view of the matter also, respondent no.1 was not justified in rejecting his application

22. Now coming to the second question as to whether the petitioner is entitled to reinstatement and back wages.

After rejection of withdrawal notice by the appointing authority on 31.10.2018, the petitioner has availed all retiral benefits and he is also receiving pension regularly. Thereafter, only on 27.02.2020 i.e. after more than sixteen months, he has approached this Court challenging the impugned order. In this view of the matter, we are of the opinion that as the petitioner has accepted the retiral benefits and he is receiving regular pension, he should be paid salary

payable to him, if he was in service, till the date of his retirement. Hence the following order :-

ORDER

(i) The Writ Petition is allowed.

(ii) The petitioner be paid the salary payable to him, as if he was in service till the date of his superannuation by deducting the pension amount paid to him.

(iii) The arrears of salary with all consequential benefits be paid to the petitioner and his pension be refixed, within a period of 12 weeks from the date of receipt of copy of this order.

23. Rule is made absolute in the above terms.

(VAISHALI PATIL-JADHAV,J.) **(NITIN B. SURYAWANSHI,J.)**

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