

(1997) 10 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 6 of 1991

Dr. (Mrs.) Shashikala Parashar

APPELLANT

Vs

State of Goa and another

RESPONDENT

Date of Decision : 08-10-1997

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 6

Citation : (1998) 2 ALLMR 393 : (1998) 2 BomCR 427

Hon'ble Judges : R.M.S. Khandeparkar, J; R.K. Batta, J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; H.R. Bharne, Government Advocate, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—By the present petition, the petitioner is challenging the order dated 10th October 1990 passed by the respondents retiring the petitioner with effect from 1st October 1990. The petitioner was working as an Associate Professor of Medicine in the Goa Medical College until the impugned order was served on her. While in service, the petitioner on account of personal reasons addressed a letter to the Government of Goa expressing her desire to retire from services with effect from 1st October 1990. However, on account of sudden development in the family circumstances, the petitioner wrote another letter dated 11th August 1990 requesting the Government to keep in abeyance her request for voluntary retirement. Being under the bona fide belief that her request for voluntary retirement having been kept in abeyance pursuant to her request, she continued to discharge her functions as Associate Professor of Medicine and even discharged the additional duties assigned to her during the resident doctors strike in Goa. The petitioner further states that she continued to work even after 1st October 1990 and went on leave on 12th October 1990 and on having resumed her duties on 13th October 1990, on the close of working hours of the said day itself she was served with the impugned order dated 10th

October 1990 where she was informed that her letter seeking voluntary retirement was given effect to from the afternoon of 1st October 1990. According to the petitioner, she was totally dumb-founded on that turn of events. However, in view of the impugned order she did not attend to her duties from 14th October 1990. Moreover, on 13th October 1990 itself she submitted a letter through proper channel addressed to the Under Secretary, Health stating that she had worked till Saturday the 13th October 1990 even having done 24 hours duty during the strike period and that she has earned her vacation from Monday 15th October 1990 to 30th October 1990 by virtue of her working till 13th October 1990 and that she should be paid her salary upto 30th October 1990, a copy of the said letter dated 13th October 1990 is also placed on the record.

2. Shri M.S, Sonak, the learned advocate appearing for the petitioner, while assailing the impugned order submitted that the respondents could not have given effect to her letter dated 5th July 1990 pursuant to her subsequent letter dated 11th August 1990 wherein she had requested to keep in abeyance her letter of 5th July 1990. Placing reliance on the judgment of the Apex Court in the matter of Balram Gupta Vs. Union of India (UOI) and Anr, , the learned advocate submitted that once the petitioner had expressed her desire to keep her request for voluntary retirement in abeyance, it ought to have been construed that she had changed her mind to retire from 1st October 1990 and that, therefore, there was no request from her available with the Government for voluntary retirement. The teamed advocate further placed reliance upon the definition of the term "abeyance" in the Oxford English Dictionary as well as in Blacks Law Dictionary as well as from Legal Thesaurus (Second Edition) by William C. Burton to make his point good that by letter dated 11th August 1990, the petitioner had in fact communicated to the Government not to act upon her original letter by which she had expressed desire for voluntary retirement. Shri Sonak further submitted that in view of the fact that there has been no counter to the petition, the averments made in the petition are deemed to have been accepted and there being no dispute about any facts stated in the petition, the petitioner is entitled for the writ of mandamus to the respondents to allow the petitioner to resume her duties with effect from 14th October 1990 as if she had been in continuous employment and for payment of full back wages alongwith consequential benefits.

3. Shri Sonak further submitted that from the fact that the petitioner continued to work even after 1st October 1990 and there had been no objection on the part of the respondents for her continuation in the employment from 1st October 1990 onwards, itself shows that the respondents had acted upon the letter dated 11th August 1990 wherein the petitioner had requested the Government not to act upon her original letter dated 5th July 1990. He further submits that the sudden change in the stand of the respondent No. 1 which was disclosed by the impugned order clearly discloses arbitrariness on the part of respondent No. 1 in issuing the said order inasmuch as that the said order has been passed on the basis of a letter which was withdrawn for all purposes and, therefore, a non-existing letter. According to Shri Sonak, the respondents were not entitled to act

in terms of Rule 48-A of the Central Civil Services (Pension) Rules, 1972, in view of the fact that the petitioner by her letter dated 11th August 1990 had pointed out that the petitioner wanted to keep her letter of voluntary retirement in abeyance in view of family reasons.

4. Shri H.R. Bharne, the learned Government Advocate, on the other hand, submitted that the petitioner has not made out any case for interference in the impugned order inasmuch there is nothing on record to suggest that the petitioner had any time withdrawn her letter dated 5th July 1990 expressing desire to go on voluntary retirement with effect from 1st October 1990. Even in the letter dated 13th October 1990, which was submitted pursuant to the acceptance of the order of retirement dated 10th October 1990, there is not a whisper regarding any grievance on the part of the petitioner for having accepted her letter dated 5th July 1990 for her voluntary retirement. If the petitioner was really dumbfounded as is sought to be alleged in the petition, it was but natural to act immediately and not to wait for about more than 2 months to make the said grievance by merely filing the petition. The learned Government Advocate submitted that there was no application filed and the petitioner has approached the Court without asking for any relief from the respondents before approaching this Court for a writ of mandamus.

5. Upon hearing the advocates for the parties and on perusal of the records, it is seen that by letter dated 5th July 1990 the petitioner had clearly expressed her desire to go on voluntary retirement with effect from 1st October 1990 on domestic grounds. The fact that she had decided to seek voluntary retirement with effect from 1st October 1990 has also been clearly averred in the petition and there is no dispute on the point that the petitioner at one point of time was clear in her mind about her decision to go on voluntary retirement with effect from 1st October 1990. It is true that the petitioner has alleged in her petition that by letter dated 11th August 1990 the respondents were informed that her request for voluntary retirement be kept in abeyance. However, firstly we see that there is not even an averment in the petition supported by affidavit to the effect that the letter dated 11th August 1990 was at any time received by the respondents. There is not even any reference to such letter dated 11th August 1990 in the subsequent letter dated 13th October 1990 sent to the Under Secretary (Health) immediately after the order was received. In the absence of a clear averment on the part of the petitioner that such letter dated 11th August 1990 was served upon or received by the respondents, it is not possible to presume, at this stage, that the letter dated 11th August 1990 was really sent by the petitioner and/or received by the respondents as sought to be argued by the learned advocate for the petitioner. In the absence of any material on record to support the submission, we cannot act upon the mere submission on the part of the petitioner as regards the letter of 11th August 1990. Being so, we are not required to decide the question as regards the interpretation of the letter dated 11th August 1990. However, even assuming that such letter was addressed and was received by the respondents in time, nothing, in our considered opinion,

prevented the respondents to act upon the desire of the petitioner for voluntary retirement expressed by her in her letter dated 5th July 1990. The word "abeyance" as has been defined in the Oxford Dictionary means, among other meanings given thereto, as under :---

"A state of suspension, temporary non-existence or inactivity; dormant or latent condition liable to be at any time revived."

In other words the term "abeyance" convey the meaning that a thing is sought to be kept in suspension for some time, which is subject to be revived at any time. Even assuming that the petitioner by letter dated 11th August 1990 had requested the respondents to keep her request for voluntary retirement in suspension, the same was revoked by her action of acceptance of impugned order dated 10th October 1990 on 13th October 1990 without any reservation or any sort of objection being expressed while accepting the said order. In fact the letter dated 13th October 1990 addressed to Under Secretary (Health) by the petitioner clearly discloses that she had accepted the impugned order willingly and without any hesitation and/or reservation, It was nearly two months thereafter that the petitioner seemed to have a second thought about her voluntary retirement.

6. The decision of the Apex Court in the matter of Balram Gupta v. Union of India (supra) has no application whatsoever to the case in hand. The ratio of the said case is that the approval is not ipse dixit of the approving authority who as a statutory authority must act reasonably and rationally. It was a case where the employee had expressed his desire to withdraw his original letter expressing desire to go on voluntary retirement. That is not the case before us. In the case in hand there was never any letter addressed or even an intimation expressed by the petitioner to withdraw her letter dated 5th July 1990 wherein she had expressed her desire to go on voluntary retirement. Being so, the decision of the Apex Court in the said case can be of no assistance to the petitioner.

7. The submission of the learned advocate for the petitioner that the very fact that the petitioner was allowed to continue to work even after 1st October 1990 would show that the Government had accepted her request to keep her original letter dated 5th July 1990 in abeyance is devoid of substance. It is not the case of the petitioner that the petitioner was allowed to continue to perform her duties in her employment for a long period after 1st October 1990, the day which was disclosed by the petitioner in her letter to be the date on which she wanted to go on voluntary retirement. Secondly the impugned order accepting her application for voluntary retirement was issued on 10th October 1990 and was served upon the petitioner on 13th October 1990 and the same was accepted by the petitioner without any reservation. These facts clearly show that there was no intimation on the part of the respondents in any manner so as to either reject her application for voluntary retirement or to postpone the date of voluntary retirement beyond the date expressed by the petitioner in her letter dated 5th July 1990.

8. The allegation in the petition that she was dumbfounded on receipt of impugned notice is totally unbelievable. As already pointed above, the petitioner after accepting the impugned order without any reservation wrote a letter dated 13th October 1990 claiming for her salary upto 30th October 1990. This act on the part of the petitioner, who is undisputedly occupying the post of Associate Professor of Medicine cannot be believed to be dumb-founded on the receipt of the order. It is not the case of compulsory retirement or any action being taken against the petitioner. The impugned order was pursuant to her own request. It is not the case of the petitioner that her request for voluntary retirement was withdrawn. In these circumstances there was no occasion for the petitioner to get dumb-founded on the receipt of the order.

9. In the circumstances, we do not find any irregularity committed by the respondents in issuing the impugned order in terms of Rule 48-A(2) of the Central Civil Services Pension Rules, 1972. That apart, before approaching this Court the petitioner did not approach the respondents with any representation against the impugned order. In order to obtain any relief in the nature of writ of mandamus, it is absolutely necessary on the part of the petitioner to approach the concerned authorities with his or her grievance and to seek appropriate relief in the matter and only in case of refusal thereof, to claim such relief by way of writ of mandamus from the High Court. In the instant case, we do not find anything on record to show that the petitioner had, in fact, approached the authorities prior to filing of the petition. Indeed the learned advocate for the petitioner did submit that prior to the filing of the petition, the petitioner had served legal notices to the respondents. It is also disclosed that such notices were served on the respondents on 8th January 1991 and the petition was filed on 11th January 1991. Apart from the fact that there is nothing on record to support the same, even assuming that the petitioner had served such notice that by itself is not sufficient to prove the demand by the petitioner and refusal by the authorities which, otherwise, is pre-requisite for issuance of writ of mandamus. Besides the period of one day between the service of notice of demand and filing of petition cannot be considered as a reasonable period, in the facts and circumstances of the case. In the present case a period of one day cannot be considered as sufficient and/or reasonable period for the respondents to enable them to take any decision in the matter. Being so, the petitioner did not comply with the pre-requisite to enable her to seek the relief in the form of writ of mandamus.

10. For the reasons stated above, we do not find any justification for interference in the impugned order and the petition is, therefore, liable to be rejected and is hereby, accordingly, rejected. Rule is, accordingly, discharged. However, there shall be no order as to costs.

11. Petition dismissed.