

GAHC010104972022



2024:GAU-AS:10680

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3664/2022

BINA PANI DUTTA
W/O. LT. BIMAL CHANDRA DUTTA, R/O. WARD NO.13, HOUSE NO. 701,
CHOLADHARA, P.O. AND P.S. JORHAT, DIST. JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FINANCE
DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ACCOUNT AND TREASURIES
ASSAM
HOUSEFED COMPLEX
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER
JORHAT P.O. AND DIST. JORHAT
ASSAM.

4:THE TREASURY OFFICER
P.O. AND DIST. JORHAT
ASSAM.

5:AMAR JYOTI SARMA
THE TREASURY OFFICER
JORHAT
P.O. AND DIST. JORHAT
ASSAM

Advocate for the Petitioner : MR. M NATH, MR. D P BORAH,MR. A BHATTACHARJEE

Advocate for the Respondent : GA, ASSAM, MS. PADMINI BARUA (R-5),SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 04-11-2024

1. Heard Mr. M. Nath, learned Senior Counsel assisted by Mr. A Bhattacharjee, learned counsel for the petitioner. Also heard Mr. P Nayak, learned counsel for the State respondents. None appears for the respondent No.5, though notice was duly served.

2. By the present writ petition, the petitioner has assailed the order dated 28.02.2022 (Annexure – 6), issued by the Treasury Officer, Jorhat whereby, the application purportedly filed by the petitioner seeking voluntary retirement, on 28.02.2022, was allowed. The further prayer is to direct the respondent authorities to act upon the application dated 21.12.2021 (Annexure – 5), whereby, according to the petitioner, she had clarified that the initial application for voluntary retirement dated 20.12.2021 was filed under duress and force from the Treasury Officer, i.e. the respondent No 4. Accordingly, it is the case of the petitioner that the application for voluntary retirement dated 20.12.2021, acting upon which, the impugned order dated 28.02.2022 was passed and the petitioner was superannuated, is illegal, malafide, arbitrary and therefore, same is liable to be set aside and the petitioner is liable to be reinstated in her service with all benefits. It is important to note herein that by an order dated 03.06.2022, this Court stayed the operation of the impugned order dated 28.02.2022 and thus, the petitioner is continuing to serve even after she was voluntarily retired.

3. The facts of the case in a nutshell, as projected by the petitioner, is that the petitioner was appointed as a Lower Division

Assistant (LDA) cum typist, Jorhat Treasury by the respondent Deputy Commissioner. Subsequently, on 20.04.1998, she was promoted to the post of Junior Assistant and was posted at the same Treasury Office and such order was also issued under the signature of the Deputy Commissioner, Jorhat. Thereafter, the petitioner was promoted to Senior Accounts Assistant on 22.06.2013 by the Deputy Commissioner. While she was working in the aforesaid post, according to the petitioner, on 20.12.2021 the private respondent No.5 along with some other staff forced the petitioner to put her signature on an application addressed to the Treasury Officer, i.e., respondent No.4. However, immediately on 21.12.2021, the petitioner submitted an application before the respondent No.4, requesting to cancel her application dated 20.12.2021 signed by her under compulsion. According to the petitioner, such communication was duly received in the office of the Treasury Officer. However, on 28.02.2022, the impugned order voluntarily retiring the petitioner was passed.

4. In the aforesaid backdrop, Mr. Nath, learned Senior counsel for the petitioner contends that admittedly the employer of the petitioner is the Deputy Commissioner, Jorhat inasmuch as, it is the Deputy Commissioner who can only consider the application for VRS inasmuch as such VRS application is to be addressed to the said Deputy Commissioner. However, the application for voluntary retirement, purportedly filed by the petitioner was under force and therefore, it was addressed to the Treasury Officer and the Treasury Officer himself has issued the impugned order accepting the voluntary retirement and therefore, such action on the part of the respondent No.4 is without jurisdiction in terms of FR 56(C). Though the respondent No.4 had mentioned that he had the approval of the authority, however, such communication does not disclose the name of

the authority or the date on which such authority issued such order of approval for voluntary retirement.

5. Referring to FR 56(C), Mr. Nath, learned Senior Counsel, further contends that under FR 56, a procedure has been laid down for filing and acceptance of voluntary retirement inasmuch as a period of three months is mandated from the date of application to the date of acceptance so that, the person who seeks for a voluntary retirement can reconsider the case and that the employer can also apply their mind to the given facts whether to allow such application or not. However, in the case in hand, for the malafide intention of the respondent authorities, more particularly, of respondent No.5, the respondents had hurriedly accepted such voluntary retirement before the expiry of such three months. Therefore, in the aforesaid backdrop, it is a clear case of malafide exercise of power by respondent No.5, argues Mr. Nath.

6. Referring to certain documents, more particularly, the documents whereby it was intimated to the petitioner regarding the acceptance of her voluntary retirement, Mr. Nath, learned Senior Counsel submits that the documents relied on by the respondent No.4 i.e, the Treasury Officer annexed with the affidavit-in-opposition filed by him, the document relied on by the Deputy Commissioner, annexed with his affidavit in opposition and the same documents received by the petitioner under RTI Act are different and the memo numbers are different in each of the cases, though their contents are similar. From the above, it is clear that there are manipulations of record to cover up things.

7. Referring to the additional affidavit filed by the petitioner, wherein the issue and receipt register are annexed, Mr. Nath, Senior Counsel argues that the same clearly demonstrates manipulation of such

document inasmuch as a bare reading of the relevant page of such register furnished to the petitioner under RTI application demonstrates that it is absolutely an illegal exercise and such document was inserted subsequently to cover up the illegal action of the petitioner.

8. Relying on the judgment of a coordinate bench in ***Badan Neog Vs. State of Assam and others*** reported in ***2001 1 GLT 565***, Mr, Nath, learned Senior Counsel contends that the language of FR 56(C) is very clear that without elapse of three three-month period, the action of the respondents to superannuate the petitioner is illegal, against the rule, even if it is assumed that the petitioner had voluntarily filed the application. In this context, the learned Senior Counsel also places reliance on the decision of hon'ble Apex Court in ***Dinesh Ch. Sangma Vs. State of Assam*** reported in ***1977 4 SCC 441***.

9. Referring to the judgment of the Hon'ble Apex Court in the case of ***Ritesh Tiwari Vs. State of UP*** reported in ***2010 10 SCC 677***, Mr. Nath, learned Senior Counsel contends that the application which was filed before the incompetent authority, itself is bad at its inception. Therefore, any action taken upon the said application is a nullity in law and accordingly, the impugned order is not sustainable being issued on the basis of an action that is nullity at its inception. In this context, Mr. Nath, also relies on the celebrated judgment of the Privy Council in ***Nazir Ahmed Vs. King of Emperor*** reported in ***1936 AIR (PC) 253***. Referring to the celebrated judgment of the Hon'ble Apex Court in the case in ***Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi & Others*** reported in ***1978 (1) SCC 405***, Mr. Nath contends that by way of an affidavit, the reasons cannot be substantiated which are not available in the impugned order.

10. Referring to the affidavit of the respondents, more particularly, the Treasury Officer, Mr. Nath, learned Senior Counsel contends that the respondent has taken a stand as regards conduct and the inability of the petitioner to perform duty and therefore, such stand in the affidavit further clarifies that the action is punitive and when an action is punitive, there should be a due process of law and therefore, on the basis of stand taken on the affidavit, the impugned order is liable to be set aside and quashed.

11. Per contra, Mr. Nayak, learned counsel appearing for respondent No. 4, Treasury Officer, referring to the documents and office notes which are part of the affidavit filed by respondent No.4, contends that there is no malafide exercise of power and the impugned order was passed following the due procedure established acting upon the application filed by the petitioner herself and therefore, this court may not exercise its power of judicial review to examine the correctness of such decision.

12. Referring to page 1 of the record, Mr. Nayak submits that after receipt of the application of the petitioner seeking VRS, the Office Assistant put a note to the Treasury Officer, Jorhat recording that the petitioner is entitled to VRS as she had fulfilled both the criteria i.e., she had attained 50 years of age and completed 20 years of service. He further contends that on 24.12.2021, the Treasury Officer forwarded his note to the Deputy Commissioner along with the service book in original for consideration of the Deputy Commissioner. Thereafter, the Deputy Commissioner forwarded the said note to the Additional Deputy Commissioner (Personnel) for his comment. Thereafter, the Additional Deputy Commissioner in its note dated 24.01.2012, opined that the VRS proposal may be approved as the petitioner has fulfilled the criteria for VRS as verified by DDO. Thereafter, the Deputy Commissioner put his signature in the office note on

09.02.2022, approving the aforesaid recommendation. Therefore, according to Mr. Nayak, there is no procedural impropriety in accepting the VRS application of the petitioner inasmuch as, according to him, the allegation of the petitioner as regards forceful resignation, which has been disputed by the respondents cannot be determined in a writ proceeding.

13. Refuting the contention of Mr. Nath that there are differences in the documents annexed in the affidavit by the Treasury Officer, by the Deputy Commissioner and the copy received by the petitioner through RTI, Mr. Nayak contends that in the office three copies were kept and the copy given to the petitioner through RTI did not contain the said name and therefore, such mistake or not recording will not defeat justice in view of the specific office note as produced by him.

14. Mr. Nayak further contends that the petitioner was paid a provisional pension of March 2022, April 2022 and May 2022 and referring to the statement of respondent No.4 at paragraph 11, Mr. Nayak contends that from the date of filing the VRS application, the petitioner has never attended the office, enjoyed her pensionary benefit and she became wise and filed a writ petition in the month of May 2022 and after getting an interim order which was passed by this court on 03.06.2022, the petitioner went to office to join. Referring to paragraph 7 of the affidavit in opposition, Mr. Nayak submits that such application(purported withdrawal letter) dated 21.12.2021 was never received in the office inasmuch as the Central Receipt Register, though shows the receipt of letter dated 20.12.2021, there is no record to suggest that such application dated 21.12.2021 was received on 21.12.2021. The office register in the original is also produced by Mr. Nayak.

15. Regarding FR 56(C), Mr. Nayak, learned counsel for the

respondent argues that the application of three months is to be considered in the given facts of each case. According to him, in the admitted position the first VRS application, did not suggest any date of effect and therefore, there shall not be any embargo upon the employer to wait for three months. It is up to the employer to exercise its power until and unless the petitioner gives a date of effect of such VRS. In this context, Mr. Nayak, learned counsel for the respondent relies on a decision of the Hon'ble Apex Court in the case of ***State of Haryana & others Vs. S.K. Singhal*** reported in ***(1999) 4 SCC 293***.

16. Heard the learned counsel for the parties and perused the records including the Central Receipt Register.

17. Though malafide was alleged against the Treasury Officer, the Treasury Officer has been arrayed as party respondent by name, and notices were duly served upon him, however, no affidavit has been filed by the said respondent i.e. the respondent No.5 and none advanced argument on his behalf.

18. The fundamental argument of Mr. Nath, learned Senior Counsel revolves around the provision of Rule 56 of the Fundamental Rules. Therefore, the aforesaid Rule has an important bearing in this writ petition. Therefore, the aforesaid provision is quoted herein below:-

“CHAPTER IX COMPULSORY RETIREMENT

F.R.56.(a) The date of compulsory retirement of a Government servant is the date on which he attains the age of 60 years. He may be retained in service after this age with the sanction of the State Government on public grounds which must be recorded in writing, and proposal for the retention of a Government servant in service after his age should not be made except in very special circumstances. The age of compulsory retirement of a Government servant has been raised to 60 years from 55 years vide Notification

No. AAP/1434/77/37, dated 18.07.77.

[Notwithstanding anything contained above, the retirement of Government employees should take effect from the after noon of the last day of the month in which the employee concerned attains the age of superannuation.]

“Explanation.- For the purposes of this Sub-rule a Government servant whose date of birth falls on the first day of any month shall have attained the age of 60 years on the afternoon of the last day of the preceding months.”

(b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire a Government servant by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice after he has attained fifty years of age or has completed 25 years of service, whichever is earlier.

(c) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

Note.- The term ‘appropriate authority’ referred to in the above clauses means the authority which has the power to make substantive appointment to the post or service from which the Government servant is required or wants to retire.

Note 3.- The purpose of F.R. 56 is not to confer upon Government servants any right to be retained in service up to a particular age, but to prescribe the age beyond which they may not be retained in service.

Note 5.- The term “appropriate authority” referred to in the above clauses means the authority which has the power to make substantive appointments to the post or service from which the government servant is required or wants to retire”.

19. It is on record that the Government of Assam in Finance Establishment (A) branch issued an office memorandum bearing no.FEG.118/75/Pt/4 dated 12.09.1984, whereby the period of 25 years of service was reduced to 20 years of service and it was further provided that the relevant provision of FR and SR and Assam Services (Pension) Rules, 1969 may be deemed to have been amended to the extent of the provision of the said memorandum and that formal amendment to the relevant rules

will be issued in due course

20. From the aforesaid, it is clear that any government servant may, by giving notice of not less than 3 months in writing to the appropriate authority, retire from service after attaining 50 years of age or having completed 20 years of service, whichever is earlier. The appropriate authority in this regard is the authority, who is having power to make the substantive appointment to the post or service from which the government servants wants to retire and in the case in hand, admittedly the Deputy Commissioner, Jorhat is the appointing authority and not the Treasury Officer.

21. It is also clear from the aforesaid provision that though the extant service rule provides a particular age of retirement, (which in the present case is 60 years of age), FR 56(C) gives a right to the government servant to seek a voluntary retirement, subject to completion of a particular number of years of qualifying service and subject to attainment of minimum age as recorded hereinabove. It further provides that when an employee who has completed the said number of years in his age and completed the prescribed number of years qualifying service, is to give a notice of three months, expressing his desire that he would voluntarily retire on the expiry of the said period of three months.

22. Thus, the said Rule is couched with a language that results in an automatic retirement of the government servant after the expiry of the period of three months from the date of issuance of such notice even in the absence of any acceptance by the employer. It is also clear that such a Rule does not prescribe or mandate any approval within the aforesaid period of three months. There is also no express provision of an order granting permission in this regard.

23. In the aforesaid backdrop, in the considered opinion of this Court, the master-servant relation shall cease after the expiry of three months. The object of the prescription of three months' Notice, in the considered opinion of this Court, is provided to give the employer time to consider the desire/notice of the government servant and to make alternative arrangements. The employer shall be within its right to reject such an application/notice of retirement within the said period of three months which is also discernible from the language of FR 56(C). In this regard, this court can gainfully refer to the judgements of the honourable Apex court in ***Dinesh Chandra Sangma (supra)*** , ***The Union of India versus Sayed Muzaffar Mir*** reported in ***1995 SCC SUPL (1) SCC 76***. In those cases, the Hon'ble Apex Court laid down the proposition that upon expiry of the period of notice, voluntary retirement takes effect automatically, when no order of refusal is passed within the notice period.

24. The Hon'ble Apex Court held that the right to voluntarily retire is conferred in absolute terms under FR 56(C), where there is no provision for denial of permission after the expiry of three months. Thus, voluntary retirement shall come into effect automatically on the expiry of the period specified in the Rule. In case in hand, there is nothing in the Rule which presupposes the acceptance of the request by the employer. It is also clear from the Rule that there is no express bar for the employer to accept the prayer of voluntary retirement made by the employer before the expiry of the notice period. Therefore, in the considered opinion of this Court, the three months' notice has been prescribed to enable the employer to consider and take a decision on such application and to make arrangements in the event such application is allowed. There is no express provision that voluntary retirement cannot be accepted before the expiry of such period. At the same time, the Law is equally well settled that a notice

for retirement can be withdrawn before acceptance by the employer.

25. Thus, to summarise, Rule 56(C) gives three months to the employer to consider the application of voluntary retirement by the employee, and such prayer is to be accepted/rejected within three months of the notice period. If no order is passed, either accepting or rejecting such prayer, the voluntary retirement shall be deemed to be accepted from the date of expiry of such notice, and the employer-employee relationship shall cease. The employee, however, shall have a right to withdraw such voluntary retirement within three months, however, before acceptance by the employer. Therefore, the argument of Mr. Nath, that before the expiry of the period of three months, the authority could not have accepted the application, stands rejected.

26. Now, coming to the authority to pass such an order voluntarily retiring a government servant, the appropriate authority to whom the notice is to be given, in the present case, is the Deputy Commissioner and not the Treasury Officer. However, from the record, it is seen that such an application was forwarded by the Treasury Officer to the Deputy Commissioner, and it is the Deputy Commissioner, who accepted the application for voluntary retirement. It is also seen that the withdrawal application was also filed before the Treasury Officer by the petitioner herself. Therefore, the writ petition cannot be allowed on the ground that the application was not filed before the appropriate authority, more particularly, when the same was duly considered by the employer i.e., the Deputy Commissioner before the acceptance. Therefore, such argument of Mr Nath, learned Senior Counsel also stands negated.

27. Now, the question remains as regards the issue whether the application for voluntary retirement dated 20.12.2021 was actually

withdrawn on the next date itself i.e. on 21.12.2021 and whether the application dated 20.12.2021 was voluntarily filed or filed under duress. In this context, as there are certain disputes, this Court is to consider the respective pleadings of the parties.

28. The controversy revolves around whether the initial application dated 20.12.2021 was filed by the petitioner voluntarily and whether the petitioner had immediately filed an application on 21.12.2021, agitating her grievance and withdrawing the application dated 20.12.2021.

29. The Treasury Officer i.e., respondent No.4 has specifically taken a stand that the aforesaid application dated 20.12.2021 is voluntary and that no application was received in the Central Receipt registrar on 21.12.2021.

30. The communication dated 20.12.2021, therefore is quoted herein below:-

To,

*The Treasury Officer,
Jorhat Treasury,
Dated Jorhat the 20th December, 2021*

Sub : Application for VRS.

Sir,

I have the honour to inform you that I am unable to perform/continue my duty due to my ill health and I therefore made up my mind to go for VRS. I request you kindly to accept this and grant the VRS which I signed with my best of my knowledge and belief.

Your faithfully

Sd/- sign
Bina Pani Dutta, Sr. Accts Asstt,
Jorhat Treasury.

31. In the withdrawal letter dated 21.12.2021, the petitioner had specifically taken a stand that she was forced to sign the letter dated 20.12.2021. In her communication dated 21.12.2021, she had asserted that the petitioner was in good health and there cannot be any question of taking voluntary retirement on health grounds. It is also her stand that being a widow and having three children who have not yet completed their education, there cannot be any occasion for her to take voluntary retirement. She had specifically taken a stand in her writ petition that the said communication dated 21.12.2021 was duly received at the office of the respondent No.4 on 21.12.2021. A signature of receipt was also there, however, there is no designation or seal over such receipt. In this regard the petitioner has taken a specific stand in her reply affidavit that her communication was received by the concerned LDA namely, Sri Ajit Hazarika on the same day i.e., on 21.12.2021, however, such facts are not denied by the respondent more particularly by filing reply, though additional records were brought by the petitioner by way of the reply affidavit.

32. The state respondent to assert their stand that they did not receive the communication dated 21.12.2021, has produced a register before this court along with a forwarding report dated 21.09.2023, which shows that the said register is a Receipt Register of the office of the Treasury Officer, Jorhat containing details of records received for the period w.e.f 23.03.2021 to 26.10.2023. Against serial number 2464, dated 20.12.2021, it is reflected that an application for VRS was received from Bina Pani Dutta. The Receipt Register also reflects different communication received in the Office of the Treasury Officer, from different authorities like

the District & Sessions Judge, Office of the Deputy Commissioner, etc. Though, a specific stand has been taken by the respondent that the Deputy Commissioner passed the impugned order on 09.02.2022 and a copy was sent to the Treasury Officer, Jorhat to intimate the same to the petitioner, however, no receipt is reflected in the Receipt Register of such communication on the said date i.e., on 09.02.2022 or any other date thereafter. In fact, there is no receipt of any letter in the Receipt Register on 09.02.2022 from the Deputy Commissioner. From 10.02.2021 till 28.02.2022, there are different entries in the Receipt Register showing receipt of different communications from the Deputy Commissioner i.e., on 11.03.2022, 17.03.2022, 06.04.2022, 20.04.2022, 04.05.2022, 18.05.2022, 27.05.2022, 09.06.2022 and in the meantime on 03.06.2022 the interim order was passed. Thus, from 09.02.2022 till the passing of the interim order dated 03.06.2022, the impugned order purportedly passed by the Deputy Commissioner was not officially received in the office of the Treasury officer, Jorhat, though from the Issue Register, it is seen that the application of the petitioner dated 20.12.2021 was duly forwarded to the Deputy Commissioner. It is to be noted herein that the respondent Treasury Officer has taken a specific stand in his affidavit in opposition that any letter/document etc. which are received at his office are recorded at the Central Register by an LDA of the office of the Treasury officer with his signature by putting note and then it is sent for signature by the Treasury Officer. Therefore, in the context of the aforesaid stand, there should have been a receipt in the register as regards the communication/order of the Deputy Commissioner passed on 09.02.2022 in the Central Receipt Register, inasmuch as there is no dispute that said order was issued by the Deputy Commissioner separately. There is also no record to suggest that the office file was returned back by the Deputy

Commissioner inasmuch as, there is no such reflection in the Receipt Register. Therefore, the contention of the Treasury Officer that each and every communication is recorded in the Receipt Register has not been substantiated and therefore, it cannot be straightway accepted that the petitioner did not submit the communication dated 21.12.2021 only for the reason that there is no mention of receipt of such communication in the Central Receipt Register. That being the position, in the given facts of the present case and based on the pleadings of the parties and materials made available to this court, this court for the reasons recorded hereinabove accepts the contention of the petitioner that she withdrew the voluntary retirement application dated 20.12.2021 immediately on 21.12.2021 i.e., prior to expiry of three months of notice period.

33. Yet another aspect of the matter is that till the passing of the interim order dtd.03.06.2022, no formal order voluntarily retiring the petitioner from service was passed by the Deputy Commissioner, except approving the same in the office file. The Treasury Officer has admitted in his affidavit that the impugned communication dated 28/02/2022 was only an intimation to the petitioner by the Treasury Officer of the decision of the Deputy Commissioner. The impugned communication dated 28.02.2022, also reflects only the approval of the Deputy Commissioner, and no date of such decision of the Deputy Commissioner was reflected in the said communication. Thus, no formal order voluntarily retiring the petitioner was issued and/or served upon the petitioner pursuant to the decision taken in the office file by the competent authority i.e. the Deputy Commissioner. However, in the considered opinion of this Court, a formal order shall be necessary for voluntarily retiring the petitioner from service, more particularly, when such a decision is taken before the expiry of the notice period of three months inasmuch as during such period, prior to

acceptance, the government servant seeking voluntary retirement shall have a right to withdraw the notice of voluntary retirement and this Court is also of the view that until and unless such a formal order is issued by the authority i.e. the Deputy Commissioner, the employer-employee relation cannot cease prior to expiry of three months.

34. Law is by now well settled that formal office order is necessary and noting on file shall not be the final conclusion until and unless it is converted into a formal order. In this regard, this Court can place reliance on the decision of the Hon'ble Apex Court in ***Gulf Goans Hotels Co. Ltd vs Union of India*** reported in ***2014 (10) SCC 673***. The respondent authority has failed to produce any order issued by the Deputy Commissioner voluntarily retiring the petitioner pursuant to her application dated 20.12.2021. Therefore, in absence of such material, this Court can safely conclude that there was no formal order voluntarily retiring the petitioner on her application prior to expiry of three months, even if, it is assumed that such application of voluntary retirement was not under any duress or under force of the Treasury Officer.

35. Therefore in the totality of the matter, more particularly for the conclusions recorded in paragraph 32 and 33 & 34 of this judgment, this Court concludes that on the basis of the materials available on record cannot conclude that the petitioner did file the application dated 21.12.2021. Therefore, in the totality of the matter, this Court, on the basis of the materials available on record including the pleadings of the respective parties can safely conclude that the petitioner filed her application on 20.12.2021, she withdrew it on 21.12.2021 and that though the Deputy Commissioner approved such voluntary retirement on 09.02.2022 in the office file, however, no formal order was issued by the

competent authority i.e. the Deputy Commissioner, except intimation of such decision by the Treasury Officer. Such course of action, in the considered opinion of this Court, does not conform with the procedure which is required to be followed and as recorded hereinabove.

36. This Court cannot also be oblivious of the fact that the petitioner has approached this Court immediately after passing of the impugned order dated 28.02.2022 and that, this Court also protected the petitioner by way of an interim order by staying the impugned order and such order is still continuing. The petitioner had also immediately withdrawn her voluntary retirement. Therefore, in totality of the matter, this court is inclined to allow this petition for the reasons recorded hereinabove.

37. Accordingly, the impugned order dated 28.02.2022 and the decision of the Deputy Commissioner dated 09.02.2022 are set aside and quashed and the petitioner is allowed to continue in service as per her service condition.

38. This order shall not debar the authorities from proceeding against the petitioner, if they so desire for the alleged illegalities committed by the petitioner as pleaded by the respondent in their affidavit in opposition.

39. The original receipt register be returned back.

JUDGE

Comparing Assistant