

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2015

DATE OF DECISION : 7.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.A.No.346 of 2015

D.Logan

... Appellant/Petitioner

Vs.

1. The Headmaster,
R.V.Government Boys Higher Secondary School,
Hosur-635 009.
Krishnagiri District.
2. The Chief Educational Officer,
Hosur Educational District, Hosur,
Krishnagiri District.
3. The Joint Director,
Directorate of Secondary School,
D.P.I., Chennai-6.
4. The Director,
Directorate of School Education,
D.P.I., Chennai-6.
5. The Secretary,
Education Department,
Secretary Office,
Fort St. George,
Chennai-9.

... Respondents/Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 27.11.2012 passed in W.P.No.16560 of 2012.

W.P.No.16560 of 2012 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in relating to proceedings of the 2nd respondent in Na.Ka.No. 7651/A6/2010 dated 14.03.2012 and quash the same and subsequently, directing the second respondent to deem petitioner Voluntary Retirement Service application as per fundamental rules 56 (3)(f) & as per G.O.Ms.No.350 P & AR (FR III) Department dated 07.10.1991 after carrying out all appropriate rectifications and modifications in service records and consequently grant all incentives and increments to which the petitioner legitimately eligible as per service rules pertaining to qualification correcting salary variations with interest and five years weightage to the petitioner.

For Appellant : Mr.R.Swaminathan

For Respondent : Mr.K.Karthikeyan,
Government Advocate

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant appeal is directed against the order dated 27th November, 2012 passed by the learned Single Judge in W.P.No.16560 of 2012, dismissing the writ petition preferred by the petitioner / appellant herein.

2. The appellant, seeking a comprehensive relief to the extent of quashing the order dated 14th March, 2012, whereunder, his application for voluntary retirement was rejected and also seeking consequential benefits by making appropriate rectifications and modifications in the service record, grant of all incentive increments with salary variations with interest and also five years weightage to him, has filed the said writ petition.

3. The facts are in narrow compass and not disputed. The appellant, while working as secondary grade teacher in the first respondent school, made an application on 30th April, 2010 while remaining absent from work, seeking voluntary retirement with effect from 1st August, 2010. In the application, it was stated that the appellant has completed 25 years of service and as such, he became eligible for voluntary retirement sought by him. Thus, the application be considered for grant of retirement with all terminal benefits.

4. It appears that no decision was taken on the said application. Feeling aggrieved, the appellant came up with the writ petition, being W.P.No.14059 of 2011 seeking direction to the respondents to consider his application for voluntary retirement and all other incidental reliefs as sought in this petition. The learned Single Judge disposed of the writ petition on 15th July, 2011, directing the first respondent therein, who is the first respondent in the instant appeal also, to send proposals and recommendations as required by the Chief Educational Officer, the second respondent herein as well as in the instant appeal, in the proceedings in O.Mu.No.2203/A6/10, within a period of four weeks from the date of pronouncement of the order. Further, the second respondent, i.e., C.E.O. was directed to pass orders thereon within a period of two weeks thereafter. The said order dated 15th July, 2011 was complied with by the impugned order dated 14th March, 2012, whereunder the said application for voluntary retirement was rejected on the ground that from the date of making application, the appellant remained absent and did not join duty and as such, his application did not merit consideration as per G.O.Ms.No.378, Government servant and Administrative Reforms, dated 11th December, 1995. Being dissatisfied, the instant petition for the aforestated relief came to be filed.

5. The learned Single Judge, taking note of the conditions prescribed in G.O.Ms.No.376 dated 11th December, 1995, whereunder, it was prescribed that no leave can be taken by the employee and only after rejoining duty by the said employee, his application for voluntary retirement can be considered, dismissed the writ petition. Thus, the instant appeal.

6. The question, which arises for consideration is in two folds. Firstly, whether the application of the appellant stands automatically allowed on completion of three months from the date of making application, if no order rejecting or accepting his application was passed and secondly, whether the condition of rejoining, if the applicant is on leave before consideration of the application, is mandatory as involved in the case on hand.

7. The learned counsel appearing for the appellant would contend that the notification dated 11th December 1995 cannot incorporate a new condition for rejection of the application as prescribed under Clause 56(3)(f) of the Fundamental Rules of the Tamil Nadu Government (for short "FR"). Seemingly, the condition prescribed in G.O. Ms.No.376 dated 11 December 1995 was for the purpose of not granting leave during the pendency of application for

voluntary retirement. The said condition cannot be read into as a part of FR 56(3). According to the learned counsel for the appellant, the appellant has completed more than 25 years of service and to his credit, the earned leave got accumulated and therefore, the authorities ought to have considered his leave.

8. Per contra, Mr.K.Karthikeyan, learned Government Advocate, appearing for the respondents would submit that the application submitted by the appellant was not in proper format. The appellant failed to submit requisite documents, as mentioned in paragraph 15 of the counter affidavit, which are relevant for the purpose of taking decision. The appellant failed to rejoin duty, which was necessary for consideration of the application. Thus, his request for voluntary retirement was rejected by the CEO, Krishnagiri by proceedings dated 31st August, 2010 for want of aforesaid documents and also compliance of the mandatory condition of rejoining duty before three months notice period. His application was rightly rejected by the second respondent. It is further contended that the impugned order passed by the learned Single Judge is just and proper, warranting no interference.

9. We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

10. The Fundamental Rules of the Tamil Nadu Government came into force with effect from 1st January, 1922 and was adapted and confirmed under Article 309 of the Constitution of India subsequently.

11. The application for voluntary retirement by the government employee is regulated under provisions of FR 56(3). For proper appreciation, it is beneficial to extract the same as under :

“(3) Voluntary retirement.-(a) A Government servant who has attained the age of fifty-years or who has completed twenty years of qualifying service may retire from service by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer for information. Before giving such notice, he may satisfy himself by means of a reference to such authority that he has completed the required number of years of qualifying service.

Explanation (i).-The term “appointing authority” means the authority which has power to make substantive

appointment to the post or service from which the Government servant wants to retire and includes any higher authority to such appointing authority.

Explanation (ii).-The term "qualifying service" means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment without interruption.

(with effect from 14th February 1997.)

[G.O.Ms.No.39, Personnel & Administrative Reforms
(FR.III) Department, dated 14th February 1997.]

(b)The period of three months notice shall be reckoned from the date of receipt of notice by the appointing authority.

(c)The three months notice may be given before the Government servant attains the qualifying age or the qualifying service, as the case may be, provided that the retirement takes place after attaining the specified age or completing the required number of years of qualifying service, as the case may be.

(d)(i)A Government servant including a Government servant in the Tamil Nadu Basic service retiring voluntarily shall be given a weightage not exceeding five years, subject to the condition that the total qualifying service rendered by such Government servant, including weightage, does not in any case exceed Thirty three years of qualifying service and it does not take him beyond the date of superannuation, as the case may be.

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(e)notice of voluntarily retirement given by a Government servant shall be accepted by the appointing authority, subject to the following conditions being satisfied namely:-

(i)that no disciplinary proceedings are contemplated or pending against the Government servant concerned for the imposition of a major penalty;

(ii)that no prosecution is contemplated or pending in a Court of Law against the Government servant concerned;

(iii)that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iv)that no dues which cannot be recovered from his Death-cum-Retirement Gratuity are pending to be recovered from the Government servant concerned; and

(v)that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily.

(f)The appointing authority shall issue orders before the date of expiry of notice either accepting the voluntary retirement or not. Otherwise, the Government servant shall be deemed to have been retired voluntary from service at the end of the period of notice:

Provided that where a Government servant under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The appointing authority may withhold the permission sought for by the Government servant, if any of the conditions specified in clause (e) are not satisfied.

(g)The Government servant may withdraw the notice of voluntary retirement or withdraw the voluntary retirement after acceptance, as the case may be, subsequently with the approval of the appointing authority, before the expiry of the period of notice.

[G.O.Ms.No.350, Personnel & Administrative Reforms (FR Special) Department, dated 7th October 1991 - with effect from 18th December, 1987]

Explanation I.-When a Government servant under suspension or against whom disciplinary action is pending seeks to retire voluntarily under this sub-rule, the specific permission of the appropriate authority or

appointing authority for such voluntary retirement is necessary. The appropriate authority or appointing authority may with-hold the permission sought by the Government servant.

Explanation II.- For the purpose of this sub-rule, the period of three months notice shall commence from the date of receipt of notice by the appropriate authority, or appointing authority.

Explanation III.-The three months notice referred to in clause (a) and (b) may be given before the Government servant attains the age or qualifying service specified in the said clauses provided the retirement takes place after attaining the specified age or completing the specified qualifying service, as the case may be.

[G.O.Ms.No.829, Personnel & Administrative Reforms (FR.III)) Department, dated 26th August 1985.]”

12. In the counter affidavit filed on 8th July, 2015, it is averred that the application dated 30th April, 2010 filed by the petitioner was rejected by the second respondent on 31st August, 2010, which is incredulous as thereafter there was no necessity for the writ petitioner to file a writ petition, being W.P.No.14059 of 2011, for a direction to consider his application dated 30th April, 2010, which was ordered on 15th July 2011. The respondents were represented through counsel and no statement was made to the effect that the said application dated 30th April, 2010 had already been rejected on 30th August, 2010. Even subsequently, while passing the impugned order on 14th March, 2012, there is no reference of dismissal of the application at an earlier point of time, as stated in the aforestated counter affidavit. Thus, the said averment deserves to be rejected.

13. The earlier writ petition, being W.P.No.14059 of 2011 was disposed of with a direction to the first respondent to send proposals and recommendations to the second respondent within a period of four weeks and thereafter, the second respondent was directed to consider the same within a period of two weeks. The six weeks period from the date of passing of the order, i.e., 15th July, 2011 came to an end on 25th August, 2011. The second respondent had passed the order on 14th March, 2012. Even if three months period as prescribed under FR 56(3)(a) is reckoned from the date of passing of the order by the learned Single Judge on 15th July, 2011, the same would expire on 14th October, 2011, and no decision was taken by that

date, as stipulated under clause (f) of FR 56(3). In that event, the deemed provision of acceptance of voluntary retirement would come into force. Here, it is pertinent to state that the explanation under clause (g) of FR 56(3) provides that in the case of a Government employee being under suspension or against whom disciplinary action is pending, seeks to retire voluntarily, specific permission of the appropriate authority or apponiting authority is necessary. In the case on hand, it is not a case, wherein, the appellant was either under suspension or departmental enquiry was pending against him.

14. The other aspect of pre-condition to rejoin duty and to work without any leave as prescribed under the aforestated G.O.Ms.No.376, dated 11th December 1995, is not a condition prescribed under FR 56 (3), which is a statutory provision. FR 56(3)(e) provides for acceptance of notice of voluntary retirement, subject to certain conditions. FR 56(3)(f) clearly provides that in the event the appointing authority does not issue an order before the date of expiry of notice either accepting the voluntary retirement or not, the government servant shall be deemed to have been retired voluntarily from service at the end of the notice period. There is no quarrel on the factual aspect that no decision was taken even to the effect that the application was not proper and lacks relevant documents before expiry of the notice period.

15. In *Tek Chand vs. Dile Ram*¹, wherein, Rule 48-A(2) of the Central Civil Services (Pension) Rules, 1972, akin to clause (f) of FR 56(3) in the instant case, was under consideration, the Supreme Court held as under:

"33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5-12-1994.

¹ (2001) 3 SCC 290

The learned Senior Counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of the Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a government servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation."

16. In the aforesaid judgment, the Supreme Court, referring to the judgment in *State of Haryana vs. S.K. Singhal*², further held as under:

"35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of

² (1999) 4 SCC 293

notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

17. In the conspectus of the aforestated factual matrix and also legal position involved herein, we are of the view that not passing the order to the effect of rejection of application within the notice period as mandated under clause (f) FR 56(3), the said application is deemed to have been accepted and the writ petitioner / appellant is deemed to have retired voluntarily from service on expiry of notice period on 1st August, 2010. Consequently, the appellant shall be entitled to all terminal benefits as per law.

18. As a sequitur, the impugned order dated 27 November 2012 rendered by the learned Single Judge is set aside and the writ appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Headmaster,
R.V. Government Boys Higher Secondary School,
Hosur-635 009.
Krishnagiri District.
2. The Chief Educational Officer,
Hosur Educational District, Hosur,
Krishnagiri District.
3. The Joint Director,
Directorate of Secondary School,
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4. The Director,
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5. The Secretary,
Education Department,
Secretary Office,
Fort St. George,
Chennai-9.

+1cc to M/s.R.Swaminathan, Advocate, S.R.No.54821
+1cc to the Government Pleader, S.R.No.54626

W.A.No.346 of 2015

UG(CO)
CA(15/10/2015)

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