

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.811 of 2015

P.Subbu

.. Appellant

Vs.

1.The Secretary to the
Government of Tamil Nadu,
Home Department,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai.

3.The Commissioner of Police,
Coimbatore City,
Coimbatore-641 018.

... Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 04.03.2015 passed in W.P.No.15375 of 2014 praying to issue writ of Certiorified Mandamus Calling for the records of the 3rd respondent impugned memo in proceedings No.C.No.J3/18236/2013 dated 25.04.2014 and quash the same as illegal and Consequently directing the 3rd respondent to permit the petitioner to retire on 06.07.2014 which is the 90th day from 07.04.2014 on which the letter of the Petitioner dated 03.04.2014 seeking permission to retire on VRS was received by the 3rd respondent.

For Appellant : Mr.M.Purushothaman

For Respondents: Mr.P.S.Sivashanmugasundaram, Spl.G.P.

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JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The appellant, who was the writ petitioner, has preferred the writ petition, questioning the legality of the proceedings dated 25th April, 2014 and seeking direction to permit the writ petitioner to retire on 6th July 2014 on completion of 90 days from 7th April, 2014, the date his letter dated 3rd April, 2014, seeking voluntary retirement was received.

2 The learned Single Judge, examining all facts of the case, came to the conclusion as under :

"7.The rule provides for 90 days notice for voluntary retirement. The very same issue came up for consideration before a Division Bench of this Court in T.Vijayakumar vs. The Principal District Judge, Erode, (W.P.No.23985 of 2014). The Division Bench having found that the petitioner therein was on leave during the notice period, by order dated 11 December 2014, upheld the order passed by the Principal District Judge, Erode and directed him to issue a fresh notice for voluntary retirement, after joining duty. The petitioner is similarly situated. I am therefore of the view that the third respondent was justified in directing the petitioner to join duty and submit a fresh application for voluntary retirement."

3 Rule 56(3) of the Tamil Nadu Government Fundamental Rules, deals with the voluntary retirement. Under the said rule, a Government servant on attaining the age of fifty years or who has completed twenty years of qualifying service, may seek retirement from service by giving notice of not less than three months in writing direct to the appointing authority. Clause (b) of the Fundamental Rule 56(3), provides for reckoning of period of three months from the date of receipt of notice by the appointing authority. Thus, a Government servant is entitled to seek voluntary retirement by giving three months notice before seeking voluntary retirement on attaining the age of 50 years or 20 years of qualifying service.

4 The facts in brief are that the petitioner submitted a notice for voluntary retirement on 3rd April, 2014. Thereafter, the petitioner proceeded on medical leave. The case of the respondent is that three months notice period contemplates continuous working without extraordinary leave or any other leave. The petitioner has no unearned leave to his credit and as such his request for voluntary retirement was declined.

5 The learned Single Judge, examining all relevant facts, came to the conclusion that before submitting the application for voluntary retirement on 3rd April, 2014, the petitioner was already on leave since 12th January, 2014. After submission of the leave, the petitioner again proceeded on leave. The three months notice does not mean the notice including leave period. The three months notice is the notice during working period. The third respondent, vide communication dated 25th April, 2014 informed the petitioner as under :

"i) It is ascertained that you have availed Medical leave since 12.01.14 and have not reported for duty and applied for V.R.S as per the reference cited above. Moreover, it is reported that you have not appeared before the Medical board in spite of instructions issued for you to do so. This is not permissible as per the Rules laid down by the Tamilnadu State Government with respect to the Police Department. Hence, it is directed that you may apply for V.R.S three months in advance only after appearing before the Medical board, reporting for duty and discharge the same for a period of 90 days.

ii) It is seen that you have applied for V.R.S on 03.07.14 (AN). V.R.S may be allowed if the requested date is in advance of 3 months. For administrative reasons, the dates allowed on V.R.S are at the end of the requested month or at the beginning of the subsequent month."

6 The learned counsel for the appellant relying on a decision of the learned Single Judge dated 5th July, 2007 in W.P.No.15066 of 2006 would contend that there is no prohibition against going on leave during the notice period of three months and as such, the same will not have any effect.

7 We have considered all facts in its entirety. The petitioner was advised four weeks medical leave from 21st April, 2014 to 19th May, 2014 by the medical board on medical grounds. Thereafter, he was required to report to office to complete the working of mandatory three months period. The petitioner did not join after submission of his notice for voluntary retirement. It is also the case of the respondents that there was no earned leave to his credit.

8 We are of the considered view that the petitioner has taken recourse to proceed on medical leave to defeat the purpose of working for three months during the notice period, as required under the provisions of law. The petitioner has not shown any reason for not joining service, except that he was required to remain on medical leave. The petitioner has come forward to pay three months pay and allowances in lieu of such notice, as prescribed under FR 56(2). FR 56(2) deals with compulsory retirement, whereunder there is clear prescription that any Government servant may be retired by giving notice of not less than three months in writing or three months' pay

and allowances in lieu of such notice. However, in the case of voluntary retirement under FR 56(3), there is no such provision of making payment of three months' pay and allowances in lieu of such notice and as such, the same cannot be incorporated in the provision of FR 56(3). Three months' notice of voluntary retirement is contemplated with a purpose, albeit it is not elaborated in the fundamental rule. However, since there is specific provision for three months' notice, the Government servant is liable to work for three months' after submission of the notice for voluntary retirement.

9 In the case on hand, the petitioner, after submission of the notice, had proceeded on medical leave. Thus, the application of the petitioner for voluntary retirement was rightly rejected. The learned Single Judge, while dismissing the writ petition, had granted liberty to the petitioner to submit a fresh application for voluntary retirement, giving 90 days notice, if so advised.

10 An identical issue came up for consideration in W.P.No.23985 of 2014. A division bench of this court, considering the relevant G.O.Ms.No.376, dated 11 December, 1995, held as under :

"9.The Government of Tamil Nadu have issued an order in G.O.Ms.No.376 Personnel and Administrative Reforms (F.R.III) Department dated 11 December 1995, clarifying Fundamental Rule 56(3) which governs the issue relating to voluntary retirement of Government servants. The Government Order in G.O.Ms.No.376 indicates that unearned leave on medical certificate and unearned leave on private affairs may be sanctioned to a Government servant during the notice period of voluntary retirement, only if he rejoins duty on expiry of leave. Otherwise, the leave salary would be recovered from him. The Government Order further shows that when earned leave without allowances runs concurrently with the period of notice, the leave should be refused and he may be requested to join duty immediately and give a fresh notice of not less than three months or otherwise, the request for voluntary retirement may be negatived."

11 Thus, the petitioner is directed to join duty forthwith. It is open to him to submit a fresh application for voluntary retirement, if so advised. In that event, his application for voluntary retirement be considered and decided on merits and as per law, by the respondents.

12 For the reasons stated herein-above, the writ appeal is dismissed. No costs.

-s/d-
Assistant Registrar(CSII)
dt:04/08/2015

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to the
Government of Tamil Nadu,
Home Department,
Fort St. George,
Secretariat,
Chennai-600 009.
- 2.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai.
- 3.The Commissioner of Police,
Coimbatore City,
Coimbatore-641 018.

+6 ccs to Mr.M.Purushothaman Advocate sr.35794,
sr.37270
+2 cc to Government Pleader sr.37035,35956

सत्यमेव जयते

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