

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 4.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.15375 of 2014

P.Subbu

... Petitioner

versus

1.The Secretary,
Government of Tamil Nadu,
Home Department,
Fort St.George,
Secretariat, Chennai 9

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

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

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent impugned memo in proceeding No.C.No.J3/18236/2013 dated 25.4.2014 and quash the same as illegal and consequently, directing the 3rd respondent to permit the petitioner to retire on 6.7.2014, which is the 90th day from 7.4.2014 on which the letter of the petitioner dated 3.4.2014 seeking permission to retire on VRS was received by the 3rd respondent.

For petitioner

Mr.A.Edwin Prabakar

For respondents

Mr.M.S.Ramesh,
Additional Government Pleader

O R D E R

The application submitted by the petitioner for voluntary retirement was rejected by the Commissioner of Police, Coimbatore City, primarily on the ground that he was on medical leave during the notice period. The said order is under challenge in this Writ Petition.

2. The petitioner having found that his marriage was broken on account of the illicit relationship of his wife with a Sub Inspector of Police, submitted an application for voluntary retirement. The notice of voluntary retirement was given on 3 April 2014. In the meantime, the petitioner was transferred to Kudankulam Police Station. The petitioner went on medical leave. The third respondent alleged that the petitioner failed to appear before the Medical Board. The third respondent ultimately rejected the application for voluntary retirement on the ground that the petitioner availed leave during the notice period.

3. The third respondent has filed a counter affidavit justifying the impugned order. According to the third respondent, three months notice period should necessarily be continuous one and should not include period of extraordinary leave. The petitioner has no unearned leave to his credit and therefore, it is not possible to accept his request for voluntary retirement.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader on behalf of the respondents.

5. The petitioner submitted an application for voluntary retirement on 3 April 2014. The petitioner even before submitting application for voluntary retirement, availed medical leave. In fact, he was on medical leave since 12 January 2014. Even after submitting the application for voluntary retirement, the petitioner continued his medical leave. F.R.56(3) provides that 90 days notice should be given for voluntary retirement.

6. The learned counsel for the petitioner contended that the third respondent was not justified in rejecting the request for voluntary retirement on the ground that during the notice period, the petitioner availed medical leave. According to the learned counsel, there was no prohibition in taking leave during the notice period.

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 he petitioner to join duty and submit a fresh application for voluntary retirement.

8. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

9. However, I make it clear that this order would not stand in the way of the petitioner submitting a fresh application for voluntary retirement giving 90 days notice.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Home Department,
Fort St.George,
Secretariat, Chennai 9

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

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

+ 1 cc to Mr.A.Edwin Prabakar Advocate SR.11939

+ 1 cc Government Pleader Sr.12336

NM(CO)
EU 23.03.2015

सत्यमेव जयते

W.P.No.15375 of 2014

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