

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND SIXTEEN
PRESENT

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.4501 of 2016

Between:

The state of Andhra Pradesh,
Rep.by its Secretary,
Infrastructure and Investment Department,
Hyderabad and another

..... PETITIONERS

AND

The Andhra Pradesh Administrative Tribunal
at Hyderabad, rep.by its Registrar and another

.....RESPONDENTS

Counsel for the Petitioners : **Smt.I.MAAMU VANI**

Counsel for Respondent No.2 : **Mr.K.RAM REDDY**

DATE OF JUDGMENT PRONOUNCED: **18.02.2016**

SUBMITTED FOR APPROVAL:

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

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Versus

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.....Respondents

! Counsel for the Petitioner: Smt.I.MAMMU VANI

^ Counsel for the respondents: Mr.K.RAM REDDY

< Gist :

> Head Note:

**? Cases Referred:
1. (2006) 7 SCC 664
2. (2011) 3 SCC 475**

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.4501 of 2016

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Order dated 20.01.2016 in O.A.No.4702 of 2015 of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal') is called in question by the respondents to the said O.A., i.e. State of Andhra Pradesh, represented by its Principal Secretary, Infrastructure and Investment Department, Hyderabad and the Director of Ports, Kakinada.

2. The facts in brief are that respondent No.2 was appointed as Assistant Executive Engineer in petitioner No.2 department in the year 1992. Petitioner No.1 has framed a scheme of voluntary retirement of State Government employees vide G.O.Ms.No.413, FINANCE & PLG. (FIN.WING-PEN.I) DEPARTMENT, dated 29.11.1977. The scheme facilitates the Government servants who have put in not less than 20 years of qualifying service to take voluntary retirement by giving at least three months notice in writing to the authority which has power to make a substantive appointment to the post from which he proposes to retire. Pleading that respondent No.2 had innumerable family problems, he approached petitioner No.2 with an application for permission to take voluntary retirement. 11 other employees of petitioner No.2 have also made similar applications. By a common proceeding, vide Memo No.DoP/B1/1098/2015, dated 25.07.2015, petitioner No.2 has rejected their applications in purported exercise of his power under Rule-43(4) of the Andhra Pradesh Revised Pension Rules, 1980 (for short 'Pension Rules'). Assailing this proceeding, respondent No.2 has filed O.A.No.4702 of 2015. Petitioner No.2 has filed a counter affidavit seeking to sustain his decision. After considering the respective pleadings of the parties and hearing the counsel, the Tribunal allowed the O.A by rendering a finding that under the extant pension scheme the competent authority has power to refuse the request for voluntary retirement only when departmental/court proceedings are pending or contemplated against the

Government servant seeking voluntary retirement. Dissatisfied with this order, the petitioners filed the present writ petition.

3. Smt.I.Mammu Vani, learned counsel appearing for the petitioners, submitted that an inherent discretion exists in employer either to accept or reject applications for voluntarily retirement and that for various reasons mentioned in the counter affidavit relating to administrative exigencies, the petitioners had to perforce reject the applications of respondent No.2 and 11 others and that the Tribunal has committed a serious error in allowing the O.A filed by respondent No.2.

4. Mr.K.Ram Reddy, learned counsel appearing for respondent No.2, submitted that the finding of the Tribunal is in consonance with the scheme of voluntary retirement framed vide G.O.Ms.No.413, dated 29.11.1977, and that therefore, the order of the Tribunal is not liable to be interfered with.

5. We have carefully considered the rival contentions of both parties and perused the records.

6. As far back as 1977 petitioner No.1 has issued G.O.Ms.No.413 providing for voluntary retirement of Government servants, who have put in not less than 20 years of qualifying service. The scheme contains certain conditions, subject to which, a Government servant can seek voluntary retirement. Sub-clauses (i), (vi), (vii) and (viii) of Clause 3 of the scheme are germane to be considered in the present context and they read as under.

- (i) Government Servants who have put in not less than twenty years qualifying service may, by giving at least three months notice, in writing to the authority which has power to make a substantive appointment to the post from which they propose to retire, retire from service voluntarily under this scheme. This scheme is purely optional, the initiative resting with the Government Servants themselves. Government does not have the reciprocal right to retire Government servants, on its own, under this scheme.

- (vi) A notice of voluntary retirement may be withdrawn, subsequently only with the approval of the authority mentioned in instruction (i) above, provided the request for such withdrawal is made before the expiry of the notice.
- (vii) When a notice of voluntary retirement is given under this scheme, the authority competent to accept the notice under instruction (i) above, shall immediately review the case to see whether departmental disciplinary or Court proceedings are pending or contemplated against the Government servant seeking voluntary retirement, which in his opinion, are likely to culminate in major penalty of dismissal or removal from service. The notice of voluntary retirement may be refused in such cases by the competent authority.
- (viii) On receipt of a notice of voluntary retirement, the authority competent to accept the notice, shall issue an order before the expiry of the notice period, either accepting or rejecting the voluntary retirement. Such Government servant shall not however retire, unless the notice of voluntary retirement is accepted by the competent authority.

7. As could be seen from the above reproduced clauses of the scheme, every Government servant who has put in not less than 20 years of qualifying service is entitled to apply for voluntary retirement by giving three months' notice. Under clause-3(vii), the competent authority has discretion to refuse the request in a case where a departmental disciplinary or Court proceeding is pending or contemplated against the Government servant seeking voluntary retirement, if in his opinion, the proceedings are likely to culminate in major penalty of dismissal or removal from service. Under sub-clause (viii) of clause-3, it is incumbent upon the competent authority to pass an order before the expiry of the notice period either accepting or rejecting application for voluntary retirement and the Government servant shall not retire unless notice of

voluntary retirement is accepted by the competent authority. Since the impugned rejection was made by petitioner No.2 under Rule-43(4) of the Pension Rules, it is apposite to reproduce this rule hereunder:

“43. Retirement on completion of 20 years of qualifying service:

(4) A Government servant opting for retirement under sub-rule(1), shall not retire unless the notice given by him as per proviso to sub-rule (1) is accepted by the competent authority:

Provided that the competent authority shall issue an order before the expiry of the notice period accepting or rejecting the notice.”

8. The learned counsel for the petitioners submitted that under sub-clause (vii) of Clause-3 of the scheme, the competent authority is vested with the power to refuse the notice of voluntary retirement and under sub-clause (viii) of Clause-3, a discretion is vested in the competent authority either to accept or reject the application for voluntary retirement. She has placed heavy reliance upon sub-rule(4) of Rule-43 of the Pension Rules. The learned counsel has also relied upon the judgments of the Apex Court in ***Board of Trustees, Visakhapatnam Port Trust vs. T.S.N.Raju***^[1] and ***Indian Overseas Bank vs. Tribhuwan Nath Srivastava***^[2] in support of her submission that the competent authority has discretion either to accept or reject the request for voluntary retirement.

9. On earnest consideration of the submissions of the learned counsel for the parties with reference to the voluntary retirement scheme, we are unable to find any merit in the submissions of the learned counsel for the petitioners. As held by the Tribunal, the only contingency on which the competent authority can reject the request for voluntary retirement is envisaged by sub-clause (vii) of Clause-3, i.e, where departmental disciplinary or court proceedings are pending and in the opinion of the competent authority they are likely to culminate into major penalty or dismissal or removal from service. The learned counsel for the petitioners however laid heavy emphasis on sub-clause (viii) of Clause-3, which reads as under:

“Such Government servant shall not however retire, unless the

notice of voluntary retirement is accepted by the competent authority.”

In our opinion, this clause limited the discretion of the authority to refuse the request for voluntary retirement only in cases where departmental disciplinary or court proceedings are pending and in the opinion of the competent authority they are likely to culminate in major penalty or dismissal or removal from service. Sub-clause (viii) of Clause-3 has not conferred any larger discretion on the competent authority than what is conferred on it under sub-clause (vii). Sub-clause (viii) has to be read and understood in sequence after reading sub-clause (vii), i.e, after examining the request of the employee for voluntary retirement, the competent authority has to take a decision before the expiry of the notice period either to accept or reject the request, and in case the contingencies under sub-clause (vii) exist, the competent authority will reject the application and in other cases, he will accept the request for voluntary retirement.

10. As regards sub-rule (4) or Rule-43 of the Pension Rules, which lays down that a Government servant shall not retire unless the notice given by him is accepted by the competent authority, we do not understand as to how this sub-rule is in conflict with the scheme and confers a discretion on the competent authority to reject the request for voluntary retirement contrary to the scheme already in force. In our view the rule must be read in conjunction with the scheme and not in derogation thereof. If it were the intention of the State Government which framed the Pension Rules that they must override the voluntary retirement scheme, there would have been a provision, such as a *non obstante* clause. In the absence of incorporation of such a provision, no discretion other than the one which is vested in the competent authority under sub-clause (vii) of Clause-3 could be read in to the Rules. Therefore, in our opinion, there is no conflict between the Pension Rules and the Voluntary Retirement Scheme and the competent authority is bound to act within the confines of the voluntary retirement scheme, framed under G.O.Ms.No.413, dated 29.11.1977.

11. Coming to the judgments cited by the learned counsel for the

petitioners, a careful reading of these judgments would reveal that the voluntary retirement schemes which fell for consideration of the Supreme Court contain specific clauses vesting the competent authority with unfettered discretion either to accept or reject the request for voluntary retirement. Such unfettered discretion is not vested in the competent authority under the voluntary retirement scheme, applicable to the present case and on the contrary, limited discretion is conferred on the competent authority only under sub-clause (vii) of Clause-3 of the scheme, as discussed above.

12. On the analysis, as above, we do not find any illegality or error in the order of the Tribunal and hence, we decline to interfere with the said order. The Writ Petition is accordingly dismissed. In the circumstances, there shall be no order as to costs.

As a sequel to dismissal of the Writ Petition, WPMP No.5763 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 18.02.2016

Dsr

Note:

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[\[1\]](#) (2006) 7 SCC 664

[\[2\]](#) (2011) 3 SCC 475