

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4952 of 2017

and WMP.No.5181 of 2017

B.Amala Jeyarani

.. Petitioner

vs.

1.Director,

Directorate of Public Health and
Preventive Medicine,
No.359, Anna Salai,
DMS Complex, Teynampet,
Chennai-600 006.

2.Deputy Director,

Department of Public Health and
Preventive Medicine,
Behind General Hospital-Palani,
Dindigul District-624 601.

3.District Health Officer,

Government Primary Health Centre,
Mannavanur, Kodaikanal Taluk,
Dindigul District.

4.Medical Officer,

Government Primary Health Centre,
Vagarai, Palani Taluk,
Dindigul District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that the petitioner is deemed to have voluntarily retired from the services of the respondents on and from 16.12.2016 and consequently, direct the respondents to relieve the services of the petitioner and to settle petitioner's terminal benefits such as Pension, Commutated Value of Pension, Death cum Retirement Gratuity etc., within the time frame stipulated by this Court.

For Petitioner

: Mr.Balan Haridas

For Respondents

: Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner, after completing +2, was appointed as Village Health Nurse on 07.01.1989 and claims to have discharging his duties honestly, sincerely and efficiently and at present working at Vagarai Primary Health Centre. The petitioner, on account of not keeping good health, availed medical leave on 10.04.2016 and though she was directed to subject herself for examination before the Medical Board, she has not received any communication regarding the date on which she should attend the medical examination. Since the petitioner's health did not improve, she extended the medical leave from 03.08.2016 to 30.09.2016 and in the light of the said fact and due to family circumstances, she took a decision to voluntarily retire from service and accordingly, she submitted an application dated 13.09.2016 seeking voluntary retirement to the respondents and requested to relieve her from service after 90 days and the said application was received by the respondent on 16.09.2016 and the 90 days period was over by 15.12.2016 and from 16.12.2016, her service should have been relieved and since no orders have been passed on her application, the petitioner sent a representation requesting to relieve her from service and conferment of terminal benefits and since no response was forthcoming, she came forward with this writ petition.

3. Mr. Balan Haridas, learned counsel appearing for the petitioner has drawn the attention of this Court to Rule 56(3) (f) of the Fundamental Rules and would submit that as per the said provision, 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 voluntarily from service at the end of the period of notice. The learned counsel appearing for the petitioner has also placed reliance upon a Division Bench judgment of this Court in *D. Logan v. The Headmaster, R.V. Government Boys Higher Secondary School, Hosur* [2015 (6) CTC 646] and would submit that the said judgment in-turn placed reliance upon the judgments in *Tek Chand v. Dile Ram* [2001 (3) SCC 290] and *State of Haryana v. S.K. Singha* [1992 (2) LLN 660 (SC)] and held that failure to pass orders on the application for voluntary retirement within the time mandated under F.R. 56(3) would result in deemed acceptance of voluntary retirement and prays for appropriate orders.

4. *Per contra*, Mr. V. Dhananjayan, learned Special Government Pleader, who accepts notice on behalf of the respondents, would submit that decision would be taken on the

application submitted by the petitioner as expeditiously as possible.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. In the light of FR 56(3)(f) coupled with the above cited judgment, this Court is of the view that non-passing of order to the effect of accepting or rejecting of the application within the notice period would result in deemed acceptance of the application for voluntary retirement. In the light of the settled legal position, this Court directs the first respondent to consider and dispose of the petitioner's application dated 13.09.2016 seeking voluntary retirement on merits and in accordance with law and pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till then, shall defer decision, if any, in respect of initiating departmental proceedings on account of non-joining of duty by the petitioner due to her illness.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-sd-

Assistant Registrar

//True copy//

Sub Assistant Registrar

jvm

To

1. Director,
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and Preventive Medicine,
No.359, Anna Salai,
DMS Complex, Teynampet, Chennai-600 006.

2. Deputy Director,
Department of Public Health
and Preventive Medicine,
Behind General Hospital-Palani,
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4. Medical Officer,
Government Primary Health Centre,
Vagarai, Palani Taluk,
Dindigul District.

+1 C.C. to The Government Pleader, High Court, Chennai-
104 SR.NO.13570

+1 C.C. to Mr. Balan Haridas Advocate SR.NO.12861

WP.No.4952 of 2017

KK (CO)
VS 13.03.2017



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