

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31319 of 2017
and
WMP Nos.34405 and 34406 of 2017

Z.Ibrahim .. Petitioner

-vs-

1. The Principal Secretary & Commissioner of
Treasuries & Accounts, IFD Complex,
Nandanam, Chennai - 600 035
2. The District Treasury Officer,
Virudhunagar District, Virudhunagar,
3. The Assistant Treasury Officer,
Srivilliputtur Sub Treasury,
Srivilliputtur, Virudhunagar District .. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his Proceedings Na.Ka.No.05731/C2/2016 dated 20.09.2017 and the order passed by the 2nd respondent in his proceedings Na.Ka.No.852/2015/A.1 dated 26.10.2017 and quash the same and direct the respondents to settle the retirement and terminal benefits and confer all the consequential benefits to the petitioner.

For Petitioner :: Mr.C.Selvaraj, Senior Counsel for
M/s C.S.Associates

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his Proceedings Na.Ka.No.05731/C2/2016 dated 20.09.2017 and the order passed by the 2nd respondent in his proceedings Na.Ka.No.852/2015/A.1 dated 26.10.2017 and quash the same and consequently to direct the respondents to settle the retirement and terminal benefits and confer all the consequential benefits to the petitioner.

2. Learned senior counsel appearing for the petitioner submitted that the petitioner while serving as Accountant in the cadre of Assistant at Sub Treasury, Srivilliputhur from 24.07.2012, suddenly affected with cervical spondylitis and giddiness. Therefore, he applied for medical leave, on loss of pay, from 06.01.2015 to 24.08.2015, on medical grounds. Thereafter, all of a sudden, he became unconscious and went to coma stage. When he approached hospital, Doctors advised him to undergo for surgery over his brain, otherwise, it would be very difficult for him to recover from the coma stage. Therefore, petitioner underwent brain surgery on 22.08.2015 at midnight in the Meenakshi Mission Hospital and Research Centre, Madurai for brain subarachnoid hemorrhage right side frontal and temporal and parietal regions with midline shift and he has also extended his leave period on loss of pay on medical grounds from 25.08.2015 to 31.12.2015. Again, he was not able to recover fully, therefore, again, he extended his medical leave from 01.01.2016 to 16.05.2016. Thereafter, he was also referred to Medical Board and the Regional Medical Board has given fitness certificate on 13.05.2016 afternoon, based on which, he joined duty on 17.05.2016.

3. Adding further, learned counsel for the petitioner submitted that as the petitioner was suddenly affected due to brain hemorrhage and giddiness, he was not able to do his normal duty. In view thereon, whenever he undertook a job, he was affected with giddiness. Further, he worked up to 19.05.2016 and finally, he was advised to obtain voluntary retirement from service. Since he had also completed 50 years of age and stood eligible to present his paper seeking voluntary retirement from service, he submitted his application for voluntary retirement on 18.05.2016, giving three months notice through proper channel. Further, petitioner has also sent advance copy thereon to the Principal Secretary and Commissioner of Treasuries and Accounts, Chennai and one more copy to the District Treasury Officer, Virudhunagar, respondents 1 and 2 herein, by speed post, seeking them to accept his request for voluntary retirement. As the petitioner cannot perform his duty, he applied for earned and unearned leave from 20.05.2016 with request to the respondents to relieve him from service accepting his request for voluntary retirement.

4. Besides the above, learned senior counsel for the petitioner submitted that the petitioner's application seeking voluntary retirement was made on 18.05.2016, while so, according to Rule 56(3)f of Tamilnadu Government Fundamental Rules, the appointing authority, in respect of the request for voluntary retirement 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 appointment authority for such Voluntary Retirement is necessary.

5. That apart, learned senior counsel for the petitioner submitted that even a mere perusal of the impugned order passed by the 2nd respondent shows that the respondents are unable to take any final decision on the petitioner's application seeking voluntary retirement. Therefore, taking note of the fact that the petitioner underwent brain surgery for brain subarachnoid hemorrhage right side frontal and temporal and parietal regions with midline shift, there cannot be any legal impediment for the respondents 1 and 2 to accept his request for voluntary retirement, thereby pleaded to allow the writ petition and to set aside the impugned orders.

6. A detailed counter affidavit has been filed by the respondents. Learned Special Government Pleader appearing for the respondents submitted that in the present case, the petitioner has extended his leave on loss of pay on medical grounds from 25.08.2015 to 31.12.2015 and then, further extended from 01.01.2016 to 16.05.2016. Thereafter, in view of having undergone surgery for brain subarachnoid hemorrhage, the petitioner was referred to the Medical Board and the Regional Medical Board had issued a fitness certificate on 13.05.2016 afternoon. Based on the said fitness certificate, petitioner also joined duty on 17.05.2016. Subsequently, one more representation has been given stating that he was unable to continue his work, as he was frequently affected with giddiness, in view of aforesaid brain problem. Therefore, in view of having effected unearned leave and unable to rejoin the duty, the respondents were not able to regularise the said period. In view thereon, the respondents may not be able to pass any final order.

7. Heard the learned counsel on either side and perused the documents available on record.

8. Admittedly, it is pertinent to note that the petitioner has sent an application seeking voluntary retirement on 18.05.2016 to the respondents 1 and 2, by speed post giving three months notice, hence, there is no impediment for the respondents to take a final decision on the earned leave or unearned leave.

9. It is relevant to mention that as per Rule 56(3)f of Tamilnadu Government Fundamental Rules, when the petitioner has made an application on 18.05.2016 giving three months time, namely, 90 days to pass an order thereon, the respondents have slept over the matter without either accepting the request or rejecting the same. In the present case, when the petitioner had sought for voluntary retirement stating that he was unable to continue in service due to the surgery that he underwent on 22.08.2015 in Meenakshi Mission Hospital and Research Center,

Madurai for brain subarachnoid hemorrhage right side frontal and temporal and Parietal regions, it is not known why the respondents 1 and 2 have not even considered his genuine request sympathetically and relieved him from the post of mere Assistant. The respondents, having kept quiet for more than 90 days, the legal fiction mandated in Rule 56(3)f of Tamilnadu Government Fundamental Rules would come to rescue the petitioner, in as much as the application seeking Voluntary Retirement made on 18.05.2016, the same shall be deemed to have been accepted by the respondents 1 and 2, as there is no departmental proceedings pending against the petitioner and moreover, there is no due payable by him is pending. It is worthwhile for this Court to extract Rule 56(3)(f) of Tamilnadu Government Fundamental Rules.

" 56(3)(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 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"

10. Since in the present case, the application seeking voluntary retirement has been submitted by the petitioner on 18.05.2016 to the respondents through speed post, it is not known why the same has been denied by the respondents in the counter affidavit. Therefore, the legal fiction as mentioned in Tamilnadu Government Fundamental Rules in 56(3)(f), would come into operation that if any application seeking voluntary retirement has been submitted by the incumbent and the Government has not acted upon within 90 days, it shall be deemed to have been accepted. As I mentioned above, in the present case, when admittedly as there is no pendency of disciplinary proceedings by any other due or adverse report against the petitioner, the Writ Petition stands allowed and the impugned orders fail and the same stand dismissed. The respondents are directed to accept the request of petitioner seeking voluntary retirement and settle the pensionary benefits within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary & Commissioner of
Treasuries & Accounts, IFD Complex,
Nandanam, Chennai - 600 035

2. The District Treasury Officer,
Virudhunagar District
Virudhunagar,

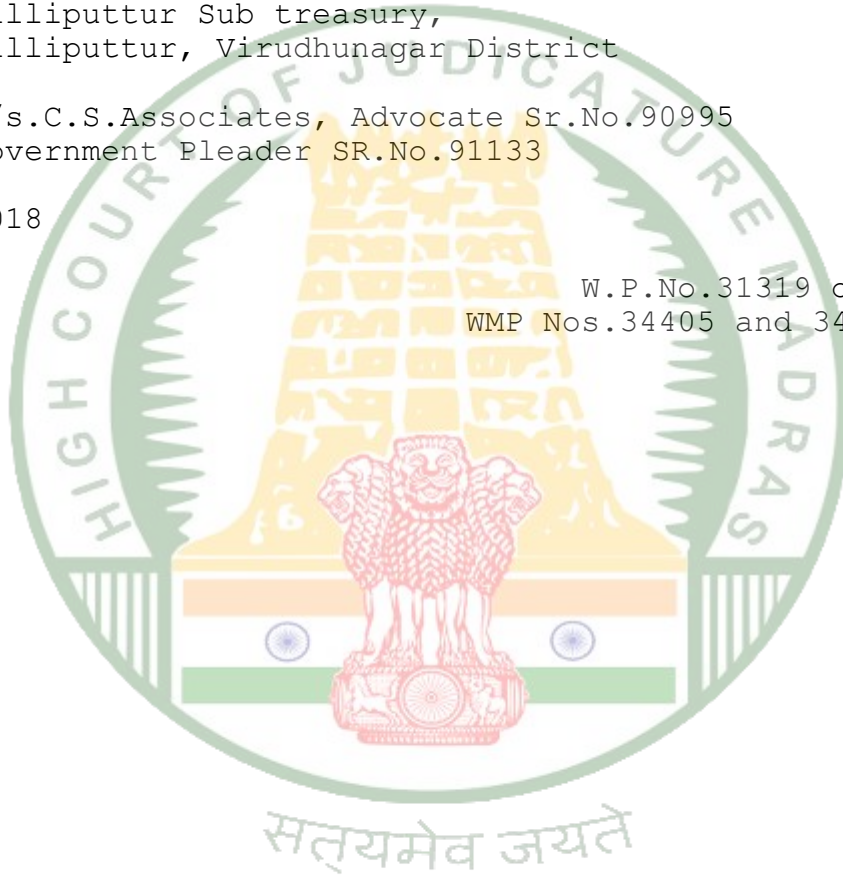
3. The Assistant Treasury Officer,
Srivilliputtur Sub treasury,
Srivilliputtur, Virudhunagar District

+1cc to M/s.C.S.Associates, Advocate Sr.No.90995

+1cc to Government Pleader SR.No.91133

sm:24.1.2018

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