

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.27989 of 2017

D.Manohar Paulraj

.. Petitioner

Vs

1.Tamil Nadu Housing Board,
Rep. By its Managing Director,
493, Anna Salai,
Nandanam, Chennai - 35.

2.Administrative Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai - 35.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration to declare that the orders of the second respondent dated 05.07.2017 bearing Memo No.PNT.4/6821/2017 and dated 13.10.2017 bearing Memo No.PNT.4/12910/2017 rejecting the Voluntary Retirement Application of the petitioner is illegal, arbitrary, contrary to law, without jurisdiction, without power and consequently direct the respondent to relieve the petitioner from service on voluntary retirement with effect from 13.10.2017, pay terminal benefits such as Gratuity, Leave Wages, etc., and also pay pension, commuted value of pension along with interest at the rate of 18% per annum.

For petitioner : Mr.Balan Haridas

For Respondent 2 : Mr.K.Venkataramani, AAG
Assist. By V.Jayaprakash Narayanan, SPL.G.P

For Respondent by : Mr.V.Anandhamurthy

O R D E R

By way of filing this writ petition, the petitioner seeks to declare the orders passed by the second respondent / Administrative Officer, Tamil Nadu Housing Board, Nandanam,

Chennai, dated 05.07.2017 and 13.10.2017 rejecting the request of the petitioner for Voluntary Retirement as illegal, arbitrary and contrary to law.

2. Heard the learned counsel appearing on either side.

3. The petitioner joined the services of the respondent Board on 16.01.1979 as a Nominal Muster Roll (NMR) employee. In the year 2000, he was promoted to the post of Junior Assistant and again, he was promoted as Assistant in the year 2015. However, after rendering 38 years of service, on 04.04.2017, he has submitted an application for voluntary retirement citing his health issues and in the said application, the petitioner has given 3 months notice period as he is being governed under the Fundamental Rule 56(3). But, the second respondent in his order dated 05.07.2017 rejected the request of the petitioner citing administrative reasons and therefore, he was once again compelled to send one more application dated 11.07.2017 to the first respondent for voluntary retirement, however, the first respondent has again rejected his request on 13.10.2017 citing the same administrative reasons.

4. As per the Fundamental Rule 56(3)(a)&(b), if a Government Servant, who intends to go on voluntary retirement on attaining the age of 50 years or on completion of 20 years of qualifying service, can give notice for not less than three months in writing and the period of three months notice shall reckon from the date of receipt of such notice by the appointing authority. Under Rule 56(3)(f), it is further stated that 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 of notice. For better appreciation, Clauses (a), (b) and (f) of Rule 56(3) of the Fundamental Rules are stated below:-

56(3) Voluntary Retirement:-- (a) A Government servant who has attained the age of fifty-years or who has completed twenty years of qualifying service may retire from service by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer for information. Before giving such notice, he may satisfy himself by means of a reference to such authority that he has completed the required number of years of qualifying service.

.....
.....
(b) The period of three months notice shall be reckoned from the date of receipt of notice by the appointing authority.

(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 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 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."

5. Besides, Fundamental Rule 563(e), which adumbrated five conditions for rejecting the request of the Government servant from going on voluntary retirement, is extracted below:-

"(i) that no disciplinary proceedings are contemplated or pending against the Government Servant concerned for the imposition of a major penalty;

(ii) that no prosecution is contemplated or pending in a Court of Law against the Government Servant concerned;

(iii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iv) that no dues which cannot be recovered from his Death-cum-Retirement Gratuity are pending to be recovered from the Government servant concerned; and

(v) that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily."

6. From the impugned order dated 05.07.2017, this Court is able to see that rejection is not based on any one of the five grounds stated in the said rule viz., Rule 56(e) (i) to (v). In the present case, neither contractual obligation is in existence between the petitioner and the respondents to serve the Government, nor pendency of criminal case nor pendency of disciplinary proceedings. In the impugned order rejecting his request, they have stated only administrative reason. The said reason does not find place as a ground for rejection in the above cited rule.

7. Learned Additional Advocate General for the respondents, on perusal of the afore-stated rule, is unable to support the impugned order.

8. Under the Fundamental Rule 56(3)(a), a Government servant, who has attained the age of 50 years or who has completed 20 years of qualifying services, can give notice for not less than three months in writing for opting voluntary retirement. Admittedly, in the present case, on the date of submission of his application for voluntary retirement, the petitioner was 57 years and has rendered 38 years of unblemished service with the respondent Board. Therefore, in my view, the request of the petitioner seeking voluntary retirement ought to have been considered by the respondent in view of Fundamental Rule 56(3)(a). However, contrary to the said rule, the respondents have rejected the request of the petitioner citing only administrative reason, which is also not being among the grounds enumerated in Rule 56(e)(i) to (v) cited supra. Therefore, the impugned orders passed by the respondents are liable to be set aside and accordingly, the same are set aside.

9. In fine, for the reasons stated above, the writ petition is allowed. Consequently, the respondents are directed to send the proposal to the authority concerned by calculating all the terminal benefits payable to him within a period of four weeks from the date of receipt of a copy of this order. No Costs. WMP.No.30028 of 2017 is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai - 35.

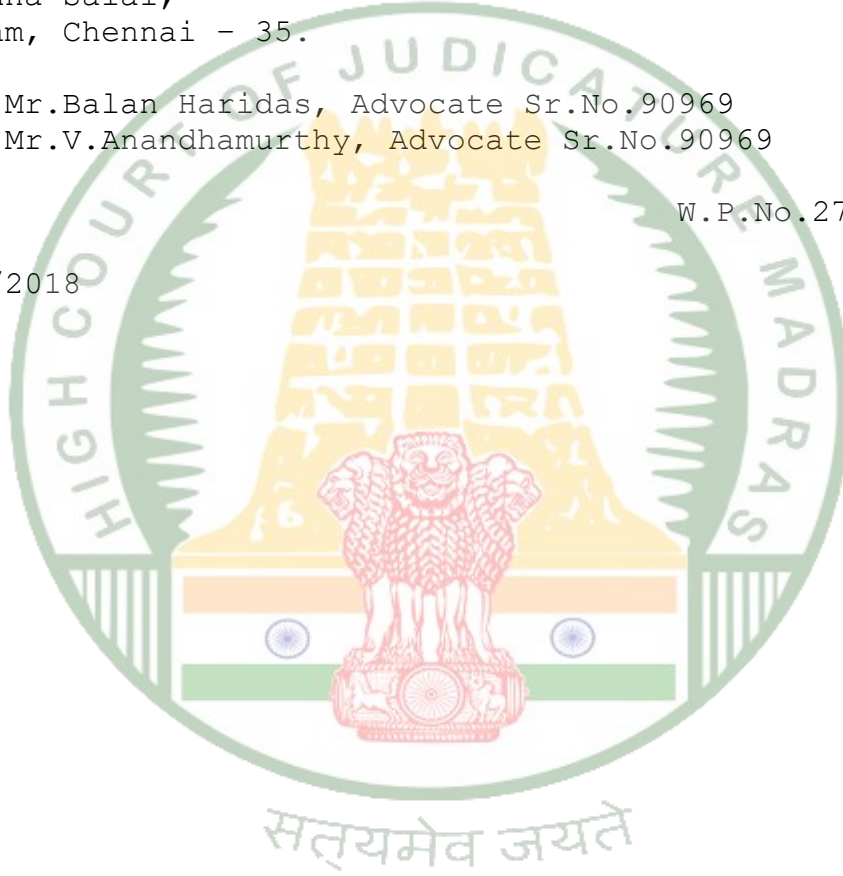
2.Administrative Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai - 35.

+ 1 cc to Mr.Balan Haridas, Advocate Sr.No.90969

+ 1 cc to Mr.V.Anandhamurthy, Advocate Sr.No.90969

W.P.No.27989 of 2017

CO(GJ-II)
RRI 05/02/2018



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