IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1753 of 2018
and C.M.P.No.14012 of 2018

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. ... Appellants

vs

Z.Ibrahim ... Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.31319 of 2017 dated 18.12.2017.

W.P.No.31319 of 2017

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 inhis 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 Appellants :: Mr.P.S.Sivashanmugasundaram, Special Government Pleader

For Respondent :: Mr.R.Syed Mustafa

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The respondent herein, while serving as Accountant in the cadre of Assistant at Sub-Treasury, Srivilluputhur from 24.07.2012, was suddenly affected with cervical spondylitis and giddiness. He applied medical leave on loss of pay from 06.01.2015 to 24.08.2015. Thereafter, all of a sudden, he became unconscious and went to coma stage. When he approached the hospital, the Doctors advised him to undergo surgery over his brain, otherwise, it would be very difficult for him to recover from the coma stage. Therefore, the respondent underwent brain surgery on 22.08.2015 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 the 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. As the respondent was suddenly affected due to brain hemorrhage and giddiness, he was not able to do his normal duty. Finally, he was advised to obtain voluntary retirement from service. He submitted his application for voluntary retirement on 18.05.2016, giving three months notice through proper channel. Thereafter, since the respondent cannot perform his duty, he applied for earned and unearned leave from 20.05.2016 with a request to the authorities to relieve him from service accepting his request for voluntary retirement. But the order dated 20.09.2017 was passed by the first appellant, to the Treasury Officer, District Treasury, Virudhunagar, to obtain a fresh proposal from the respondent. Consequently, an order dated 26.10.2017 was passed by the District Treasury, Virudhunagar requesting the respondent to make a fresh application for voluntary retirement. 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.

2.With the above background, the respondent approached this Court by way of filing a writ petition in W.P.No.31319 of 2017 to quash the order passed by the first appellant dated 20.09.2017 and the consequential order of the second appellant dated 26.10.2017 and to direct the authorities to settle the retirement and all other consequential benefits.

3.On considering the facts and circumstances of the case, the learned single Judge allowed the writ petition directing the authorities to accept the request of the respondent seeking voluntary retirement and to settle the pensionary benefits within a period of eight weeks, by order dated 18.12.2017. Challenging the order passed in the writ petition, the present appeal has been filed.

4.The learned Special Government Pleader appearing for the appellants has submitted that the learned single Judge ought to have seen that the respondent / writ petitioner had applied Unearned Leave on Private Affairs during notice period and not joined duty. The respondent's lastly availed leave, ie., unearned leave on private affairs, was considered as Extraordinary Leave without allowance. Hence, the second appellant requested the respondent to submit a fresh application for voluntary retirement as per the existing Government Orders, but the same has not been done by the respondent. In these circumstances, in view of the rule provisions, the act of the second appellant is in accordance with law and there is no violation of any legal principles.

5.The learned counsel for the respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.In the present case, the application seeking voluntary retirement has been submitted by the respondent on 18.05.2016 to the appellant through speed post and the same is not in dispute. As per Rule 56(3)(f) of the Tamilnadu Government Fundamental Rules, 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. Further, there is no pendency of disciplinary proceedings by any other due or adverse report against the respondent. In these circumstances, the learned single Judge has set aside the orders impugned in the writ petition and directed the authorities to accept the request of the respondent seeking voluntary retirement and to settle the pensionary benefits within a period of eight weeks from the date of receipt of a copy of the order.

8.The only issue that is now put forth before this Court is with regard to the calculation of 90 days notice period. It is seen that after submitting the application for voluntary retirement, the respondent has availed 18 days Earned Leave with medical certificate from 20.05.2016 to 06.06.2016, 30 days Earned Leave with Medical Certificate from 07.06.2016 to 06.07.2016, 33 days Unearned Leave on Private Affairs with medical Certificate from 07.07.2016 to 08.08.2016 and 23 days of Unearned Leave on Private Affairs from 09.08.2016 to 31.08.2016. It is also seen that the leave availed by the respondent from 05.01.2015 to 17.05.2016, ie., before submission of the application for voluntary retirement, has not been sanctioned due to non-availability of leave application from 01.01.2016 to 13.05.2016. According to the learned Special Government Pleader, the respondent the said period has to be taken as unauthorised absence only.

9.The learned counsel for the respondent has submitted that after submission of the application for voluntary retirement, the respondent has availed only 53 days leave.

10.Considering the submissions made by the learned counsel on either side, we are of the considered view that since the Government has not acted upon the application for voluntary retirement of the respondent, within 90 days, it is deemed to have been accepted. Thus, we concur with the view taken by the learned single Judge in this connection. But, with regard to settlement of terminal benefits, we would only say that for the said 90 days notice period, the appellants shall deduct the permissible leave taken by the respondent, and for the balance days, the appellants shall deduct the salary from the terminal benefits of the respondent, in accordance with law, and settle the terminal and pensionary benefits, within a period of two months from the date of receipt of a copy of this judgment.

11.The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KM

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 Mr.R.Syed Mustafa, Advocate, S.R.No.56078

+1cc to the Government Pleader, S.R.No.56078

W.A.No.1753 of 2018
and C.M.P.No.14012 of 2018

(CO)
GSP(30/08/2018)