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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2018

PRONOUNCED ON : 29.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.12002 of 2011

and

M.P. (MD) .No.1 of 2011

T.Adaikkalam

.. Petitioner

Vs.

1.The Joint Director of School Education,
(Higher Secondary),
Chennai -6.

2. The Chief Educational Officer,
Madurai.

3. The District Educational Officer,
Usilampatti, Madurai District.

4. Headmaster,
Nadar Saraswathi Higher Secondary School,
Usilampatti - 625 532.

5. Correspondent,
Nadar Saraswathi Higher Secondary School,
Usilampatti - 625 532.

6. B.Jeyarajan

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the charge memos, dated 22.07.2011, 19.03.2011 (3 charge memos) and 13.09.2011 (2 charge memos and consequential notices (two) dated 01.10.2011, issued by the 5th respondent and quash the same and direct the respondents to sanction pension including the terminal benefits to the petitioner with all the consequential benefits.

For Petitioner

: Mr.V.Panneerselvam,
for M/s.C.S.Associates

For Respondents 1 to 3

: Mr.D.Muruganandham,
Additional Government Pleader



For 4th respondent

: No appearance

For respondents 5 & 6

: Mr.V.Jayachandran

ORDER

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This writ petition has been filed by the petitioner challenging various charge memos dated 22.07.2011, 19.08.2011 and 13.09.2011 and consequential proceedings dated 01.10.2011 issued by the 5th respondent and for a consequential direction to the respondents to sanction pension including terminal benefits to the petitioner with all consequential benefits.

2.0. The case of the petitioner is that the petitioner was appointed as Record Clerk in the 5th respondent school on 24.08.1973 and promoted as Junior Assistant on 11.01.1989. After 37 years of service, on attaining the age of 55 years, the petitioner has applied for voluntary retirement on 01.03.2011 to relieve him on 31.05.2011 ie., on completion of 90 days, by enclosing all the required certificates issued by the competent authorities. The petitioner has submitted the said application to the 4th respondent in person and through the registered post and the same was acknowledged by the 4th respondent. The petitioner has also sent advance copy to the 3rd respondent directly. The 3rd respondent, on receipt of the same, has sent a communication to the petitioner as well as to the 4th respondent on 08.03.2011 and 23.03.2011 respectively, stating that the since the school is under the direct payment, the proposal has to be recommended by the Headmaster ie., the 4th respondent herein and the advance copy cannot be accepted. The 3rd respondent has further observed in his communication that as per Rule 56 of the Fundamental Rules, the relevant certificates ie., no disciplinary proceedings pending, no criminal case pending, no dues certificate and working certificate have to be sent in the proper format. The 4th respondent has forwarded the VRS proposal to the 3rd respondent enclosing all the relevant certificates on 01.04.2011 and the same was acknowledged by the 3rd respondent.

2.1. While submitting the VRS application, the petitioner was in medical leave from 08.02.2011 to 28.03.2011. In the meanwhile, on 18.02.2011, the 5th respondent has issued a memo calling upon the petitioner to submit medical certificate or otherwise the period will not be considered as medical leave, for which the petitioner has sent a letter, dated 01.03.2011, to the 3rd and 4th respondents stating that medical certificate had already been enclosed along with the leave application and the same was sent to the 3rd respondent through the 4th respondent. After availing the leave, the petitioner joined the school and he was deputed for election duty on 13.04.2011 and after election duty, the petitioner again applied leave for 46 days and joined duty on 31.05.2011 and got himself relieved being the last date of voluntary retirement notice.



2.2. After about two months from the date of VRS ie., on 22.07.2011, the 5th respondent has issued show cause notice for not submitting the medical certificate and caution deposits related to the hostel students. The petitioner submitted his reply on 27.07.2011 stating that he has no way connected with the hostels. On 19.08.2011, the 5th respondent issued three memos alleging unauthorized absent from 01.06.2011, misappropriation of hostel fund and for attending High Court frequently on medical leave supporting the previous management. On 05.09.2011 the petitioner has submitted his reply stating that he was relieved from service on 31.05.2011 on completion of three months notice period on VRS and therefore, the question of unauthorized absent would not arise and after retirement, the question of suspension and other disciplinary proceedings also would not arise. Again the 5th respondent issued two charge memos on 13.09.2011 reiterating the earlier charges. On 28.09.2011 the 5th respondent sent a communication stating that the VRS proposal was not approved and hence, the proposal cannot be forwarded. Once again on 01.10.2011 the 5th respondent sent two communications directing the petitioner to appear for enquiry. Challenging the said charge memos and consequential proceedings, the petitioner is before this Court.

3. The main ground on which the learned counsel appearing for the petitioner sought to quash the impugned orders is that the petitioner submitted his VRS application on 01.03.2011 and the same was forwarded by the 4th respondent / Headmaster of the School to the 3rd respondent / District Educational Officer, Usilampatti, Madurai District. As per the scheme for VRS, three months notice is mandatory. The three months notice starts from 01.03.2011 and the same ended on 31.05.2011. As per the mandatory provision, the application for VRS is to be decided prior to the expiry of notice period ie., prior to 31.05.2011. The official respondents did not pass any order on the said application till 31.05.2011 and hence, it is deemed to have been accepted and as the petitioner is retired from service, the 5th respondent has no right to issue the impugned charge memos and initiate consequential proceedings and hence, the same are liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the date of three months notice should be reckoned with effect from the date of receipt of notice by the grant releasing authority ie., the third respondent and hence, he prayed to dismiss the writ petition.

5. The learned counsel appearing for the 5th and 6th respondents submitted that the VRS application has been submitted by the petitioner while he was on medical leave and therefore, the same cannot be accepted. He would further submit that though the petitioner stated to be sent VRS application on 01.03.2011, even according to the petitioner, it has been forwarded by the 4th respondent to the 3rd respondent only on 01.04.2011 and it has been



dispatched on 06.04.2011 and therefore, the commencement of the application should be calculated from 06.04.2011 and three months notice ended only on 06.07.2011, but the petitioner unauthorisedly absented himself with effect from 01.06.2011. Considering the attitude of the petitioner and also considering various irregularities committed by him, the 5th respondent has issued the above charge memos and consequential notices, for which the petitioner has also given his replies and having participated in the enquiry by giving replies, now he has filed this writ petition, which cannot be sustained. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 5 & 6 and perused the records carefully.

7. Admittedly, in this case, the petitioner has submitted his Voluntary Retirement Scheme application on 01.03.2011, while he was on medical leave from 08.02.2011 to 28.03.2011 and that has been received by 4th respondent. It is not in dispute that due to various litigations against the 6th respondent, the Secretaryship of the 6th respondent was not in effect during the relevant period and the school was brought under direct payment and hence, the VRS application of the petitioner was recommended by the 4th respondent / Headmaster of the school, as per the proceedings in Oo.Mu.No.1787/Aa3/2010, dated 23.03.2011. It appears that the VRS application submitted by the petitioner was forwarded by the 4th respondent along with the relevant documents viz., (a) the application of the petitioner, dated 01.03.2011; (b) Pro forma; (c) No criminal complaint pending against the petitioner obtained from the Police; (d) No disciplinary proceedings pending against the petitioner; (e) No due certificate to the Government and (f) permanent employee certificate, to the 3rd respondent on 06.04.2011 and the same was acknowledged by the 3rd respondent.

8. When the similar issues ie., (a) whether the petitioner is entitled to submit his request for voluntary retirement while he was on leave; and (b) whether the non-consideration of the request of the petitioner before the expiry of the three months notice period can be treated as deemed acceptance of voluntary retirement, a learned Single Judge of this Court in the decision in V.S.Subbarayan Vs. the Principal, Government Arts College, Krishnagiri and others, reported in 2007 (4) CTC 689 has held in paragraph Nos.7 to 12 as follows:

"7. The point in issue is whether the petitioner is entitled to submit his request for voluntary retirement on 9.3.1994 while he was on leave, requesting to relieve him from 9.6.1994 and whether the non-communication of rejection of request of the petitioner before the expiry of three



months notice period can be treated as deemed acceptance of voluntary retirement and whether the respondents are justified in relying on the Government letter dated 25.9.1992 when there is statutory provision in FR.56 to decide the issue ?

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8. The facts in this case are not in dispute i.e, petitioner applied for voluntary retirement on 9.3.1994 while he was on leave. Petitioner completed more than 20 years of service and also 50 years of age on the date when he submitted his application for voluntary retirement. The rule applicable to submit voluntary retirement is FR.56(3). The said rule nowhere states that if a person is on leave, he is not entitled to submit application for voluntary retirement and only after joining in the post, he can submit his application. FR.56(3) is extracted hereunder for proper appreciation.

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.

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

(c) The three months notice may be given before the Government servant attains the qualifying age or the qualifying service, as the case may be, provided that the retirement takes place after attaining the specified age or completing the required number of years of qualifying service, as the case may be.

(d)(i) A Government servant including a Government servant in the Tamil Nadu Basic Service retiring Voluntarily shall be given a weightage not exceeding five years, subject to the condition that the total qualifying service rendered by such Government servant, including weightage, does not in any case exceed Thirty years of qualifying service and it does not take him beyond the date of superannuation, as the case may be.

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(ii) The weightage given shall be in addition to the qualifying service for purposes of pension and



gratuity only, and it shall not entitle a Government servant retiring voluntarily to any notional fixation of pay or purposes of calculating the pension and gratuity. The pension shall be determined based on the 50% of the average emoluments drawn during the last ten months of service rendered, or, 50% of pay last drawn, plus dearness pay, if any, admissible from time to time, by the Government servants, whichever is higher.

Reasons for rejection of voluntary retirement are also enumerated in Rule 56(e)(i) to (v), which reads thus.

56(e) notice of voluntary retirement given by a Government Servant shall be accepted by the appointing authority, subject to the following conditions being satisfied namely:

(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.

None of the reasons contained in Rule 56(e)(i) to (v) states that a request for voluntary retirement can be rejected if a person apply for the same while Page 1225 he is on leave. The effect of not passing order before expiry of notice period is stated in FR.56(f), which reads as follows, 56(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:

It is 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 with-hold the permission sought for by the Government servant, if any of the conditions specified in Clsuse (e) are not satisfied.

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As per Rule 56(f) before the date of expiry of the notice, if no order is passed accepting or rejecting the request, the Government servant shall be deemed to have been retired from service at the end of the notice period and as per the proviso, the request can be rejected only on the grounds stated in FR.56 (e) (i) to (v).

9. As stated above, in this case, notice period expires on 9.6.1994. The rejection order is passed by the respondent only on 8.7.1994. The said rejection order is admittedly long after the expiry of the notice period of three months. The application submitted by the petitioner on 9.3.1994 is deemed to be accepted on the last date of notice period i.e., on 9.6.1994. Hence deemed acceptance of voluntary retirement has taken place from 9.6.1994 and the rejection order passed by the respondents, after expiry of the notice period of three months will have no effect. Further the reason stated in the impugned order rejecting the request of voluntary retirement is not the one among the reasons stated in FR.56(e) (i) to (v).

10. Similar issue was considered by me in W.P. No. 9880 of 2007 Dr. Annabelle Rajaseharan v. The Secretary to Government, Health and Family Welfare Department, Chennai-9 and two Ors. by order dated 16.4.2007, wherein a voluntary retirement request was rejected for a reason not stated in Rule 56(e) (i) to (v). In the said order, I have followed the judgment of the Honourable Supreme Court Tek Chand v. Dile Ram regarding the deemed acceptance of voluntary retirement on the expiry of notice period. In the decision reported in 2006 (2) CTC 318 S.M.A. Mohamed Yusoof v. The Secretary, Government of T.N. also I have considered similar issue.

11. Since the submission of voluntary retirement application, its consideration, its acceptance or rejection and if no order is passed, deemed acceptance is clearly stated in the statutory rule viz., FR.56(3), the respondents are not justified in stating some other reason not stated in the statutory rule and they are not entitled to rely on the Government letter Page 1226 dated 25.9.1992, which cannot over ride the statutory rule. The said issue is well settled in the decision of mine reported in 2007 WLR 521 K. Sampath v. The State of



Tamil Nadu and Ors.), wherein I have followed the decisions of the Honourable Supreme Court State of Haryana v. Shamsher Jang and Sant Ram Sharma v. State of Rajasthan.

12. In view of the said statutory provision and having regard to the fact that no order having been passed by the respondents rejecting the request of the petitioner before expiry of the three months notice period, I hold, the impugned orders are unsustainable and the petitioner shall be deemed to be voluntarily retired from service from 9.6.1994. Since the petitioner is deemed to be retired from 9.6.1994, his absence after the said date cannot be treated as unauthorised absence and therefore the disciplinary proceeding initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the consequential order of removal of the petitioner from service are also unsustainable. Since the first respondent passed the order on 14.10.2005, removing the petitioner from service subject to the result of O.A. No. 735 of 1995 (this writ petition), the said termination order will not have any effect, as this writ petition filed by the petitioner is allowed holding that the petitioner shall be treated as deemed to be voluntarily retired from service from 9.6.1994. The respondents are directed to settle the retirement benefits payable to the petitioner treating him as voluntarily retired from service on 9.6.1994, within a period of three months from the date of receipt of copy of this order."

9. In a case, where an authority rejected VRS application by citing G.O.Ms.No.376, dated 11.12.1995, on the ground that the application made by employee on leave without rejoining duty cannot be considered, a Division Bench of this Court in the decision in D.Logan Vs. The Headmaster, R.V. Government Boys Higher Secondary School, Krishnagiri District and others reported in 2015 (6) CTC 646 has rejected the said ground. The relevant portion is extracted hereunder:

"14 The other aspect of pre-condition to rejoin duty and to work without any leave as prescribed under the aforesaid G.O.Ms.No.376, dated 11th December 1995, is not a condition prescribed under FR 56(3), which is a statutory provision. FR 56(3)(e) provides for acceptance of notice of voluntary retirement, subject to certain conditions. FR 56(3)(f) clearly provides that in the event the appointing authority does not issue an order before the date of expiry of notice either accepting the voluntary retirement or not, the government servant shall be deemed to have been



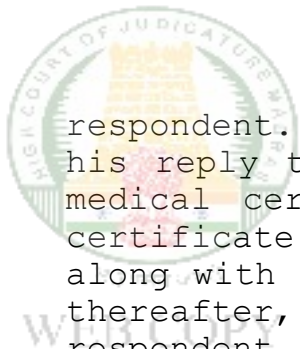
retired voluntarily from service at the end of the notice period. There is no quarrel on the factual aspect that no decision was taken even to the effect that the application was not proper and lacks relevant documents before expiry of the notice period."

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10. From the above decisions and the Fundamental Rules, it is clear that the VRS application made by employee on leave can be taken into account and if no order is passed either accepting or rejecting the VRS application, the applicant / Government servant shall be deemed to have been retired from service at the end of the notice period. In this case, as stated earlier, the 5th respondent school is an Government Aided School and during the relevant time, the appointing authority was not functioning and therefore, the petitioner has submitted his application to the Headmaster of the School. As per the proceedings in Oo.Mu.No.1787/Aa3/2010, dated 23.03.2011, the third respondent has informed that due to non functioning of the management, the Headmaster can forward the application with appropriate documents and as such, the 4th respondent has forwarded the application of the petitioner along with the relevant documents on 01.04.2011 and it is stated to be despatched on 06.04.2011.

11. It is the main contention of the learned counsel appearing for the 5th and 6th respondents that as the application has been forwarded on 06.04.2011, the date notice should be calculated from 06.04.2011 only. This Court is not inclined to accept the said contention of the respondents 5 and 6, in view of the fact that Rule 56(3)(b) of the Fundamental Rules itself contemplates that the period of three months notice shall be reckoned only from the date of receipt of notice by the appointing authority. In this case, as stated above, the petitioner has submitted his application on 01.03.2011 itself and the same was acknowledged by the 4th respondent. Therefore, the date of notice should be calculated only from 01.03.2011 and as such, the notice period comes to an end on 31.05.2011. It is also relevant to note that the petitioner has joined duty on 31.05.2011 and got himself relieved being the last date of voluntary retirement notice. Therefore, the question of unauthorized absent does not arise. Further, the memos and consequential proceedings have been issued only after the retirement of the petitioner on 31.05.2011, the said proceedings cannot be sustained and therefore, the same are liable to be set aside.

12. It is seen from the record that while the petitioner was in medical leave on 18.02.2011, the 5th respondent has sent a notice to submit medical certificate, otherwise the period will not be considered as medical leave. According to the petitioner, he has already submitted his medical leave application along with medical certificate and in order to wreck vengeance, the medical certificate has been suppressed and the said memo was issued by the 5th



respondent. It is seen that on 23.02.2011, the petitioner has given his reply to the notice dated 18.02.2011 along with a copy of the medical certificate. A copy of the said letter and the medical certificate given by an authorised medical attendant have been filed along with the typed set of papers. However, the fact remains that thereafter, the said matter was not precipitated by the 5th respondent. After the completion of the notice period, the 5th respondent has issued a memo interlinking the earlier memo dated 18.02.2011. That cannot be accepted. As stated earlier, as the charge memo has been issued after completion of the notice period, the said proceeding cannot be sustained.

13. In view of the above, this Court is inclined to set aside the impugned charge memos and consequential notices issued by the 5th respondent. Now, almost seven years have gone from the date of voluntary retirement of the petitioner and he has not been given any service benefits and pension and therefore, this Court is inclined to issue consequential direction.

14. In this result, this Writ Petition is allowed and the impugned charge memos and notices issued by the 5th respondent are set aside and the respondents 1 to 3 are directed to pay the terminal and pensionary benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CO)

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Sub Assistant Registrar(CS-II)

To

1. The Joint Director of School Education,
(Higher Secondary),
Chennai -6.

2. The Chief Educational Officer,
Madurai.

3. The District Educational Officer,
Usilampatti, Madurai District.

+2 cc to Mr.V.Panneerselvam, Advocate, SR.No.97660

+1 cc to Mr.V.Jeyachandran, Advocate, SR.No.97987

+1 cc to Spl.Govt.Pleader, SR.No.98116

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order made in
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