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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13602/2018**

RAM KUMAR YADAV Petitioner
Through : Mr R.V. Sinha, Advocate.

versus

KENDRIYA VIDYALAYA SANGATHAN
& ORS Respondents
Through : Mr. S. Rajjappa, Mr. Anil Singal,
Advocates for R1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **17.12.2018**

1. The petitioner has preferred the present writ petition to assail the order dated 01.11.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 750/2018. The Tribunal has rejected the Original Application preferred by the petitioner, wherein, he had assailed his voluntary retirement. The petitioner had submitted his application to seek voluntary retirement on 27.11.2017 due to 'personal reasons and domestic problems'. He requested for waiver of notice period of three months. On the same day, the application was forwarded by the Principal of the School, where the petitioner was serving to the Deputy Commissioner, Kendriya Vidyalaya, Regional Office, Bengaluru.
2. Vide the order dated 05.12.2017, the application of the petitioner to seek voluntary retirement was accepted from the forenoon of 06.12.2017. He

was relieved on 06.12.2017 by Principal of the school.

3. The petitioner sent a representation against his voluntary retirement on 06.12.2017 wherein he claimed that he had withdrawn his application for voluntary retirement on 29.11.2017 by handing over a letter of withdrawal to the Principal of the school.

4. We may observe that there is no record of the said withdrawal letter. The petitioner, admittedly, did not obtain any acknowledgement of the same and the Principal of the school has also not taken any steps to suggest that the said withdrawal letter was ever submitted by the petitioner.

5. Since, there was nothing to establish on record that the petitioner had withdrawn his application seeking voluntary retirement, the Tribunal has found no merit in the Original Application of the petitioner and the same has been dismissed.

6. The submission of Mr. Sinha is that under Rule 48 A of the CCS Pension Rules, when a Government servant seeks acceptance of the application for voluntary retirement on notice less than three months, the said application has to be allowed by the Appointing Authority upon satisfaction that such waiver of the period of notice will not cause any administrative inconvenience. He submits that in the present case, the order of acceptance dated 05.12.2017 does not record any reasons for waiver of the notice period of three months. He further submits that no date of retirement was communicated by the petitioner in his letter dated 27.11.2017.

7. We do not find any merit in either of the submissions made on behalf of the petitioner because petitioner himself sought the waiver of the three months notice period. The implication of the said request made by the

petitioner was that he sought voluntary retirement with immediate effect. Consequently, it was open to the respondent to accept the voluntary retirement application of the petitioner forthwith. The petitioner cannot, now, turn around and raise a grievance that his request for waiver of the notice period has wrongly been accepted by the respondent.

8. It is the submission of Mr. Sinha that the petitioner was suffering from “*mental illness*” when he gave the application to seek voluntary retirement. In this regard, he seeks to place reliance on the Prescription issued by the Bowring and Lady Curzon Hospital, which shows that the petitioner was suffering from ‘moderate depression’, when examined on 25.11.2017.

9. He also seeks to place reliance on the provisions of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (referred to as the Disabilities Act), wherein, the expression ‘*Disability*’ means *inter alia* ‘*mental illness*’. ‘Mental illness’ is defined in Section 2 (q) of the Act to mean “*mental disorder other than mental retardation.*”

10. The submission of Mr. Sinha is that the petitioner was not mentally fit to be able to take a decision with regard to his voluntary retirement and, therefore, his offer to seek voluntary retirement is nonest.

11. We do not find merit in this submission either. When the petitioner sought voluntary retirement on 27.11.2017, he did not cite the reason that he was suffering from any mental illness. Even the Prescription of the Bowring and Lady Curzon Hospital dated 25.11.2017 relied upon by the petitioner does not show that he was suffering from a “*mental disorder*”.

12. The expression “mental disorder” though not defined in the

Disabilities Act, is an expression which has been used and defined in Hindu Marriage Act as well as in the Mental Healthcare Act, 2017.

13. At this stage, we may observe that though the Mental Healthcare Act, 2017 was enacted on 07.04.2017 and was brought in force vide a notification dated 21.05.2018 on the same day.

14. Section 13(1)(iii) Explanation (a) of the Hindu Marriage Act contains the definition of the expression “Mental Disorder” to mean “*Mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes Schizophrenia.*

Section 13(1)(iii)(b) defines the expression “psychopathic disorder” to mean “*a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment;*”

15. The expression “mental illness” has been defined in the Mental Healthcare Act, 2017 to mean, “*a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence*”; (See Section 2 (s))

16. In **Ram Narain Gupta v. Rameshwari Gupta**, (1988) 4 SCC 247, the Supreme Court referred to the observations of Ormrod, J. in **Bennett v. Bennett**, (1969), 1 All ER 539 wherein, in respect of the expression “*mental disorder*” used in Section 4 of the Mental Health Act, 1959, the Ld. Judge

had stated as follows:

“Now the definition of ‘mental disorder’ in Section 4 of the Mental Health Act, 1959, is in very wide language indeed. It includes mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind and so, for the moment to turn to medical language, it clearly includes, or one would suppose it clearly includes, not only psychotic illness but neurotic illnesses as well and thus begins by enormously enlarging the field. The way in which this very large field is cut down in the Act of 1965, Section 9(1)(b), is by the use of this phrase “of such a kind or to such an extent as to be unfitted for marriage and the procreation of children”.

17. From the above definitions of the expressions “*mental illness*” and “*mental disorder*”, it is evident that mental illness or mental disorder relates to a substantial disorder, such that it grossly impairs the capacity of the person to think, behave, recognize reality or arrive at a judgment, resulting in diminishing the ability of the person to meet the ordinary demands of life. The same could be a result of an incomplete development of mind, psychopathic disorder or any disorder or disability of mind.

18. It is not even the petitioner’s case that he suffered from any “*mental illness*” or “*mental disorder*” of the aforesaid kind. At the highest, he may have been mentally upset, disappointed, dismayed, sad, angry or anxious, but it cannot be said he was robbed of his ability to take a conscious and informed decision with regard to his affairs.

19. Pertinently, it is his case that he discussed his problems with the principal. Thus, he was in a position to undertake a coherent conversation

with the principal. He consciously decided to submit his application for voluntary retirement, being fully aware of its consequences.

20. If mental disturbance or moderate depression on account of family problems, or other such type of problems were to be viewed as ‘mental illness’ in today’s times, every other person would qualify as suffering from ‘mental illness’. The stress associated with modern day life that most people experience – particularly those living in towns and cities, cannot be classified as “mental illness” or “mental disorder”.

21. Thus, even if the petitioner was suffering from ‘mild’ or ‘moderate depression’, in our view, the same would not tantamount to ‘mental disorder’.

22. For the aforesaid reasons, we find absolutely no merit in the writ petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 17, 2018

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