

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8707 of 2019
and WMP No. 9270 of 2019

P. Dhana ... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep by its Secretary to Government,
Home (Courts.I) Department,
Fort St. George,
Chennai -600 009
2. The Registrar General,
High Court, Madras
3. The Principal District Judge,
Krishnagiri
4. The Chief Administrative Officer,
Principal District Court, Krishnagiri ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the Third Respondent in proceeding Endt.Roc.No.1820/2019/A1 dated .02.2019, as arbitrary, illegal and incompetent and quash the same and direct the Third Respondent to accept the application lodged by the Petitioner on 10.12.2018 seeking 'voluntary Retirement'.

For Petitioner : Mr.Sharath Chandran for
Mr.V. Raghavachari

For First Respondent : Mr.A. Ansar
Govt. Advocate

For R.2 to R.4 : Mr.D. Kanagasundaram

ORDER

(Order of the Court was made by M. VENUGOPAL,J.,)

Heard the Learned Counsel for the Petitioner, Learned Government Advocate for First Respondent and Learned Counsel for Second to Fourth Respondents.

2. According to the Petitioner, she commenced her career as 'Steno-Typist', promoted as Assistant, Grade III Bench Clerk, Head Clerk and now serving as Grade II Bench Clerk. As a matter of fact, when she is seeking to relieve from the job, the Appointing Authority' cannot insist upon her continuance. Furthermore, it is the case of the Petitioner that 'Voluntary Retirement' is sought for by her, the only act that is accepted to be performed by the Third Respondent is to verify whether she had completed the required number of qualifying years of service. That apart, an Employee is expected to give three Months' notice which she had given in advance. In this connection, the Petitioner places reliance upon the ingredients of G.O.Ms.No.350 dated 07.10.1991 which enjoins upon the 'Authority' to act in accordance with the stipulations indicated therein.

3. The version of the Petitioner is that she sought for 'Voluntary Retirement' on account of ailments, which she had seriously affected. She had stated that she is suffering from low back pain and Cervical Collar Bone problem. Further she is often getting giddiness and therefore, she is not in a position to discharge her duty as before and hence thought it fit to seek 'Voluntary Retirement' and addressed a letter dated 31.07.2018 and as soon as the Letter was submitted, the same was initiated and she was informed by Proceedings in ROC No.215/2018/A1 dated 31.10.2018 that she would not be permitted to retire on 31.10.2018 and the said Proceedings was served on her on the same day.

4. The Petitioner had sought a 'Voluntary Retirement' through her Letter dated 10.12.2018 and according to her, she should have been allowed to retire by 10.03.2019. However, the Third Respondent had returned the Letter in D.No.488/2019 dated 19.02.2019 addressed by the learned Chief Judicial Magistrate, Krishnagiri I/c when the service particulars of the Petitioner for seeking vigilance clearance were furnished and the same was returned with an endorsement in ROC No.1820/2019/A1 Dated 02.2019 as not called for by the Third Respondent's Court'.

5. It is the case of the Second Respondent/Registrar General, High Court, Madras that based on a complaint by one Ponnusamy, Krishnagiri to the Registrar (Vigilance), High Court, Madras against the Petitioner and five others for not issuing certified copies of records in O.S.No.850 of 1980 on the file of District Munsif Court, Krishnagiri, a sworn affidavit has been called for from the complainant (P. Ponnusamy) by the Registrar (Vigilance) of this Court and that the complainant had not given sworn affidavit as requested by the Registrar (Vigilance) of this Court.

6. The Learned Counsel for the Second Respondent brings it to the notice of this Court that that Report was called for from the Third Respondent/The Principal District Judge, Krishnagiri, Krishnagiri District on 14.11.2018 and an Action Taken Report was called for by the Registrar (Vigilance) of this Court and the same was furnished to the Registrar (Vigilance). Moreover, on 19.11.2018 the Third Respondent/The Principal District Judge, Krishnagiri had submitted an 'Interim Report' as to the action taken with regard to missing of case records from the District Munsif, Krishnagiri. On 07.02.2019, the Third Respondent submitted a Report which states that an Explanation was called for from the Petitioner and based on the Report further action was dropped against the Petitioner and the said Explanation offered by the Third Respondent was submitted to the Hon'ble Portfolio Judges of Krishnagiri District.

7. Continuing further, the Learned Counsel for the Second Respondent/Registrar General, High Court, Madras points out that the Action Taken Report of the Third Respondent was placed before the Hon'ble Portfolio Judges of Krishnagiri District in ROC Nos.65593-B/2017/C1 and 89401-A/2017/C1 and it was minuted as follows:

"Since Sworn affidavit not filed further action may be dropped".

8. Indeed, the Minutes of the Hon'ble Portfolio Judges for Krishnagiri District was communicated to the Registrar (Vigilance), High Court, Madras through Letter in ROC Nos.65593-B/2017/C1 and 89401-A/2017/C1 dated 24.04.2019.

9. At this juncture, the Learned Counsel for the Second Respondent submits that the action in the subject matter in issue was dropped.

10. It is to be noted that the Government Servant can avail of his right to proceed on 'Voluntary Retirement' from service as per relevant Service Rules. To exercise the right of proceeding on 'Voluntary Retirement' is an unilateral one and in few cases, it may be 'Bi-lateral' one.

11 .The term 'Voluntary Retirement' implies retirement before reaching the age of superannuation as determined under Service Rules. It may center around on the ground of 'medical unfitness' or because an Employee does not want to continue to work. A notice for 'Voluntary Retirement' may be withdrawn.

12. It is an axiomatic principle in Law that even if the 'Voluntary Retirement' notice is moved by an Employee and when the same is accepted by the concerned Authority within the time determined, before the date of retirement is reached, an Employee has 'Locus Standi' to withdraw the proposal for 'Voluntary Retirement'. If the Rules do not confer any right on the Employee to retire, then, he has to seek permission to retire and in such type of cases, the 'Voluntary Retirement' depends on the subjective discretion of an Employer, who has to act in a fair and unbiased manner.

13. Considering the fact that further action was dropped in the subject matter in issue, this Court is of the considered view that there may not be any impediment on the part of the Third Respondent/The Principal District Judge, Krishnagiri to receive the application of the Petitioner dated 10.12.2018, seeking 'Voluntary Retirement' and to proceed further in the subject matter in issue, of course, in the manner known to Law and in accordance with Law and to pass a reasoned speaking order 'on merits' assigning qualitative and quantitative reasons within a period of four weeks from the date of receipt of copy of this Order.

14. With the aforesaid observations and directions, the present Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

sr

To

1.The Secretary to Government,
Government of Tamil Nadu,
Home (Courts.I) Department,
Fort St. George,
Chennai - 600 009

2. The Registrar General,
High Court, Madras

3. The Principal District Judge,
Krishnagiri

4. The Chief Administrative Officer,
Principal District Court, Krishnagiri.

5. The Section Officer,
Legal Cell Section,
High Court, Madras.

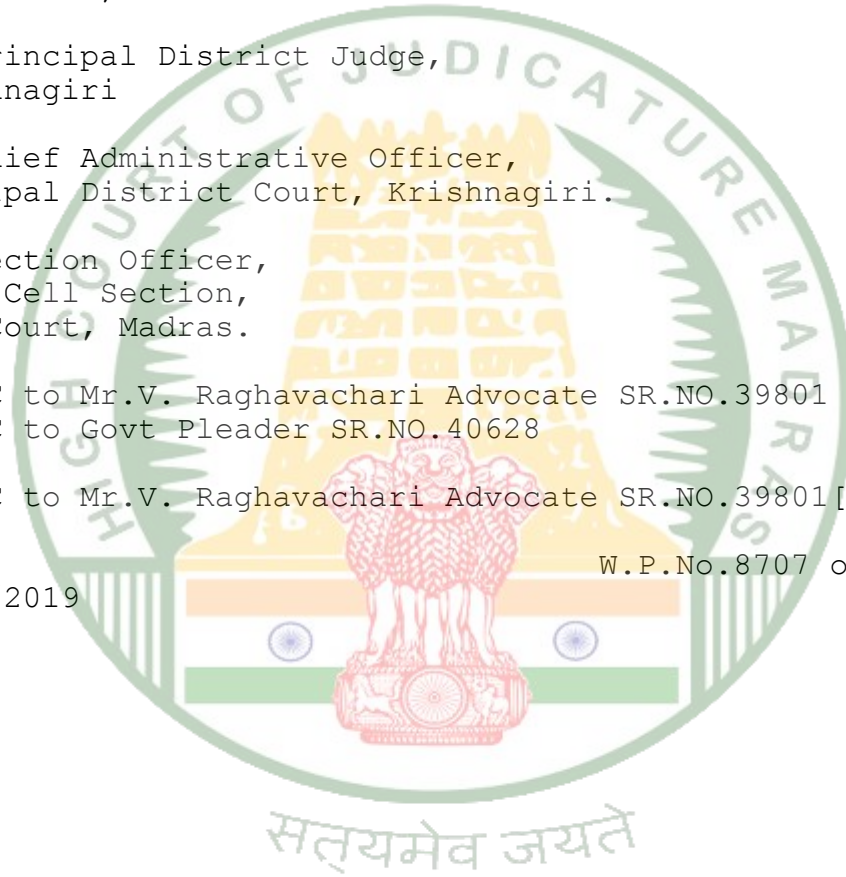
+1CC to Mr.V. Raghavachari Advocate SR.NO.39801

+1CC to Govt Pleader SR.NO.40628

+1CC to Mr.V. Raghavachari Advocate SR.NO.39801[17/06/2019]

W.P.No.8707 of 2019

MK:12/06/2019



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