

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.23540 of 2019

P.Dhana ... Appellant

vs.

1. The Government of Tamil Nadu
rep. by its Principal Secretary to Government
Home Department
Secretariat, Fort St. George
Chennai - 600 002.
 2. The Registrar General
Hon'ble High Court
Chennai - 600 104.
 3. The Principal District Judge
Krishnagiri District
Krishnagiri.
 4. The Judicial Magistrate
Fast Track Court
Hosur.
- .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the third respondent in Ro.No.157/2019/A2, dated 6.7.2019, to quash the same and consequently direct respondents 1 to 3 to allow the petitioner to go on VRS on 10.3.2019 with all consequential and other attendant benefits.

For Petitioner

: Mr.G.Sankaran

For Respondents

: Mr.R.Udayakumar
Addl. Government Pleader
for 1st respondent

Mr.M.Santhanaraman
for respondents 2 to 4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard learned counsel for the parties.

2. This writ petition is by a Bench Clerk working in the Subordinate Judiciary at the Principal Sub Court, Hosur, challenging the order dated 6.7.2019, whereby her request for voluntary retirement has been declined by the learned Principal District Judge, Krishnagiri.

3. Learned counsel for the petitioner has invited the attention of the Court to Rule 56(3) of the Fundamental Rules in relation to the process to be adopted for considering an application for voluntary retirement to contend that the respondents in order to defeat the claim of the petitioner initiated disciplinary action, but in the present case, the application for voluntary retirement had been moved on 10.12.2018, on which no orders came to be passed within three months, i.e., up to 10.3.2019, and it is only thereafter a charge memo for commencing disciplinary proceeding against the petitioner was issued on 28.3.2019. The submission therefore in short is that according to the Rule, referred to herein above, once no orders had been passed within three months as stipulated therein, the petitioner's request for voluntary retirement shall be deemed to have been accepted and therefore no action could have been taken against the petitioner as a consequence of the issuance of the charge memo dated 28.3.2019 or even thereafter. It is submitted that a specific order in writing was required to be passed which was never done and therefore the impugned order having been passed on 6.7.2019 is a nullity.

4. Learned counsel for the respondent, however, submits that according to the Rule itself the disciplinary proceedings were very much under contemplation, inasmuch as a show cause notice after a vigilance enquiry had been issued on 6.3.2019 and consequently, since a disciplinary proceeding was under contemplation, the deemed clause would not be attracted so as to invalidate the impugned order dated 6.7.2019. In the circumstances and in view of the subsequent developments of the disciplinary proceedings undertaken against her, the petitioner cannot now be granted any relief at this stage.

5. We have considered the submissions raised and in order to appreciate the rival contentions, we may extract Rule 56(3)(e) and (f) of the Fundamental Rules that are relevant for the purpose of present controversy. The same is reproduced herein under:

"Rule 56(3)(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 during the period in which the Government Servant concerned; and
- (v) That there is no contractual obligation to service, the Government servant concerned seeks to retire voluntarily.

Rule 56(3)(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 voluntarily from service at the end of the period of notice: सत्यमेव जयते

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."

6. A perusal of Rule 56(3)(e)(i) and (ii) of the Fundamental Rules would demonstrate that a notice for voluntary retirement would be acceptable subject to the condition that no disciplinary proceedings are contemplated or pending against the government servant concerned for the imposition of a major penalty and no prosecution is contemplated or pending in a court of law against the government servant. In our assessment, the aforesaid Rule therefore empowers the employer to pass an order subject to the aforesaid conditions and in the event any disciplinary proceedings are contemplated or pending or any criminal prosecution has been launched, it is open to the employer to refuse to grant such permission for voluntary retirement.

7. However, the situation gets altered slightly in view of Rule 56(3)(f) of the Fundamental Rules which provides that the appointing authority has to issue orders mandatorily within a period of three months, otherwise the government servant will be deemed to have retired voluntarily. This provision, therefore, mandates in no uncertain terms that an order has to be passed within a period of three months either accepting or refusing to accept an application for voluntary retirement in terms of Rule 56(3)(e) of the Fundamental Rules. In the absence of any such order in writing, by deemed fiction, as under the aforesaid clause, the government servant will be deemed to have retired voluntarily.

8. Thus, within a period of three months from the date of request for voluntary retirement, the employer has full control over its employees and can refuse the request of voluntary retirement if either a disciplinary proceeding is pending or contemplated.

9. The third dimension which emerges on account of the proviso to Rule 56(3)(f) of the Fundamental Rules is required to be taken notice, inasmuch as this proviso clearly mandates that if a government servant who is under suspension or against whom a disciplinary or criminal action is pending seeks voluntary retirement, a specific order of the appointing authority would be necessary and the authority would be under an obligation to pass an order if it so chooses to withhold the permission.

10. In the background aforesaid, the action to be taken by the authority by passing a written order is clearly governed by the proviso which contemplates either a suspension or a pendency of a disciplinary or criminal action as against the contemplation of a proceeding indicated in Rule 56(3)(e) of the Fundamental Rules. This distinction therefore has to be borne in mind and which therefore, in our opinion, gets attracted on the facts of the present case, inasmuch as admittedly the charge

memo was issued for the first time in relation to the disciplinary proceedings on 28.3.2019. It is settled law that a disciplinary proceeding can be said to be pending only if a charge memo has been issued, inasmuch as a disciplinary proceeding commences with the issuance of the charge memo, as was held by the Apex Court in Coal India Ltd. v. Ananta Saha, reported in (2011) 5 SCC 142 and Union of India v. Anil Kumar Sarkar, reported in (2013) 4 SCC 161.

11. In the present case, even if any vigilance enquiry had been initiated prior to 10.3.2019, the same cannot amount to the pendency of a disciplinary proceeding unless there are other facts which can demonstrate that the disciplinary proceeding had already commenced prior to 10.3.2019. The impugned order dated 6.7.2019 nowhere reflects any consideration of the aforesaid provisions or the analysis of the facts pertaining to the initiation of the disciplinary proceeding against the petitioner in the light of what has been observed herein above.

12. We, therefore, find that the impugned order dated 6.7.2019 cannot be sustained and requires a reconsideration by the learned Principal District Judge in the light of the provisions referred to herein above. It shall be open to the learned Principal District Judge to examine all the facts and assess the status of the initiation of the proceedings or otherwise before passing a fresh order after giving an opportunity of hearing to the petitioner within a period of six weeks from the date of production of the certified copy of the order before the learned Principal District Judge.

13. The writ petition is allowed and the order dated 6.7.2019 is quashed with the above direction. Any other consequential action or otherwise would be dependent upon the passing of such order by the learned Principal District Judge. No costs. Consequently, W.M.P.Nos.23353 and 23355 of 2019 are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

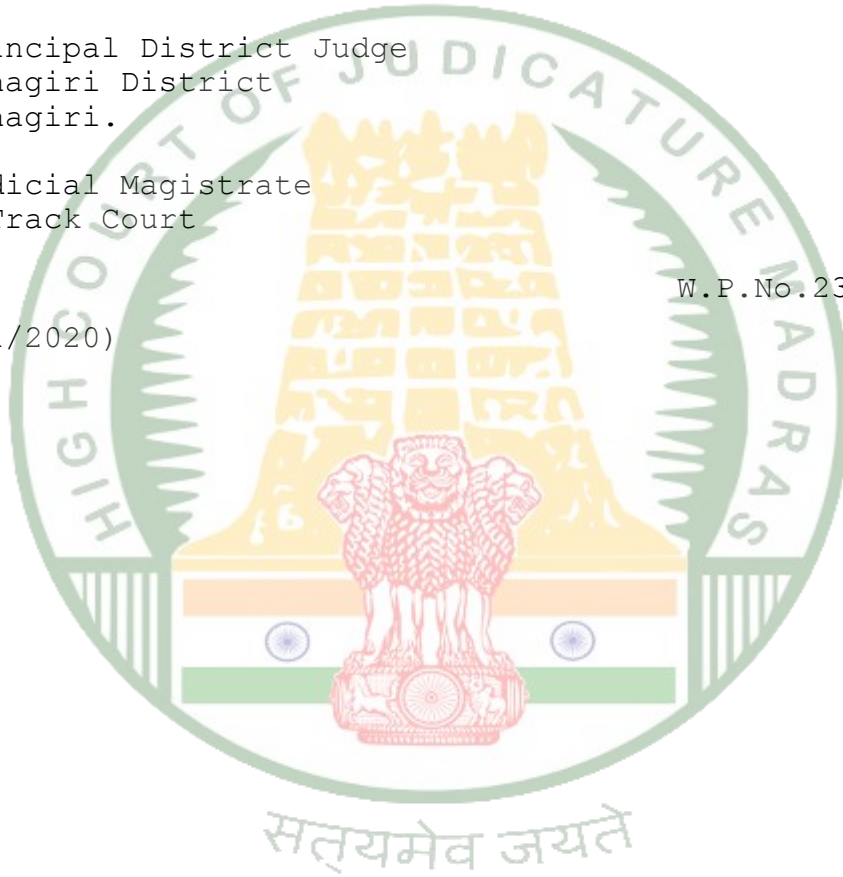
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To:

1. The Principal Secretary to Government
Government of Tamil Nadu
Home Department
Secretariat, Fort St. George
Chennai - 600 002.
2. The Registrar General
High Court
Chennai - 600 104.
3. The Principal District Judge
Krishnagiri District
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W.P.No.23540 of 2019

A.SK(24/01/2020)



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