

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

PRONOUNCED ON :29.03.2019

CORAM

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.27460 of 2018

S.Muthukumarasami

.. Petitioner

V.

1. The Tamil Nadu State Legal Services Authority,
Represented by its Member Secretary,
High Court Buildings,
Chennai - 600 104.

2. Tiruvannamalai District Legal Services Authority,
Represented by its Chairman/District Judge,
Tiruvannamalai,
Synchronized District Court Complex,
Tiruvannamalai - 606 604.

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in show cause notice as issued in DLSA No.867/2018 dated 16.03.2018, on the file of the second respondent, quash the same and consequentially order that the petitioner is deemed to have been retired on 31.07.2015, based upon his application for voluntary retirement made under Rule 53 (6) of the Fundamental Rules of Tamil Nadu Government, as recommended by the second respondent on 30.04.2015 and direct the respondents to grant all retirement benefits to the petitioner.

For Petitioner : Mr.R.Bharanidharan

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2.Factual Matrix:

(i) The Petitioner joined the services of the Tamil Nadu State Legal Services Authority on 01.09.1992 as Junior Administrative Assistant and posted at the Madras High Court Legal Aid Centre. Later, he worked with very same post at District Legal Services Authority, Vellore from 05.07.1993 to 30.11.1993 and thereafter, at Taluk Legal Services Committee, Chengam from 01.12.1993 to 31.07.2012, he was promoted as Senior Administrative Assistant and continued to work at Chengam till 19.03.2013 when he was transferred to District Legal Services Authority, Tiruvannamalai, where he worked until 14.09.2015 and thereafter, transferred to Taluk Legal Services Committee, Polur.

(ii) The version of the Petitioner is that from the year 2008, he was facing numerous health related complications and underwent open surgery for gastrointestinal stromal tumour and thereafter was diagnosed with high Diabetic and Cervical problem and therefore, could not perform his duties and was to undergo medical treatment by utilising his Medical Leave etc. He was not able to concentrate in his duties and submitted an Application for 'Voluntary Retirement' on 28.04.2015 to the 1st Respondent through the 2nd Respondent as per Fundamental Rules 56(3) of the Government of Tamil Nadu.

(iii) According to the Petitioner, on 16.09.2015 he took charge as the Senior Administrative Assistant, but could not perform his duties because of his ill-health and having exhausted all his Medical and Earned Leave, he had applied for 'Unearned Leave' on 18.11.2015 for the period from 17.11.2015 to 16.12.2015 and further that, he had applied for an Earned Leave on 17.12.2015 for the period from 17.12.2015 to 25.01.2016. He submitted one more Application for 'Voluntary Retirement' on 29.12.2015 wherein he had mentioned about the earlier Application dated 28.04.2015 as recommended by the 2nd Respondent on 30.04.2015 which was received by the Office of the 1st Respondent on 31.12.2015 and further appeared before the Medical Board on 27.01.2016 and the Medical Board had recommended for leave to recover from his illness from 21.06.2016 to 25.02.2016 and based upon the subsequent Application and appearance before the Medical Board, he was granted an extension of Medical Leave for 35 days from 26.02.2016.

(iv) The plea of the Petitioner is that on 05.04.2016, he projected another Representation to the 2nd Respondent reminding

about the Application for 'Voluntary Retirement' submitted by him on 29.12.2015. Further, the 2nd Respondent on 16.03.2018 called upon the Petitioner to submit his explanation alleging that charge was framed against him on 27.05.2016 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, based on which an enquiry was conducted 'Ex parte' and the Report was also submitted on 23.08.2016. On the receipt of the Show Cause Notice dated 16.03.2018, he submitted his explanation on 26.03.2018 and it is his case that he is deemed to have retired even as early as on 31.07.2015 based upon his Application for Retirement on 28.04.2015 or atleast the second Application for Voluntary Retirement which was made on 29.12.2015 according to which he would have been deemed to have retired on 31.03.2016.

(v) In short, the contention of the Petitioner is that no charges could be framed against him without passing any order either entertaining or declining his Application for 'Voluntary Retirement' and the consequential Charge Memo, Enquiry Report and that the impugned Show Cause Notice dated 16.03.2018 is unsustainable in Law.

(vi) The Petitioner addressed a communication to the 2nd Respondent dated 22.06.2018 and prayed for supply of copy of the Charge Memo which was not furnished to him till date and hence, it has necessitated him to assail the impugned Show Cause Notice dated 16.03.2018. Therefore, he filed the present Writ Petition seeking to call for the records comprised in show cause notice as issued in DLSA No.867/2018 dated 16.03.2018 on the file of the 2nd Respondent and to quash the same. Further, he prayed for passing of an order by this Court in directing that he is deemed to have retired on 31.07.2015, based upon his Application for 'Voluntary Retirement' made as per Rule 53(6) of the Fundamental Rules of the Government of Tamil Nadu.

3. Petitioner's Contentions:

3.1. The Learned Counsel for the Petitioner contends that the earliest Application of the Petitioner for 'Voluntary Retirement' under F.R.56(3) of the Government of Tamil Nadu on 'Medical Grounds' recommended by the 2nd Respondent/Tiruvannamalai District Legal Services Authority on 30.04.2015 to the 1st Respondent/Tamil Nadu State Legal Services Authority, Chennai and therefore deemed to have been sanctioned as per F.R.56(3)(f) of the Fundamental Rules. Viewed in that perspective, it is the stand of the Petitioner that no proceedings could be initiated against the Petitioner as per Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and on this ground alone, the impugned Charge Memo as well as the second consequential Show Cause Notice is liable to be set aside.

3.2. The Learned Counsel for the Petitioner submits that the Petitioner submitted another Application seeking 'Voluntary Retirement' on 29.12.2015, as recommended by the 2nd Respondent on 30.04.2015 and in fact, the Petitioner should have been permitted to retire as per Rule 56(3) of the Fundamental Rules of the Government of Tamil Nadu, at the end of the notice period. Furthermore, it is represented on behalf of the Petitioner that although the said Applications for 'Voluntary Retirement' were received by the Appropriate Authority viz., 1st and 2nd Respondents, no orders were passed against the Petitioner and as such, it is the contention of the Petitioner that he is deemed to have retired as per Rule 56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu.

3.3. The Learned Counsel for the Petitioner takes a legal plea that the 2nd Respondent on the one hand cannot recommend the Petitioner's case for a 'Voluntary Retirement' and on the other hand, initiate Disciplinary Proceedings in respect of his unauthorised absence as per Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3.4. The Learned Counsel for the Petitioner points out that the Office of the 2nd Respondent on finding that the Show Cause Notice calling for explanation from the Petitioner, Charge Memo and the Enquiry Report not being served upon him during his absence from residence coupled with the fact that the Office of the 2nd Respondent is very well aware about the medical complications undergone by the Petitioner and further that, he was taking treatment in numerous hospitals should not have treated that the Show Cause Notice calling for explanation, Charge Memo and the Enquiry Report, as being served upon him for taking further action.

3.5. The Learned Counsel for the Petitioner contends that the 2nd Respondent had not furnished the Show Cause Notice, Charge Memo dated 27.05.2016 and the Report of the Enquiry Officer dated 23.08.2016, even after a request made by the Petitioner in this regard. As a matter of fact, the impugned Show Cause Notice dated 16.03.2018 is liable to be set aside in the interest of Justice for non-supply of Show Cause Notice etc.

3.6. It is projected on the side of the Petitioner that no 'Disciplinary Proceedings' can be initiated against him without negating the request for 'Voluntary Retirement' and that the whole 'Disciplinary Proceedings' commenced in violation of F.R.56(3)(f) of the Government of Tamil Nadu is an illegal one.

4. Respondents' Submissions:

4.1. In response, it is the submission of the Learned

Special Government Pleader for the Respondents that although the Petitioner had submitted his first VRS Application on 28.04.2015 with three months notice to retire with effect from 31.07.2015, he had not acted as per Rule 56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu. Per contra, the Petitioner continued under his service for the subsequent period also and as such, his claim that he is deemed to have retired with effect from 31.07.2015 as per Rule 56(3)(f) of the Fundamental Rules is not a correct one, in the eye of Law.

4.2. The Learned Special Government Pleader for the Respondents submits that in regard to the second VRS application submitted by the Petitioner dated 29.12.2015 with a notice period of three months to retire with effect from 31.03.2016 also cannot be considered as a valid claim under F.R.56(3)(f) to the effect that he deemed to have retired voluntarily, because of the reason that he had applied for two days casual leave on 17.11.2015 and 18.11.2015 without leave period in his account and that he had applied for Unearned Leave on Medical Certificate for 30 days from 17.11.2015 to 16.12.2015, before receiving the aforesaid Leave Application for the 30 days of Unearned Leave on Medical Certificate. In this connection, it is to be mentioned that the 2nd Respondent through Office Note dated 21.11.2015 had called for explanation for his 'Unauthorised Absence' for the period from 17.11.2015 to 21.12.2015 and for the subsequent Unearned Leave on Medical Certificate for 40 days from 17.12.2015 to 25.01.2016 applied by the Petitioner were referred to the Medical Board by the 2nd Respondent to find out the genuineness of the Leave applied by him.

4.3. The Learned Special Government Pleader for the Respondents projects an argument that very often without getting prior permission, the Petitioner applied for 'Leave' and taking into consideration of the fact that he had applied for the third spell of 'Unearned Leave on Medical Certificate' from 26.01.2016 to 31.03.2016 (for 66 days) was returned by the 2nd Respondent because of the reason that the earlier 'Unearned Leave' applied for by the Petitioner was not regularised in view of the non receipt of any communication from the Medical Board. That apart, in the interregnum, an explanation was called for by the 2nd Respondent from the Petitioner in communication dated 02.03.2016 for non joining of duty by him on the afternoon on 27.02.2016 till 01.03.2016 without any intimation and permission.

4.4. In this regard, it is to be pointed out on behalf of the Respondents that since the Petitioner had not offered any explanation, the 2nd Respondent initiated Disciplinary Proceedings by framing charges under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules against him for an unauthorised absence of duty, dereliction and negligence

of duty. Therefore, it is the contention of the Respondents that in view of the pendency of the aforesaid initiation of proceedings for the Petitioner's unauthorised absence, he cannot claim any right or take shelter under Rule 56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu and for the aforesaid reasons, his 'VRS Applications' were not considered by the 2nd Respondent.

4.5. The Learned Special Government Pleader for the Respondents brings it to the notice of this Court that the 2nd Respondent/District Legal Services Authority, Tiruvannamalai issued an Official Memorandum dated 02.03.2016 to the residential address of the Petitioner wherein an explanation was called for from him for non-joining of duty on the expiry of 32 days of Unearned Leave on Medical Certificate issued by the Medical Board from 26.01.2016 to 26.02.2016 and in reality, the Petitioner had not joined duty on the afternoon of 27.02.2016 till 01.03.2016 without any intimation or prior permission. In fact, the aforesaid Memorandum was sent to the Petitioner's 'Residential Address' through 'Special Messenger' by name P.Sundar, but the same was unable to be served on the Petitioner, since the resident door was kept under lock and seal for two days.

4.6. The Learned Special Government Pleader for the Respondents submits that the aforesaid Special Messenger on 3rd day went to the residence of the Petitioner and found the resident door was kept under Lock and therefore, he returned the said cover containing the Official Memorandum to the 2nd Respondent with a Report that the door was Locked.

4.7. The Learned Special Government Pleader for the Respondents contends that the Official Memorandum dated 21.11.2015 was issued by the 2nd Respondent and that the said Memorandum was sent through Special Messenger Mr.Appu (PLV) to the residential address of the Petitioner and the same got returned with a letter of the said Special Messenger Appu dated 23.11.2015 wherein it was mentioned that the Petitioner's wife who was present in the house refused to receive the Tapal brought by him and replied that the Petitioner (her Husband) is taking treatment from the Hospital.

4.8. The Learned Special Government Pleader for the Respondents takes a plea that with a view to bring it to the notice of the Hon'ble High Court that the Enquiry Officer after receiving the Enquiry File had sent the copy of the charge to the Petitioner to the Registered Post vide D.No.892/2016 dated 29.06.2016 through R.P.A.D. to the Petitioner's address and the said R.P.A.D. got returned with the postal endorsement as 'Intimation given Unclaimed Returned to the Sender' and as such,

it is incorrect. Further, the Petitioner had come out with a plea that he was totally in dark about the Show Cause Notices calling for explanation in respect of unauthorised absence including the Charge Memo framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

4.9. It is the stand of the 2nd Respondent that once again the Petitioner was informed through the 2nd Respondent's letter dated 16.03.2018 that the charges levelled against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and an Ex parte Enquiry Report passed was also communicated to the Petitioner which was accepted by the Petitioner through his Letter dated 26.03.2018 addressed to the Chairman/DLSA viz., the 2nd Respondent. Furthermore, although the Petitioner through his Letter dated 26.03.2018 had submitted his explanation to the 2nd Respondent, the entire File along with Enquiry Report was forwarded to the Tamil Nadu State Legal Services Authority to pass final orders by a covering letter dated 04.04.2018. Later based on the Note Order dated 01.08.2018 of the Hon'ble Executive Chairman of the Tamil Nadu State Legal Services Authority, the entire File of the Petitioner with Enquiry findings were returned to the 2nd Respondent on 04.09.2018 and as on date, the said File is pending for passing final orders.

5. Petitioner's Reply:

5.1. It is the submission of the Learned Counsel for the Petitioner that it is very peculiar on the part of the 2nd Respondent to make an endeavour to serve the notice upon the Petitioner at his residence through a Special Messenger when it is quite clear that he would not be available at his residence and was undergoing treatment in the Hospital.

5.2. The Learned Counsel for the Petitioner contends that the 2nd Respondent had not followed the due procedure to serve the notice as per Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which provides for service of notices in person in respect of the Government Servant concerned or sent to him by registered post by acknowledgement due or if such person is not found, by leaving it at his last known place of residence or giving it to an Adult Member of his family or if none of the above means aforesaid is available by affixing it in some conspicuous part of his last known place of residence.

5.3. The Learned Counsel for the Petitioner categorically points out that the 2nd Respondent had not explained as to why the Official Memorandum dated 02.03.2016 and the Official Memorandum dated 21.11.2015 seeking for explanation for unauthorised absence of the Petitioner were not attempted to be served by way of a registered post as provided under Rule 18(c)

of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Furthermore, there is no explanation as to why the 2nd Respondent had not waited till the Petitioner came out of the Hospital etc.

5.4. The Learned Counsel for the Petitioner submits that the Enquiry was conducted on 06.08.2016 in one single day and that the Petitioner was 'Set Ex parte' on the same day and that no opportunity was provided to the Petitioner and straight away the impugned show cause notice dated 16.03.2018 was issued to the Petitioner through Registered Post which he received at his residence while taking rest after treatment from the Hospital and subsequently, he submitted his reply to the Show Cause Notice on 23.06.2018 and even after lapse of nearly eight months till the date no final orders were passed in the subject matter in issue.

5.5. The Learned Counsel for the Petitioner contends that even though the Petitioner was set Ex parte in the Enquiry Proceedings, the same will not disentitle the 2nd Respondent from withholding the Enquiry Report being served upon the Petitioner and that the denial of the Enquiry Report before the Disciplinary Authority takes its final decision in the Disciplinary Proceedings is a denial of reasonable opportunity to the Employee to prove his innocence, besides this, the same is in violation of Principles of Natural Justice.

6. Voluntary Retirement:

6.1. At the outset, this Court points out that the term 'Voluntary Retirement' is a 'Condition of Service' and the same comes into effect only on acceptance by an Employer, till then, the legal position is no enforceable right accrue to an Employee. An offer of 'Voluntary Retirement' can be withdrawn before the date of its coming into effect even it was accepted, as per decision of the Hon'ble Supreme Court in Balbir Singh Negi V. Union of India reported in (1996) 8 SCC 283.

6.2. An offer of 'Voluntary Retirement' projected by an Employee is to be accepted by an Employer, with a view to constitute a binding contract between the parties. When there was no explicit acceptance being conveyed to an Employee and when he continued to work till his retirement on Superannuation, then, he could not claim benefit of Ex gratia, payable in case of 'Voluntary Retirement' Scheme for which he made request while in service, as per decision National Textile Corporation (M.P.) Limited V. M.R. Jadhav reported in AIR 2008 SC 2449.

6.3. Further, if an Employee continued to work after intended date of his 'Voluntary Retirement' and without any haziness or unconditionally received/ accepted salary till he attained the age of Superannuation, then, in Law, he must be

deemed to have waived his right, if any of 'Voluntary Retirement Scheme'.

6.4. Be it noted that when an Employee expresses his inability to join duty on Medical Grounds and leave is refused to him, then, such a case cannot be considered as 'Deemed Voluntary Retirement' as per decision of the Hon'ble Supreme Court in Syndicate Bank V. Satya Srinath, (2009) 16 SCC 422.

6.5. Besides this, an 'Employer' and 'Employee' Relationship continues till an Employee is relieved of the duty and after acceptance of offer of 'Voluntary Retirement' or Resignation, as per decision of the Hon'ble Supreme Court in Power Finance Corporation Limited V. Pramod Kumar Bhatia, (1997) 4 SCC 280. The effective date of 'Voluntary Retirement' is the day when the concerned Authority/Government accepts such application and not from the date of communication of acceptance. Moreover, upon accepting the monetary dues the jural relationship between the Employer and Employee ceases to exist, as per decision A.K.Bindal V. U.O.I., 2003 (5) SCC 163.

6.6. Moreover, in the decision Union of India V. A.N.Saxena reported in AIR 1992 SC 1233, it is observed as under:

"Where there were serious charges against an Income-tax officer e.g. in a case where the assessee-trust was used apparently only as a device for converting the unaccounted income of the family of the trustees, the ITO without making any enquiry, in the assessment order held that the donations made to the trust were found to be genuine, rendering it difficult even to re-open the assessment of the trust for that assessment year without considering and determining the issues involved, the interim order of Administrative Tribunal granting a stay of disciplinary proceedings against the delinquent officer without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, was liable to be set aside. The imputations made against the officer were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour in such a case, it could not be said that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi judicial proceedings. Where the actions of such an officer indicate culpability, namely,

a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

6.7. Also that, an 'Employee' may by his own conduct render his notice ineffective when he continues to work after the effective date specified in his notice, as per decision of the Hon'ble Supreme Court in *Tulsi Ram Sharma V. State of Rajasthan*, 1994 (1) SLR 287.

6.8. It cannot be ignored that a 'VRS' although contractual in character ought to be interpreted which avoids an unreasonableness and arbitrariness. A 'Judicial Review' in respect of a VRS under Article 226 of the Constitution is maintainable inter alia based on the reasons that (i) an Employer is Authority under the State; (ii) the action of such an Authority must pass the test of Article 14 of the Constitution of India; (iii) a right of an Employee to continue in Employment as per Article 21 of the Constitution of India could not be taken away except in accordance with Law as per decision of the Hon'ble Supreme Court in *Bank of India V. O.P.Swaranakar* reported in AIR 2003 SC 858.

7. Ascribing of Reasons:

7.1. In the words of 'FRANZ SCHUBERT', 'Reason is nothing but analysis of belief'. According to 'CICERO', 'Reason is the Mistress and Queen of all things'. Reasoned Orders/Decisions are important to exhibit that a person is receiving Justice.

7.2. To quote 'ROSALIND FERGUSSON', 'Law governs Man, Reason the Law'. Inadequacy of Reason in an order is an error 'Apparent on the Face of Record'. 'Reasons' reveal a rational nexus between the facts considered and conclusions reached, as per decision *Uma Charan V. State of M.P.*, AIR 1981 SC 1915.

7.3. Further, recording of reasons helps an Appellate Authority/ Revisional Authority or the Supervisory Authority to find out whether the Author of an Order/Judgment/Decree or Sentence had acted fairly and justly to meet out Justice to an 'Aggrieved person', as per decision *Maharashtra State Board of Secondary and Higher Secondary Education V. K.S.Gandhi and others*, (1991) 2 SCC 716.

Service of Notice:

8. As regards the question as to Service of Notice, the Court is duty bound to record a Finding, as per decision of the Hon'ble Supreme Court in *Naresh Chandra Agarwal V. Bank of Baroda and others*, AIR 2001 Supreme Court 1253. Undoubtedly, the onus is on the part of the 2nd Respondent to establish service of

cover containing the Official Memorandum dated 02.03.2016 addressed to the Petitioner's residential address. Generally, a Direct Service on the Petitioner is one of the recognised modes of service.

9. At this stage, it may not be out of place for this Court to make a mention that a Notice/Summons returned with an endorsement 'Not Claimed' is a due service, as per decision Vithabai G. Ghodake and another V. United Western Bank Limited and others, AIR 2003 Karnataka 266, 269. Also that, where service is received back as 'Refused' by Registered Post, it is sufficient service, as per decision Sri Krishna Rice Mills V. P. Rajagopala Konar, AIR 1958 Madras 522.

10. A service of notice on Adult Member of the family was held to be a valid service, as per decision Patel Bhikha Bhutta V. State of Gujarat and others, 1995 AIHC 1080, 1081. A service on the father of the Respondent as evidenced by Bailiff report, was held to be 'sufficient service', as per decision Sedam Pandurangaiah V. Chavva Guruvaiah, (2004) 5 Andhra Law Times 365 (A.P.).

11. Also, it is to be pointed out that in the decision Eravi Pillai Krishna Filial and another V. Maluk Mohammad Shaul and other, AIR 1953 Travancore-Cochin 494, wherein at paragraph 54, it is inter alia observed as under:

"Under O.5, R.15, Civil P.C. It is only when the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf that service may be made on any adult member of the family of the defendant who is residing with him. In this case even if Sankara Pillai is regarded as a member of the family of Narayani Pillai it is seen from the evidence of P.W.4 that he was not residing with her. P.W.4 does not also say that he took the notice to the house where Narayani Pillai was living. He does not remember at what place the notice was served on Sankara Pillai. It is only if Narayani Pillai could not be found in her house that the notice could be served on any adult member of the family residing with her."

12. At this juncture, this Court aptly points out the decision in Intu Miah Mistry V. Durbuksh Bhuiyan, AIR 1914 Calcutta 845, wherein it is observed as under:

"An appeal was decided ex parte against the appellant who was employed in His Majesty's

Marine Service. He applied to set aside the ex parte decree on the ground of insufficiency of notice. It was found that a notice was served under the provisions of Rr.15 and 16, O.5, and the appellant had an opportunity of appearing as he was in communication with his family members both before and after the service."

Sufficient Cause:

13. In reality, what is 'Sufficient Cause' depends on the facts and circumstances of each case and there is no straight jacket formula for deciding what is 'Sufficient Cause'. As a matter of fact, the term 'Sufficient Cause' is to be considered with pragmatism in Justice Oriented Process Approach thereby avoiding a pedantic approach and the matter is left to the wisdom better sense and discretion of the concerned Enquiry Officer/Disciplinary Authority as the case may be. The basic Principle is that no order ought to be passed to the detriment of a person without providing an opportunity to him.

Appearance:

14. It is to be noted that the word 'Appearance' means appearance in person or through pleader prepared to conduct the case as per decision Hindustan Steel Limited V. Prakash, AIR 1970 Orissa 149.

Relevant Rules:

15. In fact, Rule 13(2) of the Tamil Nadu District Legal Services Authority Rules, 1997 enjoins as follows:

"13. Conditions of service and the salary and allowances of the officers and other employees of the District Authority:-

(2) The officers and other employees of the District Authority shall be governed by the rules regulations of the Tamil Nadu Judicial Ministerial Service Rules. They shall be entitled to such other facilities, allowances and benefits as may be sanctioned by the Government from time to time."

16. It is to be pointed out that Rule 17(f) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, reads as under:

"(f) If the Government Servant, to whom a copy of the charges together with a statement of the allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the

case, is communicated, does not submit the written statement of his defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte."

Discussions:

17. In regard to the plea taken on behalf of the Petitioner that his First Application dated 28.04.2015 seeking Voluntary Retirement on Medical Grounds was recommended by the 2nd Respondent on 30.04.2015 to the 1st Respondent was deemed to have been sanctioned in accordance with Rule 56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu and later he submitted Second Application on 29.12.2015 seeking 'Voluntary Retirement' (wherein he had mentioned about his First Application dated 28.04.2015) and that he should have been allowed to be permitted to be retired as per Rule 56(3)(f) of the Government of India at the end of the notice period, it is to be pointed out that his offer of 'Voluntary Retirement' was not accepted by the 1st Respondent. Further, the Petitioner after his VRS Application on 28.04.2015 with three months notice period to expire on 31.07.2015, he continued in service for the subsequent period and as such, the contra plea taken on behalf of the Petitioner that he was deemed to have voluntarily retired on 31.07.2015 as per F.R.56(3)(f) is not accepted by this Court.

18. In this connection, it is pertinent to make a relevant mention by F.R.56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu, the 'Appointing Authority' may withhold the permission sought for by the Government Servant (in accepting his Voluntary Retirement) if any of the conditions specified in F.R.56(3)(e) are not fulfilled. In fact, F.R.56(3)(e)(i) specifically enjoins that no Disciplinary Proceedings are contemplated or pending against the Government Servant concerned for the imposition of 'Major penalty'.

19. In the present case, it comes to be known that the Petitioner had applied for two days 'Casual Leave' on 17.11.2015 and 18.11.2015 respectively without any leave credit in his account and further, he applied for 'Unearned Leave on Medical Certificate' for 30 days from 17.11.2015 to 16.12.2015 and before the receipt of his said Leave Application for 30 days of 'UEL on Medical Certificate', the 2nd Respondent/District Legal Services Authority by means of an Office Note dated 21.11.2015 sought for an explanation from the Petitioner for his unauthorised absence for the aforesaid period from 17.11.2015 to 21.11.2015.

20. Apart from that, the 2nd Respondent had referred the

Petitioner to Medical Board for the 40 days Unearned Leave on Medical Certificate sought for by him (for the period 17.12.2015 to 25.01.2016), with a view to find out the genuineness/bona fide of leave applied for. The 2nd Respondent/District Legal Services Authority had returned the third spell of 'Unearned Leave on Medical Certificate' from 26.01.2016 to 31.03.2016 (66 days) because of the reason that the earlier Unearned Leave applied for by the Petitioner was not regularised in view of non-receipt of any communication from the Medical Board. In the interregnum, the 2nd Respondent/ District Legal Services Authority had called for an explanation from the Petitioner for non-joining of duty on the forenoon of 27.02.2016 till 01.03.2016 without any intimation and permission. The 2nd Respondent initiated a Disciplinary Proceedings against the Petitioner, since he had not offered any explanation and necessary charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in respect of his unauthorised absence of duty and dereliction and negligence of duty.

21.Suffice it for this Court to make a significant mention that because of the pendency of the aforesaid initiation of Disciplinary Proceedings against the Petitioner for his 'Unauthorised Absence', it is not open to him to seek an umbrage under 56(3)(f) of the Fundamental Rules of the Government of Tamil Nadu. Viewed in that perspective, the two Applications of the Petitioner dated 28.04.2015 and 29.12.2015 seeking 'Voluntary Retirement' were not considered. Moreover, the 1st Respondent/Appointing Authority had rightly not accorded permission sought for by the Petitioner especially in the teeth of F.R.56(3)(e) of the Government of Tamil Nadu and as such, the plea taken on behalf of the Petitioner that he is deemed to have retired as per F.R.56(3)(f) is clearly unsustainable in Law and is not acceded to by this Court.

22.In the instant case, an Official Memorandum dated 02.03.2016 was sent to the residential address of the Petitioner and by virtue of the said Memorandum, an explanation was sought for from him for non-joining of duty on expiry of 32 days Unearned Leave on Medical Certificate issued by the Medical Board from 26.01.2016 to 26.02.2016. He had not joined the duty on Afternoon of 27.02.2016 till 01.03.2016 without any prior permission or intimation. In reality, the Official Memorandum dated 02.03.2016 was sent to the Petitioner's residential address through a Special Messenger P.Sundar and the same was not served on the Petitioner, since the resident Door was kept under Lock and Key for two days. On the third day, the Special Messenger went to the residence of the Petitioner and found that the resident Door was kept under Lock. Therefore, he submitted a report to the 2nd Respondent to the effect that the Door was

Locked and returned the cover (containing the Official Memorandum).

23. The 2nd Respondent sent an Official Memorandum dated 21.11.2015 (in D.No.1078/2015 to the Petitioner whereby an explanation was sought for from the Petitioner for his unauthorised absence from duty for the period from 17.11.2015 to 21.11.2015 and in fact, the said Memorandum was sent through Special Messenger Appu (PLV) to the Petitioner's Residential address and the same was returned with his Letter/Report dated 23.11.2015 stating that he went to the address of the Petitioner with the Official Memorandum and there Petitioner's wife informed him that the Petitioner because of his sickness, went to outside for taking Medical Treatment and by so saying, she refused to receiving the Official Memorandum and hence, he returned to the Office.

24. The 2nd Respondent sent a copy of the Charge Memo to the Petitioner by means of Registered Post Acknowledgement Due dated 29.06.2016 to the Petitioner's address and the same returned with a Postal Endorsement as 'Intimation Given. Unclaimed returned to the Sender'. In the returned cover, two dates viz., "30.6 and 1.7" are seen.

25. Before this Court, it is the categorical stand of the 2nd Respondent that because of the non-submission of an explanation by the Petitioner and non-receipt of charge memo sent to him which was returned and a further statement given by the Special Messenger before the Enquiry Officer that the date of Enquiry fixed and intimated by the Enquiry Officer through letter dated 06.08.2016 sent through Special Messenger was also refused to be received by the Petitioner and therefore, the Special Messenger had affixed the said letter on the residential Door of the Petitioner and added further, when the Petitioner was informed by the 2nd Respondent through communication dated 16.03.2018 that a charge was framed against him as per Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 27.05.2016 and that he was set Ex parte in the Enquiry Proceedings for non-appearance etc., the Petitioner was directed to receive the copy of the communication and offer his explanation in regard to the proved charges within a week from the date of the communication. The said communication dated 16.03.2018 of the 2nd Respondent was received by the Petitioner on 26.02.2018 and in fact, the Petitioner had submitted his explanation on 26.03.2018. In the said explanation, the Petitioner among other things had clearly mentioned that he was not served with the charges framed against him and also enquiry notice was not served on him and also that, without providing an opportunity he was set Ex parte and as such, the Enquiry Officer is not valid

and binding upon him etc.

26. At this juncture, a perusal of the Representation/ explanation of the Petitioner dated 26.03.2018 clearly points out that the Petitioner had appeared before the Joint Director of Medical Science, Tiruvannamalai and after scrutinising his Medical Records, and after medical check up by the Board, his leave was recommended as genuine and necessary one (for the period in question). Hence, the Petitioner in his explanation dated 26.03.2018 had taken a stand that there was no unauthorised absence on his part from 17.11.2015 to 31.03.2016 and the same was on health grounds after submitting his Leave Application together with Medical Certificate. As on date, the Petitioner's entire File is pending before the 2nd Respondent/Chairman, District Legal Services Authority, Tiruvannamalai from 04.09.2018 for passing 'Final Orders'.

27. Even though the Petitioner has filed the present Writ Petition seeking to quash the impugned order dated 16.03.2018, this Court considering the fact that no 'Final Orders' were passed by the 2nd Respondent at the time of filing of the Writ Petition by the Petitioner and also till date, no 'Final Orders' were passed and for passing 'Final Orders', the matter is pending before the 2nd Respondent, this Court comes to a resultant conclusion that the filing of the present Writ Petition is nothing but a 'premature and otiose' one.

28. In view of the divergent stand taken on behalf of the Petitioner as well as the Respondents and also taking note of the fact that the entire File relating to the Petitioner is pending as on date before the 2nd Respondent for passing 'Final Orders' and also, this Court, bearing in mind of the explanation submitted by the Petitioner dated 26.03.2018, at this stage, simpliciter, without expressing any opinion on the merits of the matter and also not delving deep into the same, as a prudent course of action, directs the 2nd Respondent to look into the contents of the explanation of the Petitioner dated 26.03.2018 in a lock stock barrel fashion and that too in a Just, Fair, Free, Unbiased, Objective and in a dispassionate manner, by advertng to both Factual and Legal pleas raised by the Petitioner [including the aspect of whether service was effected upon the Petitioner in a valid and proper manner, especially as per Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or whether the ingredients of Rule 18(c) were adhered to in true letter and spirit or whether or not there was sufficient cause for the Petitioner to refuse service, in respect of the Official Memorandum dated 02.03.2016 and the Letter dated 21.11.2015] and meeting out the same, is to pass a reasoned speaking order, in a qualitative and quantitative

manner, within a period of eight weeks from the date of receipt of copy of this order. If the Petitioner is 'Aggrieved' against the 'Final Orders' passed by the 2nd Respondent, then, he may prefer an 'Appeal' before the Appellate Authority/1st Respondent/Tamil Nadu State Legal Services Authority and seek necessary reliefs, if he so desires/advised. In case the Petitioner requires any personal/oral hearing to air his grievances touching upon his Representation dated 26.03.2018 by making a written request in this regard, the 2nd Respondent shall provide an opportunity, in a practical, pragmatic, purposeful, meaningful and rational manner, by adhering to the Principles of 'Natural Justice'. The Petitioner is directed to offer his unstinted cooperation and assistance to the 2nd Respondent in passing the 'Final Orders' in the subject matter in issue, within the time determined by this Court.

Result:

29. With the aforesaid observations and directions, the Writ Petition stands disposed of. Consequently, the interim order dated 26.10.2018 passed by this Court shall stand vacated in furtherance of substantial cause of Justice. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Member Secretary,
The Tamil Nadu State Legal Services Authority,
High Court Buildings, Chennai - 600 104.
2. The Chairman/District Judge,
Tiruvannamalai District Legal Services Authority,
Tiruvannamalai, Synchronized District Court Complex,
Tiruvannamalai - 606 604.

W.P.No.27460 of 2018

PPA (CO)
CS/08/05/2019