

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.06.2019
Pronounced On	28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.31513 of 2018

R.Thangaraj

... Petitioner

vs

1. The Registrar General,
Madras High Court,
Chennai - 600 104.

2. The Principal District Judge,
Thiruvannamalai.

3. The Chief Judicial Magistrate,
Thiruvannamalai.

.... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution, to issue a writ, Order or Direction particularly in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 12.10.2018 passed in Dis.No.6375/2018/A on the file of the 2nd Respondent herein, quash the same and consequently direct the 2nd Respondent herein to reinstate the petitioner in service with all consequential and attendant benefits.

For Petitioner : Mr.Govi Ganesan

For Respondents: Mr.R.Vijayakumar

O R D E R

C.SARAVANAN, J.

The petitioner is aggrieved by the impugned order dated 12.10.2018 bearing reference ORDER IN DIS.NO 6375/2018/A passed by the 2nd respondent compulsorily retiring the petitioner under Rule 56 (2) of the Fundamental Rules.

2.The impugned order has been passed by the 2nd respondent at the time when the petitioner was aged about 57 years after completing 30 years of service. The petitioner was to otherwise retire on 30th June, 2019 on attaining the age of superannuation.

3.The impugned order is based on the report/recommendation of the Review Committee dated 11.10.2018.

4.The issue that arises for consideration in the present writ petition is whether the 2nd respondent was justified in compulsorily retiring the petitioner vide impugned order dated 12.10.2018 bearing reference ORDER IN DIS.NO 6375/2018/A based on the report/recommendation of the Review Committee dated 11.10.2018.

5.While the recommendation of the Review Committee states that it is pursuant to the reference by the Appointing Authority namely the 2nd respondent herein and it had reviewed the order of the 2nd respondent and suggested that the petitioner be paid 3 months' salary in lieu of the notice and be relieved immediately from service on public interest because the petitioner was on Medical Leave and he was physically unfit.

6.Since, the impugned order is based on the recommendation of the Review Committee dated 11/10/2018 which in turn was pursuant to an order of the 2nd respondent as the Appointing Authority, we called for the records to see whether any order was indeed passed by the 2nd respondent as Appointing Authority for the Review Committee to give their recommendation to compulsorily retire the petitioner. We have perused the records.

7.On 10.10.2018, the 2nd Respondent opined that the post of Sheristadar, Chief Judicial Magistrate Court, Tiruvannamalai was a very important and vital post in the Administration of Criminal Units in the District Judiciary. Though the petitioner was holding this responsible post he availed 225 days of Unearned Leave on the strength of Medical Certificate and remained absent and spoiled the entire Administration of Courts and caused inconvenience to the Public and litigants.

8.Based on the Medical Certificate submitted by the individual it was concluded that the petitioner was unfit to perform the duties as the Public Servant as he himself admitted in his leave application that he is suffering from multiple disorders in the Bones and Joints and he cannot perform his work like writing, etc.

9.Therefore, the petitioner was found to be unfit to continue as a public servant and in the Public interest the petitioner was ordered to be Compulsory Retired with immediate effect.

10.The 2nd respondent followed the guidelines in G.O.No.623 Personal and Administrative Reforms (Per.R) Department Dt:14.07.1983 before compulsory retiring the petitioner by referring the decision to compulsory retire the petitioner to a Review Committee.

11.The Review Committee consisted of the Additional District Judge (FTC),Arni, the Chief Judicial Magistrate, Tiruvanamalai the (2nd respondent herein) and the Principal Subordinate Judge, Tiruvanamalai.

12.Recommendations of the Review Committee dated 11.10.2018 read as under:-

- i. On perusal of the Service particulars of Thiru R.Thangaraj Sheristadar, Chief Judicial Magistrate Court, Tiruvannamalai it is noted that his actual date of Superannuation will be on 30.06.2019 and the residual portion of his service is 8 months and 20 days. The individual has rendered total service of 37 years 3 months and 17 days in Judicial Department. This order of Compulsory Retirement passed on Public Interest will not affect the Pensionary Benefits of the individual.
- ii. On perusal of the service particulars of the individual it is noted that the individual had availed Unearned Leave on Medical Certificate for 225 days from 13.2.2018 to 10.10.2018 and also he intended to extend his leave for further periods without joining in the service on 11.10.2018 which proves that his physical fitness is in question to continue his service as public servant and his physical condition is unfit to continue his service as Public Servant. So the order of Compulsory Retirement on his Physical Condition and Public Interest is acceptable to this committee.
- iii. This committee also reviewed the order of the Appointing authority and suggested that the individual may be paid 3 months' salary in lieu of notice period and allow the individual to relieve immediately from the service on Public Interest because the individual is still in Medical Leave and his Physical Condition is unfit.

13. Based on the above recommendations of the Review Committee, the Petitioner was relieved from service. Three months salary in lieu of notice has also been credited to the account of the petitioner subsequently on 13.11.2018.

14. The brief facts of the case resulting in the impugned order is that the petitioner availed medical leave for treatment while serving as Sheristadar of the Sub- Court at Tiruvanamalai. The petitioner continued to undergo treatment and was therefore on leave and applied for sanction/grant of unearned leave on

medical grounds.

15. In all, the petitioner was on leave for a period of 225 days commencing from 13.02.2018 ending with 18.10.2018. The leave application filed by the petitioner were periodically sanctioned by the 3rd respondent from 19.02.2018 for a period of 24 days, on 20.02.2018 for a period of 18 days, and 03.04.2018 for a period of 25 days and for a period of 20 days on 02.05.2018.

16. Thereafter, the petitioner requested to join duty and 18.05.2018. The 3rd Respondent accepted the request. However, on 26.05.2018, the Petitioner again applied for leave which was sanctioned on 29.05.2018 by the 3rd respondent for a period of 25 days up to 19.06.2018.

17. Thereafter, no further leave was sanctioned. By letter dated 27.8.2018 the petitioner requested for further leave between 27.08.2018 to 10.10.2018 (both days inclusive). The petitioner, thus continued to be on further leave from 20.06.2018 up to 10.10.2018 and kept applying for leave in four spells.

18. After availing 225 days of medical leave up to 10.10.2018, the petitioner approached the 3rd respondent with medical fitness certificate issued by the Government Hospital but however requested another 15 days leave from 11.10.2018 to 25.10.2018 to celebrate his son's wedding. This request was made without joining duty.

19. Under these circumstances, the 3rd respondent on 11.10.2018 returned the leave application on the ground that the petitioner had not appeared in person for seeking further leave.

20. Since the petitioner applied for more than 60 days of Medical Leave, the 3rd respondent by a communication dated 12.10.2018 bearing reference DIS.No.1446/2018, stated that leave can be sanctioned only after referring the petitioner to the Medical Board, Tiruvanamalai and after obtaining the opinion of the Medical Board pursuant to decision taken to him in this regard on 10.10.2018 by him. However the signature in the communication dated 12.10.2018 shows as if it was signed on 10.10.2018.

21. It is thereafter the 2nd respondent decided to retire the petitioner compulsorily under Rule 56 (2) of the Tamil Nadu Government Fundamental Rules.

22. It is the case of the petitioner that the copy of the recommendations of Review Committee dated 11.10.2018 was not furnished and no remarks were called for from the petitioner. If any adverse recommendation was put against the petitioner, he should have been given an opportunity to offer his explanations and thereafter only any decision should have been taken.

However, the said report has been signed by the chairman on 12.10.2018.

23.It was further submitted that all the unearned leave applied on medical certificate was sanctioned by the 3rd respondent herein and the salary was also paid for the leave period and therefore the same cannot be put against the petitioner herein.

24.It was also submitted that the competent ,Medical Officer, Government Medical College & Hospital, Tiruvanamalai and the District Medical Board of Tiruvanamalai District has also post facto issued certificates to the effect that the petitioner is fit to resume duties and recommended leave on medical grounds. It is submitted that when the experts have certified that the petitioner was unfit, it was highly improper to contend that the petitioner's physical fitness was questionable to continue in service.

25.It is submitted that all the medical leave was sanctioned by the 3rd respondent with the knowledge of the 2nd respondent. It is submitted that even before the certificate was issued by the Medical Board and even before the 3rd respondent has taken the decisions as to whether grant leave or not, the 2nd respondent has hurriedly compulsorily retired the petitioner on 12.10.2018 when especially the petitioner was asked to appear before the Medical Board on the same day.

26.The petitioner further submitted that the 3rd respondent cannot assume dual role of a Review Committee member as well as a leave sanctioning authority. The impugned order of compulsory retirement was been to byepass Departmental Enquiry when such course is desirable.

27.The petitioner submits that he had put in more than 20 years of service and therefore he is eligible for leave on medical certificate for 18 months in all as per Fundamental Rules. Therefore, the respondents herein ought to have considered his case sympathetically and should not to have compulsorily retired him.

28.The petitioner submits that he would have rendered service for more than 37 years in judicial department and his date of superannuation is 30.06.2019. The 2nd respondent has compulsorily retired him from service when there was residual service of 8 months and few days left. The petitioner submits that he has clear track record and unblemished service throughout his career. The petitioner reiterates that no disciplinary proceedings, Charge Memo was or at least Memo was issued to him in his career. But, by the impugned order he has been unceremoniously sent out which is causing unnecessary stigma in his District.

29.The learned counsel for the petitioner has filed the copy of the recommendations of the Medical Board dated 13.12.2018. The Medical Board has recommended the leave based on the records produced by the petitioner.

30.The learned counsel for the petitioner submits that the invocation of Rule 56 (2) of the Fundamental Rules was in violation the express conditions of the aforesaid provisions applicable to all Government servant in as much as three months salary was not given to the petitioner at the time of compulsory retirement. He further submitted that on 10.10.2018, the Medical Officer, Government Medical College and Hospital, Tiruvannamalai issued fitness certificate to the petitioner but wanted to take further leave for 15 days and therefore applied for leave on 11.10.2018. The application was rejected and the petitioner was directed to approach the Medical Board to fitness of physical conditions under the Medical Board. However, on 12.10.2018 the impugned has been passed.

31.The respondents have filed respective counters.

32.The 1st respondent submits that the 2nd respondent is the competent authority to deal with the issue, being the Appointing Authority.

33.The 2nd respondent has filed detailed counter to state that the petitioner has availed 225 days of Medical Leave up to 10.10.2018, which is Unearned leave on the strength of Medical Certificate but the petitioner has failed to join duty on the expiry of his applied Unearned leave on the Medical Certificate again.

34.It is case of the 3rd respondent submitted that the petitioner failed to join the duty on the expiry of the Unearned Leave and over the period of time extended leave on a piece meal basis for 225 days in 8 spells which prevented the Principal District Judge from appointing another person in his place to attend the duty of Sheristadar of the Court to take care of the Administrative work in the Criminal Units in Thiruvannamalai.

35.The 2nd respondent has explained the action of the petitioner led to stagnation of work and the Court and suffered. The order by the 2nd respondent was also referred to the Review Committee consisting the Chairmanship of the Additional District Judge (FTC), Arni with 3rd respondent Chief Judicial Magistrate, Tiruvannamalai and Principal Subordinate Judge, Tiruvannamalai for a proper order.

36.Since, the petitioner failed to join duty even on 11.10.2018, his physical fitness to continue in service as a Public Servant was questionable and considering the facts that the petitioner was aged about 57 years and had completed 37

years of qualifying service, order was passed only after pursuing his files. It was concluded that the petitioner was unfit to continue his service due to his physical condition.

37.The Review Committee accordingly recommended to Compulsory Retirement of the petitioner to the 2nd respondent Appointing Authority.

38.The 2nd respondents submits that the order of Compulsory Retirement was passed as per the guidelines issued in G.O.Ms.No.623, Personnel and Administrative Reforms (Per.R) Department, dated 14.07.1983 which was framed with the object to weed out the dead wood in order to maintain a high standard of efficiency and integrity in the State services.

39.The petitioner's case was considered as per Sl.No.4(iii) of the consolidated instructions given in Appendix-I of the said G.O wherein it is stated that cases where an officer's integrity is not in doubt, but his physical or mental condition is such as to make him inefficient and renders him unfit to discharge duties properly he can be compulsorily retired. In this instant case, the petitioner has availed unearned Leave on Medical Certificate continuously for a period of 225 days in 8 spells and further intended to continue his leave for further periods of 15 days.

40.As per the recommendations of the Review Committee, the salary was also been paid for 3 months in lieu of notice period through ECS and the amount of Rs.2,20,761/ was paid and settled into the account of the petitioner on 13.11.2018.

41.The 2nd respondent has justified the action of the compulsorily retiring the petitioner under Rule 56(2) of the Fundamental Rules and merely because the petitioner was holding more 270 days unearned Leave available on Medical Certificate was utilizing the same clearly shows the intention of the petitioner.

42.The 3rd respondent submitted that the petitioner was deliberately avoiding to join the duty at the expiry of the Unearned Leave on Medical Certificate. As the petitioner has been absent over the period of time thereby impacting the functioning of the Court ignoring the fact that the service of aforesaid Sheristadar as a important function which cannot be delegation on adhoc basis. He further submitted that the petitioner kept taking leave in 8 spells thereby created a huge backlog of work in the Court.

43.We have considered the rival arguments advance on behalf of the petitioner and the respondents. The Appointing Authority namely 2nd respondent has exercised the power under the Rule 56 (2) of the Fundamental Rules, which reads as under:

"(2) Compulsory Retirement.—Notwithstanding

anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty-five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service.

Explanation I.—“Appropriate authority” means “the authority which has the power to make substantive appointments to the post or service from which the Government servant is required to retire.”

Explanation II.—Omitted.

Explanation III.—In computing the notice period of three months, the date of service of the notice shall be included.

Explanation IV.—Omitted.

Explanation V.—The powers conferred on the “appropriate authority” under this sub-rule may also be exercised by any higher authority.

Explanation VI.—The term “qualifying service” means “permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment without interruption”.

(G.O. Ms. No. 39, Personnel & Administrative Reforms Department, dated 14th February 1997—with effect from 3rd January 1991.)”

44.The petitioner was aged about 57 years and had completed more than 30 years of service. Therefore, the 2nd respondent as the Appointing Authority is empowered to invoke Rule 56(2) of the Tamilnadu Fundamental Rules in public interest. The Appointing Authority can either issue a notice for the period not less than 3 months or pay 3 months of pay allowances in lieu of such notice before compulsorily retiring from service.

45.In cases relating to compulsory retirement scope for interference is limited. The position has been clarified by the Hon'ble Supreme Court in State of Gujarat vs UmedbhaiM.Patel (2001) 3 SCC 314. In paragraph 11 the Court has summarized the decision as follows:-

11.The law relating to compulsory retirement has

now crystallised into definite principles, which could be broadly summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

46. The Hon'ble Supreme Court in *Pyare Mohan Lal vs State of Jharkhand and Ors* (2010) 10 SCC 693 has once again clarified the above position after referring the decision of the Hon'ble Supreme Court in *Baikuntha Nath Das and Anr vs Chief District Medical Officer, Baripada and Anr* AIR 1992 SC 1020 which was also considered in the first mentioned case.

47. The Hon'ble Supreme Court have held that the Court would be justified interfering with order compulsory retiring an employee only if it is satisfied that the order suffers on account of:-

(a) mala fide; or

(b) is based on no evidence or

(c) is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material.

48. The Hon'ble Supreme Court in *Rajendra Singh Verma (dead)*

Through LRS and Others vs Lieutenant Governor (NCT of Delhi) and Others (2011) 10 SCC 1 reiterated the above position in paragraph 41.

49. The only criteria for exercising the power under Order 56 (2) of Tamilnadu Fundamental Rules is 'public interest' if other criteria is satisfied to compulsorily retire such an officer by the Appointment Authority. The Appointment Authority can either give a notice of three months to the concerned officer or pay the 3 months salary in lieu of the notice.

50. In this case, the salary was directed to be credited to the account of the petitioner and was also credited to the account of the petitioner on 13.11.2018. Thus, there is compliance of provision 56(2) of the Tamilnadu Fundamental Rules as far as payment of Pay and Allowance in lieu of three months notice.

51. The post of a Sheristadar in criminal courts is an important post in the Criminal Courts in the Districts and the person occupying such post plays a pivotal role in the administration of justice. Even a single day of absence of a person working as Sheristadar in the Courts impacts the functioning of the courts and interferes with the administration of justice.

52. Reasonable length of time of absence on account of medical condition and for personal inconveniences of such an officer which may impact the functioning of courts can be condoned as the Courts can continue to function during temporary absence of such officers. However, where the absence is long, the public interest is compromised.

53. The petitioner was continuously absent for a period of 225 days on account of the illness and therefore the work in the court suffered. Even after recovering from illness, the petitioner applied for another 15 days leave to celebrate his son wedding without joining duty. Thus, it appears that the petitioner was unwilling to serve the office of a Sheristadar even after recovering from illness and was bidding his time by taking accumulated leave to the prejudice of the administration of justice.

54. The fact shows that the petitioner kept taking leaves in a staggered manner leaving no scope for the 2nd respondent to appoint another person in his place. The casualty was the administration of justice in the court and accumulation of work which impacted the public interest. Therefore, the 2nd respondent was justified in invoking Rule 56 of the Fundamental Rules.

55. The said decision to compulsorily retire petitioner under

Rule 56 of the Fundamental Rules was also placed before the Review Committee. The Review Committee has considered and recommended that the petitioner be relieved from duty immediately by paying the pay and allowance for 3 months in lieu of the notice. Therefore, the decision of the 2nd respondent to compulsorily retire the petitioner under Rule 56 of the Fundamental Rules cannot be questioned.

56. As long as the decision to retire an officer compulsorily is not on account of mala fide or lack of evidence or was arbitrary in the sense that no reasonable person could form such an opinion, the decision taken under Rule 56 of the Fundamental Rules cannot be questioned. We find no reasons to interfere in the decision taken by the 2nd respondent.

57. In fact, the fact that the petitioner was on leave for continuous period of 225 days itself shows that the 2nd respondent as the appointing authority was justified in invoking the provisions of the Rule 56 of the Fundamental Rules in public interest. In our view, pay and allowance also need not be credited simultaneously on the date of such decision.

58. Further there is also no estoppel operating against the 2nd respondent from invoking the provisions of the Rule 56 of the Fundamental Rules in public interest, merely because the 3rd respondent directed the petitioner to report of the Medical Board for examination. It did not mean that the 2nd respondent cannot take a decision independently under Rule 56 of the Fundamental Rules in public interest. There appears to be urgency shown in compulsorily retiring the petitioner as a result there are few mix up in the dates as mentioned. However, that would not come in the way of Compulsorily retiring an officer whose absence resulted in stagnation of work.

59. Further, compulsory retirement under Rule 56 of the Fundamental Rules has not resulted in punishment. In any event, the petitioner merely had 8 months and few days of residual service when the decision was taken to compulsorily retire him.

60. Petitioner cannot complain ignominy maybe because he has been compulsorily retired as such retirements is not punitive nature. The reasons for retiring the petitioner is clear that he was unable to discharge duty for continuous period of 225 days and wanted to take another 15 days to celebrate his son wedding.

61. Further, going by the conduct of the petitioner in taking leave, the post cannot be kept unoccupied till the date of the petitioner's superannuation. It would have not served public interest. There is also no point in ordering reinstating of the

petitioner as in any event he would be retired on 30.06.2019.

62.We are therefore of the view that the present writ petition is liable to be dismissed and is accordingly dismissed. No cost.

jen

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar General,
Madras High Court,
Chennai - 600 104.
2. The Principal District Judge,
Thiruvannamalai.
3. The Additional District Judge, (FTC),
Arni.
4. The Principal Subordinate Judge,
Tiruvannamalai.
5. The Chief Judicial Magistrate,
Thiruvannamalai.

+1cc to Mr.K.Govi Ganesan, Advocate, SR.No.54185/19

W.P.No.31513 of 2018

Kak (23/07/2019)

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