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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No. 18565 of 2009

Dr.K.Mathiharan

...Petitioner

Vs.

1.State of Tamil Nadu

Rep.by Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Medical Education

EVR Salai,
Chennai-600010

3.Dean,

Government Royapettah Hospital,
Royapettah,
Chennai-600014

4.The Superintendent

Government Royapettah Hospital
Royapettah,
Chennai-600014

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records and quash the order in reference No.29548/PHC5/A3-09 dated 30.04.2009 read with Reference No.6057/E1(1/09) dated 25.06.2009 and direct the respondents to issue the order relieving the petitioner from Government service with effect from 15.06.2009.

For Petitioner : Ms.N.S.Tanvi
for Mrs.D.Nagasaila

For Respondents : Mr.C.Selvaraj
Government Advocate



ORDER

The petitioner was appointed as Assistant Professor in the Government Royapettah Hospital, Chennai in the year 1997. Charges had come to be framed as against the petitioner on 07.04.2003 that had been pending for long. The petitioner challenged the delay in finalizing the proceedings initiated vide charge sheet dated 07.04.2003 by way of a writ petition in W.P.No.21476 of 2008 seeking a mandamus directing the respondents to pass final orders thereupon.

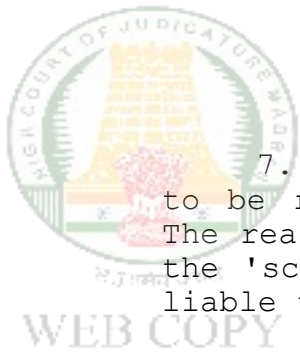
2. The writ petition came to be disposed on 10.09.2008, this Court recording that the matter had been hanging fire for over three years and directing the first respondent to pass final orders relating to charge memo dated 07.04.2003 on or before 28.11.2008. On 27.11.2008, with due regard to the order passed by this Court on 10.09.2008, an order came to be passed by R1 imposing punishment of stoppage of increment for a period of one year with cumulative effect.

3. That apart, in 2008, a charge-sheet was laid against the petitioner and an order passed on 31.03.2008 imposing a penalty of stoppage of increment for a period of six months with cumulative effect. Learned counsel would state that effect has been given to both punishments imposed, as aforesaid.

4. The petitioner thereafter tendered his resignation on 17.03.2009 stating that he wishes to resign on account of compelling family circumstances. Resignation was sought with effect from 17.03.2009, the petitioner submitting that all parameters as set out in terms of the Section 41-A of the Tamil Nadu State and Subordinate Services Rules (Service Rules) stood satisfied.

5. While there was no order passed in regard to the request for resignation, seven memos appears to have been issued to the petitioner, the one dated 25.06.2009 filed as part of the compilation before me, calling upon the petitioner to report for duty and calling for an explanation as to his continued absence under threat of necessary action to be taken against him as per Rules.

6. In the meantime, there was a communication inter se the Director of Public Health and Preventive Medicine and the Director of Medical Education /R2 wherein the former seeks a clarification as to whether the amendment made to the Fundamental Rules of the Tamil Nadu Government (FR) specifically Rule 56(3) by way of insertion of sub-clause (f) in the aforesaid sub-Rule relatable to voluntary retirement, would also apply to Rule 41-A of the Service Rules.



7. The application of the petitioner for resignation came to be rejected on 30.04.2009, impugned in this writ petition. The reason for the rejection was that the petitioner fell within the 'scarce' category and hence his duties in services were not liable to be dispensed with, as sought for.

8. The petitioner has challenged order dated 30.04.2009 as well as the memos issued thereafter calling for his explanation and that he report for duty, under threat of coercive action. Pending writ petition it appears that the charge memos issued for his continued and allegedly unsanctioned absence, have culminated in an order of termination of employment, dated 28.09.2011.

9. Though the petitioner has received the said order, he has not chosen to challenge the same perhaps for the reason that the order rejecting his request for resignation is already under challenge in the present case.

10. In order to decide the question that arises in this writ petition, it is necessary to take note of Rule 56(3) of the FR Rules as well as Rule 41-A of the Service Rules and both are extracted below:

Rule 56 of the Fundamental Rules

Chapter IX-Retirement

Rule 56

.....

(3). Voluntary retirement.-(a) A Government servant who has attained the age of fifty-years or who has completed twenty years of qualifying service may retire from service by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer for information. Before giving such notice, he may satisfy himself by means of a reference to such authority that he has completed the required number of years of qualifying service.

.....

(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 servant concerned; and

(v) that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily.

(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 voluntary from service at the end of the period of notice:

Provided further that the appointing authority may also withhold the permission for voluntary retirement sought for by a Government servant, if the post held by him has been declared as "Scarce Category" by the administrative department concerned in Secretariat and whose continuation in Government service is absolutely essential in public interest.

(added vide G.O.Ms.No.179, P&AR(FR.IV) Department, dated 29.09.2008 w.e.f. 3.11.2006)

Rule 41-A of the Service Rules

41-A. Acceptance of resignation

(a) - A Government servant may resign his appointment by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The period of three months notice shall be reckoned



from the date of receipt of such notice by the appointing authority.

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(d) Notice of resignation given by the Government servant shall be accepted by the appointing authority, subject to the condition:-

(i) that not disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;

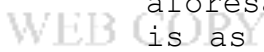
(ii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iii) that no dues are pending to be recovered by the Government from the Government servant concerned;

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period in which the Government servant concerned seeks to resign.

(e) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (d), where a Government servant, under suspension or against whom disciplinary or criminal action or vigilance enquiry is pending, seeks to resign, the appointing authority shall examine the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of the notice of resignation.

11. Rules 56(3) of the FR deals with voluntary retirement and sub-clauses (i) to (v) in Rule 56(3)(e) set out various pre-conditions for the acceptance of the application for voluntary retirement. Initially there were only five requirements. Thereafter, an amendment appears to have been brought into Rule 56(3) adding a second proviso on 28.09.2008 vide G.O.(Ms).No.179 P&AR (FR.IV) Department with effect from 03.11.2006, to the effect that the declaration of the post held by the employee seeking voluntary retirement, as falling in the 'scarce' category by the concerned administrative department, in public



12. The clarification sought by the State relates to the aforesaid aspect of the matter. What is sought to be clarified is as to whether the condition of 'scarce' category brought in with effect from 2006 to Fundamental Rule 56(3) would have any impact in the matter of resignations as under rule 41A of the Service Rules as well.

14. At this point, Mr.Selvaraj, learned Government Advocate would also circulate Letter No.27829/B2/2011-2 dated 14.12.2011 dated answering the query raised by the Public Health and Preventive Medicine Department on 03.11.2011, extracted below:-

2. In this connection I am to state that Voluntary Retirement of a Government servant is governed by rule 56 of the Fundamental Rules. As per the proviso to rule 56 (3) (f), the appointing authority is empowered to withhold permission of voluntary retirement sought by the Government Servant who held the post declared as scarce category and whose continuation in Government Service is absolutely essential in public interest. G.O.(Ms) No.408, Health and Family Welfare Department dated



15.12.2009, declares the list of medical specialties which are scare categories.

3. The rule position stated in para 2 above relates to Voluntary Retirement only. Resignation is governed by General Rules 41(A) for Tamil Nadu State and Subordinate Services and the conditions to be satisfied for acceptance of resignation are laid down in General Rules 41A (d). Further, resignation relates to complete cessation of service and the provision of the rules does not provide for rejection of a request for resignation if the conditions laid down therein are satisfied. It may also be stated that as per Rule 41A (c) of the General Rules for Tamil Nadu State and Subordinate Services, the appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons therefor. If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice.

15. Thus, the request of the petitioner for resignation is liable to be accepted without demur and as a consequence, the challenge to memo dated 25.06.2009 succeeds. The order of termination dated 28.09.2011 is effective no more. Learned counsel for the petitioner does not pursue her prayer in regard to the challenge to letter dated 30.04.2009 as it is the response to this letter that has, in a way, saved the petitioner herein and the letter itself ceases to have any effect in light of letter dated 03.11.2011.

16. As regard terminal benefits, the relevant provision would be Rule 41 of the Service Rules that deals with consequences of resignation and states as follows:

41. Consequences of resignation - A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government. The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply; and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or



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order: Provided that nothing contained in this rule shall effect the operation of proviso to rule 23 or of rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978: *Provided further that a member of a service, who has resigned his appointment and contested in the General Election to Parliament or State Legislature or in the Elections to local bodies either as a party candidate or as an independent candidate, shall not be eligible for reappointment to any service.

17. Rule 23 of the Tamil Nadu Pensions Rules, 1978 (Pension Rules) that deals with 'forfeiture of service on resignation', contains a proviso to the effect that resignation shall not entail forfeiture if the employee in question has taken up, with proper permission, alternate employment whether temporary or permanent, under the Government. In such a case, the candidate in question would not lose the benefit of prior service.

18. The issue as to whether resignation on medical grounds would also come within the beneficial sweep of the proviso to Rule 23 of the Pension Rules had come up for consideration before this Court in the case of Dr.Vijayarangan Vs.Secretary , Sales Tax Appellate Tribunal [(2009) 3 MLJ 1005]. The Division Bench considered the case of that petitioner who had been constrained to resign on account of ill health. Recording as a fact, that the resignation had only been on account of ill health and not on account of any other reasons such as misconduct or adverse record, the Bench held that a medical reason stands equated with the reason of availment of alternate service under the proviso to Rule 23 of the Pension Rules. This decision has been subsequently followed by this Court in the case of M.K.Sivakami Vs. Hon'ble Principal District Judge, City Civil Court, Chennai-104 and Others [(2017) 4 MLJ 169].

19. Upon a specific query being put to the learned Government Advocate as to whether the State has accepted the ratio in Dr.Vijayarangan's case (supra), rendered on 17.11.2008, Mr.Selvaraj would confirm that no SLP has been filed as against the same.

20. In light of the above discussion, the petitioner is entitled to the terminal benefits, however, upon his being able to establish that the leave availed was for medical reasons only. He is thus permitted to make a representation in this regard enclosing evidence to substantiate his claim and such representation, if filed within a period of four weeks from today, shall be adjudicated upon after hearing the petitioner and considering all evidences filed, and disposed within a period of six weeks from date of receipt of the representation.



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21. This writ petition is disposed in the above terms. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.State of Tamil Nadu

Rep.by Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.

2.The Director of Medical Education

EVR Salai,
Chennai-600010

3.Dean,

Government Royapettah Hospital,
Royapettah, Chennai-600014

4.The Superintendent

Government Royapettah Hospital
Royapettah, Chennai-600014.

+1cc to Mrs.D.Nagasaila, Advocate SR.No.46000

+1cc to the Government Pleader SR.No.46173

W.P. No. 18565 of 2009

PA(CO)

RVM(07/10/2021)