



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P (MD)No.5415 of 2021

WEB COPY

Vetrivel

... Petitioner

Vs.

1.The Principal District Judge,
Dindigul District Court,
Dindigul.

2.The Sessions Judge,
Fast Tract (Mahila) Court,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order made by the first respondent in Roc.No.4448/2020/A1 dated 17.09.2020 and quash the same as illegal and consequently direct the respondents to accept and permit the petitioner's request for voluntary retirement from service within the time stipulated by this Court.

For Petitioner : Mr.M.Mohaboob Athiff
For Respondents : Mr.N.Tamil Mani

ORDER

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

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the first respondent dated 17.09.2020 and to quash the same and consequently, directing the respondents to accept and permit the petitioner's request for voluntary retirement from service within the time that may be stipulated by this Court.

2.The petitioner is presently serving as Head Clerk in the Additional Mahila Court, Dindigul. He joined the service on 16.10.1996. The petitioner submitted an application on 21.03.2019 seeking to retire voluntarily, however, the first respondent by order dated 29.08.2019, passed an order rejecting the request claiming that there is shortage of staffs and if the request is accepted, it would lead to further shortage. To qualify for availing voluntary retirement as per Fundamental Rule 56(1)(c)(3), a Government servant is expected to attain the age of fifty years or should have completed twenty years of qualifying service. A three



months notice for voluntary retirement should be given to the employer.

3.In the case on hand, the petitioner had already crossed the age of 59 years and will attain superannuation within nine months time. The petitioner has also putting nearly 25 years of service. Therefore, the petitioner has fulfilled both the conditions for availing voluntarily retirement under Fundamental Rule 56(1)(c)(3).

4.When the petitioner is qualified to avail voluntary retirement, the reasoning given by the first respondent for rejecting the application on the ground of existing vacancy cannot be accepted. The Fundamental Rule does not prohibit a staff from availing voluntary retirement when the said person had fulfilled the conditions imposed under Fundamental Rule 56(i)(c)(3). The existence of the vacancy cannot be put against a staff member for accepting the voluntarily retirement application.

5.In such view of the matter, the impugned order passed by the first respondent, dated 17.09.2020 is liable to be set aside and the same is set aside. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Judge,
Dindigul District Court,Dindigul.

2.The Sessions Judge,
Fast Tract (Mahila) Court,Dindigul.

+1 CC to M/s.MAHABOOB ATHIFF, Advocate (SR-27609[F] dated 31/08/2021)

W.P (MD) No. 5415 of 2021
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