

14.11.2022

WPST 105 of 2022

Court : 04
Item : DL-43
Matter : WPST
Status : OP
Transcriber: nandy

The State of West Bengal & Ors.

Vs.

Dr. Satyajit Chakraborty

Mr. T.M. Siddiqui, Advocate

Mr. N. Chatterjee, Advocate

Mr. Y. Singhi, Advocate

.....for the Petitioners

Mr. G.P. Banerjee, Advocate

Mr. Biswarup Nandy, Advocate

.....for the Respondent

The State has filed the instant writ petition challenging an order of the West Bengal Administrative Tribunal dated September 24, 2019 in OA 651 of 2019 whereby and whereunder the order of the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal dated January 15, 2019 was quashed and set aside and a direction was passed upon the authority to pass a necessary order granting voluntary retirement to the respondent.

The undisputed facts emerged from the pleading of the respective parties are that the respondent was born on January 15, 1958 and completed sixty years of age and rendered more than thirty-four years of his service in the year 2018. By virtue of the provisions contained in Rule 75(aa) and 75(aaa) of the West Bengal Service Rules, Part-1, an application was taken out for voluntary retirement. The Additional Chief Secretary, Department of Health and Family Welfare, rejected the said application on the premise that such prayer for voluntary retirement cannot be acceded to on the larger public interest.

Such being the salient fact involved in the instant matter, the Tribunal manifestly proceeded on the basis that once the conditions enshrined in the enabling provision of Rule 75(aaa) have been fulfilled, there was no other option left to the Government to grant the prayer and allow the respondent a voluntary retirement.

It is no doubt true that Rule 75(aaa) of the said Service Rules confers a right on the Government employee to seek a voluntary retirement provided he gives three months' notice after attaining the age of fifty years and rendered service for a prescribed period. The Tribunal, in our opinion, overlooked the note appended to the aforesaid provision and hovered around the subsequent amended provision brought by way of an amendment with effect from February 7, 2014 by inserting Rule 75(aaaa). The said amended Rule starts with a non-obstante clause and excludes the applicability of the provisions contained in Rule 75(aa) and 75(aaa) of the said Service Rules to have any manner of application in relation to the holder of the service in West Bengal Health Services, the West Bengal Medical Education Services, the West Bengal Public Health-cum-Administrative Services, the West Bengal Dental Service and the West Bengal Dental Education Services.

Initially, it was contended by the State that such amended provision overrides the provisions contained in Rule 75(aa) and 75(aaa) of the said Service Rules, as the respondent is rendering the services in the prescribed department. The Tribunal appears to have been swayed by such argument and held that the aforesaid amended provision i.e. Rule 75(aaaa) of the said Service Rules is not applicable and the case of the respondent is to be guided and/or considered on the parameters of the provisions contained in Rule 75(aaa) of the said Service Rules.

There has been a drift in the stand of the State in the instant writ petition. It is contended that even if the observations of the Tribunal is correct yet it does not confer any right upon the respondent to seek voluntary retirement on a mere drop of the hat or on fulfillment of the parameters enshrined therein, as the Tribunal overlooked and ignored the note appended thereto. In support of the aforesaid contention, reliance is placed on a three Judges Bench of the Supreme Court rendered in case of

State of West Bengal and others vs. Dr. Tonmoy Mondal,
reported in **(2019) 16 SCC 348.**

After perusal of the judgement and the ratio decidendi deduced therefrom we find that there is a parity not only on the facts but of the consequences to follow on the interpretation of the aforesaid provisions. In the said Report, the respondent therein joined the medical service in the year 1986 and sought voluntary retirement in the year 2013. The Government declined to grant such prayer on the ground of public interest. The order of the authority was challenged before the Tribunal solely on the ground that the concept of public interest is neither contemplated in Rule 75(aaa) nor can be used as a weapon in order to frustrate the legislative mandate. The Tribunal quashed and set aside the order of the authority and accepted the contention of the respondent therein, which was challenged before the Division Bench of this Court. The Division Bench initially opined that Rule 75(aaa) of the said Service Rules is abridged and/or controlled by Note-3 appended thereto and, therefore, cannot be applied in an abstract and/or isolated manner. The said order was sought to be reviewed subsequently and the review application was allowed as a consequence whereof, the order of the original authority stood quashed and set aside. The matter travelled to the Supreme Court and an argument was advanced in a similar fashion and the Apex Court after considering the provisions contained in Rule 75 of the said Service Rules held that though Note-1 of Rule 75(aaa) provides for the purpose of computation of three months, the date of service of the notice and the date of expiry shall be excluded, but Note-3, which is a most important and relevant part of the said Rules, is not contrived in operation to sub-rule (aaa) of Rule 75 of the said Service Rules. Note-3 bestowed power upon the appointing authority to take a decision and form the opinion whether it is necessary to retire a Government employee in pursuance of the aforesaid Rule. The Bench also considered the earlier Supreme Court decision

rendered in case of **State of U.P. vs. Achal Singh**, reported in **(2018) 17 SCC 578**, where it is held that the concept of the public interest can also be invoked by the Government when a voluntary retirement is sought by an employee and in the opinion it would be against the public interest, the said provision cannot be said to be violative of any of such rights and, therefore, the order of the Division Bench, more particularly, the order of review was set aside and the respondent therein was directed to immediately revert back to duty within the stipulated time.

The instant case is not falling under the service in the Administrative Department of the Government. The health sector being a most important sector in the administration of the system for not only rendition of the services to the society but to the humanity as well. The health of the citizenry plays a very pivotal role in the development of the society and the country. The people Doctor ratio in the country is abysmally low and there is a dearth and paucity of the Doctors at the Government Hospitals where the poorest of the poor got benefit of the treatment.

Seen from the above perspective as well, Note-3 appended to Rule 75(aaa) of the said Service Rules cannot be completely whittled down nor to be rendered otiose but is an integral part of the aforesaid statutory provision and its applicability can be envisioned therefrom. Note-3 postulates that the Government may decline to grant voluntary retirement on public interest and once such decision is taken unless it appears that the provision is so stringent that it cannot be brindled by any incorporation, the fullest effect to such provision is required to be given.

In view of the ratio laid down in **Dr. Tonmoy Mondal (supra)**, there is no impediment on the part of the appointing authority to decline the prayer for voluntary retirement taking aid under Note-3 of Rule 75(aaa) of the said Service Rules.

A point has also been taken by the respondent that after amended provision having brought by incorporating Rule 78(aaaa) of the Service Rules, one of the Doctors, namely Sharmila Kundu, a Professor, posted in the Department of Obstetrics and Gynecology, Chitta Ranjan Seva Sadan, has been allowed to retire voluntarily and, therefore, it is a case of discrimination. The moment the case of discrimination is made out, the most integral part of the pleading is that the person who have been favoured, stands on a same footing that of the petitioner.

We are not unmindful of the settled principle of law that equality must be ensured amongst the equals and not amongst unequals. Note 3 of Rule 75(aaa) of Service Rules clothed the appointing authority with the power to deny the prayer for voluntary retirement on public interest. The public interest has been visualized in the sense that the Public is getting benefit and/or service from the employee posted in respective department. When it comes in case of health, the transfer of the Doctors in the Government Hospitals is not unknown. A Doctor of a particular department where the pressure of attending the patients may not be such in comparison to other department of the Hospitals. There is scanty pleadings in the application with regard to the claim that the respondents stand on a same pedestal with that of a State Doctor and, therefore, mere permitting a Doctor to avail the benefit of voluntary retirement cannot be extended to the petitioner.

The order of the Tribunal is, thus, set aside. The application filed by the respondent herein before the Tribunal stood dismissed and the order of the Additional Chief Secretary, Department of Health and Family Welfare shall not be deemed to have been interfered with.

In view of the fact that the order of the Tribunal has been set aside, the respondent is directed to resume his duty within

fortnight from date.

However, at this stage, an emotional argument has been advanced at the behest of the respondent that the respondent is suffering from various ailments, which he has pleaded in the application filed before the Tribunal and he cannot render work with full potential.

The aforesaid submission has not been disputed by the Counsel for the petitioners, who concedes that such averment has been made in the pleading filed before the Tribunal.

In view of the fact that the respondent is suffering from various ailments, we request the concerned department to put him in such position, as it would not cause much stress or impede the health condition. However, it is entirely at the discretion of the appointing authority to accept such request as made above.

With these observations, the writ petition being WPST 105 of 2022 is **disposed of**.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

