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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.8852 of 2022

A.Mohamed Jiyaputheen

.. Petitioner

Vs

1.State of Tamil Nadu,
rep. by the Chief Secretary,
Public (Special-A) Department,
Secretariat Building,
Fort St. George,
Chennai, Tamil Nadu-600 009.

2.The Registrar General,
Madras High Court,
High Court Road, Parrys,
George Town,
Chennai, Tamil Nadu-600 104.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the entire records pertaining to the impugned order of the first respondent in G.O.(Ms) No.1003 Public (Special-A) Department dated 30.11.2021 and the consequential proceedings in Notification No.295/2021 in R.O.C.4028/2021/B1/Spl.Cell dated 08.12.2021 on the file of the second respondent and quash the said proceedings and direct the respondents to grant liberty to the petitioner in service to retire voluntarily with all consequential and attendant benefits including continuity of service, seniority, promotion, back wages etc. to expunge the adverse remarks in the Annual Confidential Reports of the petitioner.

For the Petitioner

: Mr.AR.L.Sundaresan
Senior Counsel
for Mr.K.M.Mrithunjayan



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For the Respondents

: Mr.P.Muthukumar
State Government Pleader
for respondent No.1
: Mr.M.Santhanaraman
for respondent No.2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to challenge the orders dated 30.11.2021 and 8.12.2021, by which the petitioner was given compulsory retirement. The challenge to the order was made with an alternative prayer to retire the petitioner voluntarily.

2. Learned Senior Counsel appearing for the petitioner submitted that a decision not to extend the period of service after attaining the age of 55 years and a decision for compulsory retirement of the petitioner was taken in reference to only one remark of "below average". In any case, the petitioner does not intend to challenge the order, but asking to substitute the order of compulsory retirement by the order of voluntary retirement. The petitioner sent representations to permit him to voluntarily retire before issuing the order impugned herein.

3. The only remark of "below average" could not have been considered for compulsory retirement of the petitioner. The petitioner having attained the age of 56 years, now, seeks to accept voluntary retirement in place of compulsory retirement.

4. Learned counsel for the respondent High Court submitted that an application for voluntary retirement was submitted by the petitioner a day after the resolution passed by the Full Court to compulsorily retire the petitioner. In view of the above, the then Chief Justice declined to accept the application for voluntary retirement, as otherwise, it could not have been against the resolution of the Full Court. Therefore, the application for voluntary retirement was not accepted.

5. So far as challenge to the order of compulsory retirement is concerned, material exists to support the said decision. However, if this Court is of the view that the order of compulsory retirement be substituted by voluntary retirement, that issue may not be required to be addressed on merits as otherwise submitted by the petitioner also. The prayer is, accordingly, to pass an appropriate order.

6. We have considered the submissions and find that the petitioner was subjected to an order of compulsory retirement on



attaining the age of 55 years. A decision was taken by the Administrative Committee not to continue the services of the petitioner beyond 55 years and the resolution aforesaid was confirmed by the Full Court. A day after the resolution of the Full Court, the petitioner made an application for voluntary retirement, but could not be accepted by the then Chief Justice going against the resolution of the Full Court. The Government, thereupon, issued order of compulsory retirement of the petitioner, which has been assailed herein.

7. We do not find the prayer of the petitioner of such nature which cannot be considered or accepted. The prayer is to accept the application for voluntary retirement from the date he was given compulsory retirement. It is not in dispute that the retiral benefits arising out of the compulsory retirement or voluntary retirement would be the same and the petitioner is not claiming any additional benefits. In view of the above and looking to the facts of the case and as an exception, the prayer of the petitioner to substitute the order of compulsory retirement to that of voluntary retirement is accepted. The petitioner would be treated to have voluntarily retired from the date of the order of compulsory retirement.

8. With the aforesaid, the writ petition is disposed of. There will be no order as to costs. Consequently, W.M.P.No.8680 of 2022 is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Chief Secretary,
State of Tamil Nadu,
Public (Special-A) Department,
Secretariat Building,
Fort St. George,
Chennai, Tamil Nadu-600 009.
- 2.The Registrar General,
Madras High Court,
High Court Road, Parrys,
George Town,
Chennai, Tamil Nadu-600 104.



3.The Section Officer,
Legal Cell Section,
High Court, Madras.

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+2cc to Mr.K.M.Mrithunjayan, Advocate, S.R.No.37589
+1cc to the Government Pleader, S.R.No.38203

W.P.No.8852 of 2022

CA(CO)
SB(30/06/2022)