



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11885 of 2021

Dr.I.Jayanthi

.. Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Chief Secretary to the Government,
Public (Special-A) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Secretary to the Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai - 600 009.
3. The Registrar General,
High Court of Judicature at Madras,
Chennai - 600 104.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of declaration to declare Rule 56 (2) of the Fundamental Rules of the Tamil Nadu Government on the file of the second respondent as ultra vires, unconstitutional, unreasonable and opposed to public policy in view of authoritative pronouncement of the Hon'ble Supreme Court of India and consequently, to call for the records pertaining to the proceedings of the 1st respondent in G.O.Ms.No.267, dated 18.05.2020 and the consequential proceedings in ROC No.4017/2020/B1/Spl.Cell-Notification No.60/2020 dated 26.05.2020 on the file of the 3rd respondent and quash the same as illegal, incompetent and ultra vires and consequently, direct the respondents to re-instate the petitioner in the post of District Judge (Entry Level) with all consequential service and monetary benefits.



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For the Petitioner : Mr.R.Singaravelan
Senior Counsel
for Mr.R.Jayaprakash

For the Respondents : Mrs.R.Anitha
Special Government Pleader
for respondent Nos.1 and 2

: B.Vijay
for respondent No.3

ORDER

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

By this writ petition, a challenge is made to the constitutional validity of Rule 56(2) of the Fundamental Rules of the Tamil Nadu Government, apart from the challenge to G.O.Ms.No.267, Public (Special.A) Department, dated 18.05.2020 and the consequential proceedings dated 26.05.2020.

2. The petitioner was selected and appointed as judicial officer by the order dated 08.09.2000 after completion of one month training. After appointment, she continued in service till attaining the age of 55 years. On attaining the age of 55 years, the Full Court of this Court did not recommend the extension of service and, accordingly, the petitioner was compulsorily retired. A challenge to the aforesaid has been made by the petitioner while calling in question the constitutional validity of FR 56(2) of the Fundamental Rules.

3. Learned Senior Counsel for the petitioner has given up the challenge to Rule 56(2) of the Fundamental Rules, but has pressed the order passed for compulsory retirement of the petitioner.

4. Learned Senior Counsel for the petitioner submitted that the petitioner was a judicial officer whose work was appreciated all throughout her career. She held various posts and earned appreciation. In recognition of her works other than judicial work, certificates have been issued. Looking to the multi-faceted personality of the petitioner, she was appreciated by the higher officers throughout, barring her initial years of service when certain adverse remarks were noted. Having no knowledge about the system during her initial years of service, she did not make a representation to expunge the adverse remarks. The petitioner's case was taken for scrutiny on



attaining the age of 55 years and it was resolved by the Full Court of this High Court not to continue her services, though initially the Administrative Committee took a decision to extend the services of the petitioner.

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5. Referring to the adverse remarks, learned Senior Counsel for the petitioner submitted that the last adverse remarks made against the petitioner were in the year 2010 and it was otherwise not significant, yet the same was taken note. Thus, the same cannot weigh against the outstanding remarks and promotions given to the petitioner subsequently. The respondents taking into consideration the old remarks, passed the impugned orders. In view of the above, a prayer is made to set aside the order of compulsory retirement, which is going to affect the petitioner even for pension, because she is short of two months for completion of 20 years of service to get a full pension. A prayer is also made to consider her to be voluntarily retired instead of compulsory retirement and if it is permitted with effect from 09.09.2020, she would at least be entitled to receive full pension. He submitted that in case the prayer aforesaid is accepted, this Court may not deal with the issues raised by the petitioner to challenge the order.

6. The prayer aforesaid was initially opposed by learned counsel appearing for the High Court so also the Special Government Pleader appearing for the State. However, later, they left it to the discretion of the Court to appropriately consider the prayer made by the petitioner.

7. The issue raised by the petitioner could have been considered to find out whether a case was made out for compulsory retirement or not. However, a prayer was made that if the order of compulsory retirement is treated to be voluntary retirement with effect from 09.09.2020, then the petitioner would not press the writ petition challenging her compulsory retirement.

8. Taking into consideration the overall facts and the prayer made by the petitioner, we find reasons to substitute the order of compulsory retirement with that of voluntary retirement with effect from 09.09.2020. However, with clarity, as admitted by the petitioner, she would not be entitled to salary of the intervening period i.e. for advancing the date of voluntary retirement from the date of compulsory retirement though the period aforesaid may be taken towards the qualifying period for the purpose of pension and if it entails revision of pension the petitioner can pursue her cause aforesaid.

9. With the aforesaid observation, the order of compulsory retirement is substituted by treating it to be a case of



voluntary retirement with effect from 09.09.2020, by accepting the prayer made by the petitioner.

10. The writ petition is disposed of with the aforesaid observation. There will be no order as to costs. Consequently, W.M.P.Nos.12639 to 12641 of 2021 are closed.

It is made clear that the aforesaid order has been passed considering the peculiar facts and circumstances of the case and shall not be cited as precedent.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1. The Chief Secretary to the Government,
State of Tamil Nadu,
Public (Special-A) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Secretary to the Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai - 600 009.
3. The Registrar General,
High Court of Judicature at Madras,
Chennai - 600 104.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.15455

+1cc to the Government Pleader, S.R.No.15015

W.P.No.11885 of 2021

SPD(CO)
SU(14/03/2022)