IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.11.2022**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.18081 of 2022

V.Arasudevan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The Principal Commissioner,
Commercial Taxes Department,
Chepauk, Chennai - 600 005.

3.The Joint Commissioner (Administration),
O/o. the Principal Secretary / Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

4.The Deputy Commissioner,
Commercial Taxes, Zone X,
Chennai South and Central Division,
Chennai - 600 035. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records in connection with the impugned orders bearing Ref.No.CP2/01-30/1/2022 dated 29.04.2022 actually served on the petitioner on 02.05.2022 by the 4th respondent said to have been issued from the office of the 2nd respondent denying his request for voluntary retirement and the consequential order rejecting petitioner's request for voluntary retirement by the 3rd respondent vide Ref.No.CP2/01-30/1/2022 dated 29.06.2022 and quash the same and direct the 1st and 2nd respondents to relieve the petitioner forthwith and settle all the terminal benefits arising out of voluntary retirement with effect from the date of 30.04.2022 together with interest till the date of such settlement.

For Petitioner	:	Mr.V.Prakash Senior Counsel for Mr.K.Krishnamoorthy
For Respondents	:	Ms.K.Vasantha Mala Government Advocate

ORDER

The petitioner has challenged the rejection orders passed by the fourth and third respondents rejecting his request for voluntary retirement.

2. The petitioner is presently working as an Assistant Commissioner (CT) in the Commercial Taxes Department. He has sought for voluntary retirement from service by his application dated 20.01.2022. In his application dated 20.01.2022, he has categorically stated that he has an unblemished track of record and only due to his ill-health, he is giving voluntary retirement.

3. The application dated 20.01.2022 submitted by the petitioner, seeking for voluntary retirement, has been rejected under the impugned order dated 29.04.2022. The reason for rejection is that the respondents claim that the petitioner was involved in forty five Internal Audit paras which are yet to be entitled. Besides, he has also been involved in thirteen AG defects. Aggrieved by the rejection orders, the petitioner has filed this Writ Petition.

4. The contention of the petitioner is that under Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules, if the appointing Authority has not taken any decision, either accepting or rejecting the petitioner's request for voluntary retirement before the expiry of three months notice period, it is deemed that the petitioner has been retired from Government service on 30.04.2022, as the request for voluntary retirement was given by the petitioner on 20.01.2022.

5. A Counter Affidavit has been filed by the respondents, reiterating the contents of the impugned orders, stating that only in accordance with the Fundamental Rules and only due to the fact that the petitioner is involved in

forty five Internal Audit paras which are yet to be entitled and he is also involved in thirteen AG defects, the request for voluntary retirement was rejected.

6. Heard, Mr.V.Prakash, learned Senior Counsel assisted by Mr.K.Krishnamoorthy, learned counsel for the petitioner and Ms.K.Vasantha Mala, learned Government Advocate appearing for the respondents.

7. Learned Senior Counsel appearing for the petitioner drew the attention of this Court to Rule 56 (3) of the Tamil Nadu Fundamental Rules which deals with voluntary retirement. He would submit that the petitioner has satisfied all the requirements as stipulated under Rule 56 (3) of the Tamil Nadu Fundamental Rules and therefore, his request for voluntary retirement ought to have been accepted. He would also submit that as per Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules, it is clear that 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. Learned senior counsel appearing for the petitioner would submit that the petitioner is having an unblemished track of record and having satisfied all the requirements, the respondents ought to have accepted his request for voluntary retirement. Learned senior counsel appearing for the petitioner would submit that, only on 02.05.2022, the petitioner was informed about the rejection which is beyond the period of three months from the date when the petitioner requested the respondents for granting voluntary retirement in his favour. Therefore, learned senior counsel appearing for the petitioner would submit that it is deemed that the respondents have approved the petitioner's request for voluntary retirement.

8. Per contra, learned Government Advocate appearing for the respondents would submit that even as early as on 29.04.2022, the petitioner was informed about the irregularities committed by him through e-mail and therefore, the petitioner is aware as early as on 29.04.2022 itself that his request for voluntary retirement has been rejected.

9. The letter dated 29.04.2022 which the respondents rely upon has also been placed on record before this Court. Admittedly, the said letter has

also been forwarded to the petitioner on 29.04.2022 itself through e-mail.

Discussion:

10. Rule 56 (3) of the Tamil Nadu Fundamental Rules deals with voluntary retirement. The relevant rules are extracted hereunder:

> " ***(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.*
>
> *(b) ...*
>
> *(c) ...*
>
> *(d) (i)A Government servant including a Government servant in the Tamil Nadu Basic Service retiring voluntarily shall be given a weightage not exceeding five years, subject to the condition that the total qualifying service rendered by such Government servant, including weightage, does not in*

any case exceed Thirty three years of qualifying service and it does not take him beyond the date of superannuation, as the case may be.

...

...

(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 that where a Government servant under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The appointing authority may with-hold the permission sought for by the Government servant, if any of the conditions specified in clause (e) are not satisfied.

... ."

11. Admittedly, the petitioner has completed more than twenty five years of service. As on the date of the request made by him for voluntarily retirement, i.e., as on 20.01.2022, he has:

a) not faced any disciplinary proceedings;

b) not faced any prosecution before any Court of Law, with regard to his employment;

c) no adverse report from the Director of Vigilance and Anti-Corruption and no enquiry is contemplated or pending against him;

d) no dues which cannot be recovered from his Death-Cum-Retirement Gratuity are pending to be recovered from the petitioner;

e) no contractual obligation to serve the Government during the period in which the petitioner seeks to retire voluntarily;

f) satisfied the requirements for the qualifying service for voluntary retirement.

12. As per Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules which is extracted supra, the Appointing Authority shall issue orders before the expiry of the notice, either accepting the voluntary retirement or not. Otherwise, the Government servant shall be deemed to have been retired voluntarily from service at the end of the period of notice.

13. The petitioner made the request for voluntary retirement by his application dated 20.01.2022. According to the respondents, they intimated the petitioner about their proposal to reject his request for voluntary retirement only on 29.04.2022. The said letter is also placed on record before this Court. Though the petitioner contends that he was intimated only on 02.05.2022, the date 29.04.2022 on which the respondents claim that it

was forwarded to the petitioner is also beyond the period of three months from the date of the petitioner's request seeking for voluntary retirement which was on 20.01.2022. Therefore, as per Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules, the petitioner's request for voluntary retirement is deemed to have been approved as the objection raised by the respondents was informed to the petitioner only on 29.04.2022 beyond the three months period. The three months period from the date of the petitioner's request for voluntary retirement will expire on 20.04.2022. Having intimated the petitioner, even according to the respondents, about their proposal to reject the petitioner's request only on 29.04.2022, applying Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules, the petitioner's request for voluntary retirement is deemed to have been approved.

14. The proviso to Rule 56 (3) (f) of the Tamil Nadu Fundamental Rules applies only in cases where the Government servant who is under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The proviso also says that the appointing authority may with-hold the permission sought for by the

Government servant, if any of the conditions specified in clause (e) are not satisfied.

15. In the case on hand, the petitioner has satisfied all the conditions stipulated under Rule 56 (3) (e) of the Tamil Nadu Fundamental Rules to enable him to seek for voluntary retirement. The petitioner has also contended that only due to his ill-health, he is unable to continue his service. Even as on date, despite the irregularities pointed out by the respondents in the impugned orders that the petitioner is involved in forty five Internal Audit paras which are yet to be entitled and he is also involved in thirteen AG defects, till date, no disciplinary proceedings have been initiated against the petitioner, which goes to show that the respondents are not serious with regard to the allegations leveled against the petitioner in the impugned orders.

16. For the foregoing reasons, the impugned orders have to be necessarily quashed and the Writ Petition has to be allowed. Accordingly, the impugned orders passed by the fourth and third respondents are hereby quashed and the Writ Petition is allowed. No Costs.

17. The respondents are directed to approve the petitioner's request for voluntary retirement and allow him to voluntarily retire from the service, forthwith and they are also directed to pay all the retirement benefits in accordance with law, within a period of three months thereafter.

08.11.2022

Index : Yes/No
Speaking Order : Yes / No
ab

To

1.The State of Tamil Nadu,
Rep. by the Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The Principal Commissioner,
Commercial Taxes Department,
Chepauk, Chennai - 600 005.

3.The Joint Commissioner (Administration),
O/o. the Principal Secretary / Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

4.The Deputy Commissioner,
Commercial Taxes, Zone X,
Chennai South and Central Division,
Chennai - 600 035.

ABDUL QUDDHOSE. J.,

ab

W.P.No.18081 of 2022

08.11.2022