

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 192 of 2019

**The State of West Bengal & Ors.
VS.
Dr. Gour Pada Nayek**

For the Petitioners/State : Mr. T.M. Siddiqui, AGP
Mr. S. Adak, Advocates

Heard & Judgement on: August 28, 2023

DEBANGSU BASAK, J.

- 1.** State is aggrieved by an order dated July 30, 2019 passed by the West Bengal Administrative Tribunal in OA 443 of 2019.
- 2.** By the impugned order, the Tribunal set aside an order of rejection of the prayer of the writ petitioner for voluntary retirement and directed the authorities to accept the application of the private respondent for voluntary retirement dated August 30, 2016 with effect from December 1, 2016.
- 3.** None appears for the respondent.

4. Learned advocate appearing for the writ petitioner/State relies upon **(2019) 16 SCC 348 [State of West Bengal & Ors. vs. Dr. Tonmoy Mondal]** and submits that, the issue of voluntary retirement in terms of Note 3 of Rule 75(aaa) of the West Bengal Service Rules, 1971, was considered by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that, an application for voluntary retirement in the case of a Doctor can be considered in the context of public interest and can be rejected by the State.

5. Learned advocate for the writ petitioner/State relies upon an unreported decision of a co-ordinate Bench dated **November 14, 2022** passed in **WP.ST 103 of 2022 [The State of West Bengal & Ors. vs. Trilokendu Das]** and submits that, a prayer for voluntary retirement can be declined taking aid under Note 3 of Rule 75(aaa) of the West Bengal Service Rules, 1971.

6. Learned advocate for the State submits that in the facts of the present case, the private respondent was a Doctor who applied for voluntary retirement. His application was rejected by the authorities on the ground of his service being required in public interest. The Tribunal erred in overturning the decision of the authorities in rejecting the application for voluntary retirement.

7. From the materials made available on record we find that, the private respondent joined the services of the State under the West Bengal Health Service as a medical officer on January 12, 1991. His service was confirmed by an order dated January 12, 1994.

8. The private respondent made a representation dated August 31, 2016 for voluntary retirement with effect from December 1, 2016. His prayer for voluntary retirement was rejected by the competent authority by an order dated January 19, 2017. The order of rejection was

challenged by the private respondent in OA 1045 of 2018. The Tribunal disposed of OA 1045 of 2018 on January 21, 2019 by setting aside the order of rejection dated January 19, 2017 and directing fresh consideration by passing a reasoned order. The Additional Chief Secretary, Health, Government of West Bengal, passed an order dated May 2, 2019 rejecting the prayer for compassionate appointment. This order dated May 2, 2019 was assailed in OA 443 of 2019 which resulted in the impugned order.

9. The application for voluntary retirement is governed by Rule 75 of the Rules of 1971.

10. Rule 75, particularly, Rule 75 (aaa) in Note 3 thereof, was considered by the Hon'ble Supreme Court in **Dr. Tonmoy Mondal (supra)**. It was observed as follows :-

"14. Rule 75(a) deals with the retirement on attaining the age of superannuation. The expression 'compulsory' retirement has been wrongly used in the said provision. What is meant by compulsory retirement probably is that no one to continue in service after attaining the age of 58 years. The retirement on attaining the age of superannuation is not a concept of compulsory retirement as understood in the service jurisprudence. Be that as it may, the State may be well advised to amend the Rule.

15. Rule 75(aa) deals with retirement in public interest. As a matter of fact, the concept of compulsory retirement is the one which is to be found in Rule 75(aa). It provides that there is an absolute right with the State Government in the public interest to retire a person by giving a notice of not less than 3 months in writing or 3 months' pay and allowances in lieu of such notice.

16. When we come to Rule 75(aaa) of the Rules, it is apparent that the same deals with the voluntary retirement of a government employee. Any government employee by giving notice of not less than 3 months in writing or 3 months' pay and allowances in lieu of such notice, to the appointing authority, may retire from government service after he has

attained the age of 50 years, if he is in Group A or Group B (erstwhile gazette) service or post and had entered government service before attaining the age of 35 years, and in all other cases, after he has attained the age of 55 years, provided that it shall be open to the appointing authority to withhold permission to a government employee under suspension who seeks to retire under this sub-rule.

17. Note 1 to Rule 75(aaa) provides that in computing the three months' notice period referred to in Rule 75(a) and (aaa) date of service of the notice and date of expiry shall be excluded. Note 2 specifically deals with three months' notice referred in sub-rule (aa) and sub-rule (aaa) that it may be given before the government employee attains the age specified in the said sub-rules provided that the retirement takes place after the government employee has attained the specified age.

18. However, Note 3 which is relevant is not confined in operation to sub-rule (aaa) of Rule 75. It is clearly provided in Note 3 that the appointing authority should invariably keep on record that in his opinion it is necessary to retire the government employee in pursuance of the aforesaid Rule in public interest. Obviously, Note 3 is applicable to both Rules 75(aa) and 75 (aaa) as was rightly opined by the Division Bench while rendering the judgment and order dated 22-8-2014."

11. Dr. Tonmoy Mondal (supra) considered (2018) 17 SCC 578 (State of U.P v. Achal Singh) where it was observed that, the concept of public interest can be invoked by the Government when voluntary retirement sought by an employee would be against public interest.

12. Dr. Tonmoy Mondal (supra) was considered by the coordinate Bench in **Trilokendu Das (supra)**. Coordinate Bench noted that the concept of public interest can be invoked by the Government to decline a prayer for voluntary retirement by a Government employee. Rule 75(aaa) of the Service Rule allows the Government to decline the prayer for voluntary retirement on the ground of public interest.

13. In the facts of the present case, the application for voluntary retirement made by the private respondent was rejected by the Government on the ground of public interest. The factual scenario is akin to those obtaining in **Dr. Tonmoy Mondal (supra)** and **Trilokendu Das (supra)**.

14. In such circumstances, we find that the Tribunal erred in interfering with the decision taken by the authorities rejecting the prayer for grant of voluntary retirement in public interest to the private respondent.

15. The impugned order dated July 30, 2019 is set aside. The order of the authorities dated May 2, 2019 is restored. OA 443 of 2019 is dismissed.

16. WP.ST 192 of 2019 is **allowed** without any order as to costs.

(Debangsu Basak, J.)

17. I Agree.

(Md. Shabbar Rashidi, J.)