

18.09.2023
Item No.27
Ct. No.5
CHC

WP.ST 231 of 2014

**The State of West Bengal & ors.
Vs.
Dr. Tapan Kumar Pal**

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Pinaki Dhole,
Mr. Somnath Naskar
...for the petitioners/State

Mr. Rabindra Nath Mahato,
Mr. Sudip Sarkar,
Mr. Aninda Bhattacharya,
Mr. K. P. Santra
...for the respondent

The writ petition is directed against an order dated November 18, 2013 passed by the West Bengal Administrative Tribunal in O.A.1155 of 2013.

By the impugned order, the Tribunal, directed the Secretary of the Health and Family Welfare Department to accept the prayer of voluntary retirement of the private respondent and to communicate his decision to release all admissible benefits in favour of the private respondent.

Learned Senior Advocate appearing for the State submits that, the Original Application was disposed of without permitting the State an opportunity to file affidavit.

Learned Senior Advocate appearing for the State draws the attention of the Court to the order

rejecting the application for voluntary retirement dated February 13, 2013. He submits that private respondent applied for voluntary retirement by a writing dated August 2, 2011 which was rejected on the ground of public interest. He refers to **(2019) 16 SCC 348 (State of West Bengal and others versus Dr Tonmoy Mondal)** submits that public interest is a ground for disallowance of an application for voluntary retirement.

Learned advocate appearing for the private respondent submits that, Note 3 of Rule 75(aaa) cannot be read to be forming part of Rule 75(aa). He submits that, 75(aa) governs a situation, where a Doctor in service, is made to compulsory retired. There, the Doctor does not possess any discretion. However, Rule 75(aaa) comes into operation when the Doctor concerned, at his discretion, can apply for voluntary retirement. He, however, agrees that an application for voluntary retirement made by such Doctor under Rule 75(aaa) can be decided on the touchstone of public interest. He draws the attention of the Court to paragraphs 17 and 18 of the **Dr. Tonmoy Mondal (supra)**.

In the facts of the present case, the private respondent, applied for voluntary retirement on August 2, 2011. His application for voluntary retirement was rejected by an order dated February

13, 2013 on the ground that allowing the private respondent to voluntary retire was against the greater interest of public service.

Dr. Tonmoy Mondal (supra) considers the provisions of Rule 75 of the West Bengal Service Rules Part-I. With regard to Rule 75(aaa), of Note 3 thereof, it is of the following view:

“17. Note 1 to Rule 75(aaa) provides that in computing the three months’ notice period referred to in Rules 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.”

Dr. Tonmoy Mondal (supra) also notes that, public interest can be a ground for rejection of an application for voluntary retirement. In the facts of the present case, the application for voluntary retirement was rejected on the ground of the same not being in public interest. State possessed such right to deny an application for voluntary retirement on the ground of public interest.

In such circumstances, the Tribunal, erred in law in directing acceptance of the application for voluntary retirement made by the private respondent, which stood rejected on the ground of public interest, without returning any finding as to how, public interest was not being affected by acceptance of the voluntary retirement as prayed for.

We are informed that, the private respondent never joined service after this application for voluntary retirement. We are also informed that private respondent superannuated in the meantime.

In **Dr. Tonmoy Mondal (supra)** the Supreme Court after finding that, the application for voluntary retirement of the Doctor concerned therein could not be accepted and was rightly rejected on the ground of public interest directed the Doctor concerned to rejoin the duty and further directed back-wages for the period when he was absent not to be paid.

In the facts of the present case, since the private respondent never joined duty subsequent to his application for voluntary retirement, and since he superannuated in the meantime, issuing a similar direction for rejoining of service will be futile.

State rightly rejected the application of the private respondent for voluntary retirement.

The impugned order of the Tribunal is set aside.

State will process the service benefits of the private respondent if any on the basis of his application for voluntary retirement being rightly rejected.

WP.ST 231 of 2014 is **allowed** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)