IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.990 of 2023
and
CMP.No.9903 of 2023

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)
   Office of the Principal Secretary / Commissioner of
   Commercial Taxes, Chepuak, Chennai - 600 005.

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

Versus

V.Arasudevan
Assistant Commissioner (ST),
Nolambur Assessment Circle,
Chennai (South) Division,
Chennai - 600 035. .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 08.11.2022 made in W.P. No.18081 of 2022.

For Appellant	:	Mr.Haja Nazirudeen, Additional Advocate General assisted by Mr.M.Venkateswaran, Special Government Pleader
For Respondent	:	Mr.S.Viswanathan

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal has been filed challenging the order dated 08.11.2022 passed by the learned Judge in W.P.No.18081 of 2022.

2. According to the appellants, the respondent had joined the Government service on 08.12.1988 and after completion of 33 years, he submitted an application on 20.01.2022 seeking voluntary retirement, stating that he had unblemished track of record and only due to his ill-health, he made such application. After examining the same, the second appellant rejected the application seeking voluntary retirement, by order dated 29.04.2022, against which, the respondent preferred an appeal before the third appellant and the said appeal was also dismissed, by order dated 29.06.2022. The request of the

respondent seeking voluntary retirement was not considered by the appellant authorities, on the ground that during the interregnum period i.e., from the date of application seeking voluntary retirement to the date of his retirement on 30.04.2022, the respondent was engaged in assessment work in the post of Assistant Commissioner (CT), Nolambur Assessment Circle, and in order to safeguard the revenue, without any loss to State Exchequer, the department had to conduct audit on the assessment files, where the respondent has passed the assessment orders. Challenging the orders so passed by the appellant authorities, the respondent preferred WP. No. 18081 of 2022, which was allowed by the learned Judge, by setting aside the orders impugned therein and by directing the appellants to approve the respondent's request for voluntary retirement, allow him to voluntarily retire from service, forthwith, and pay all the retirement benefits, in accordance with law, within a period of three months. Aggrieved by the said order of the learned Judge, the appellants have preferred this writ appeal.

3. The learned Additional Advocate General appearing for the appellants submitted that the respondent was working as Assessing Officer in Nolambur Assessment Circle, and his work is subject to the departmental audit and by Accountant General audit, which are statutory in nature. Based on the status of Accountant General Audit paras and internal audit paras, wherein

huge revenue was involved, the respondent can be permitted to retire from service and without arriving on a conclusion regarding his retirement, the respondent cannot invoke the writ jurisdiction. That apart, the representation sent by the respondent was received only on 25.01.2022 and the notice period of three months ends only on 30.04.2022 and the impugned order has been passed against the respondent on 29.04.2022 itself. Hence, there is nothing perverse or violation of Rules in passing the orders impugned in the writ petitions. Continuing further, the learned Additional Advocate General submitted that the first appellant is the competent authority to decide the voluntary retirement of the respondent. But the respondent sent his application dated 20.01.2022 seeking voluntary retirement to the second appellant, who inturn forwarded the same to the first appellant. However, before the date opted by the respondent for voluntary retirement i.e., 30.04.2022, appropriate communication has been sent to him on 29.04.2022 itself. Hence, there is no delay in issuing rejection orders on the part of the appellants. It is also submitted that his request was not rejected in toto and he was directed to renew the same after the audit defects are settled. However, the learned Judge erred in setting aside the same and thereby allowing the writ petition in favour of the respondent, by the order impugned herein. It is further submitted that before knowing the fate of audit paras raised by the audit officers, the order of the learned Judge cannot be implemented by the appellant authorities.

However, the respondent has issued a contempt notice in a hasty manner. Therefore, the learned Additional Advocate General prayed for allowing this appeal by setting aside the order of the learned Judge.

4. On the other hand, the learned counsel for the respondent submitted that as per Rule 56(3)(f) of the Tamil Nadu Fundamental Rules, the respondent has to be relieved from service on completion of three months period of notice, but he has not received any orders from the appointing authority either accepting or rejecting his application for voluntary retirement, within the aforesaid period. That apart, neither disciplinary proceedings nor enquiry or investigation is pending against the respondent in Vigilance and Anti Corruption department. However, the appellants are harassing him from pillar to post. Taking note of all these factors, the learned Judge has rightly quashed the orders passed by the appellant authorities and directed them to accept the application seeking voluntary retirement, permit the respondent to retire from service and pay all the retirement benefits to him, by the order impugned herein, which does not warrant any interference by this court.

5. Heard both sides and perused the materials available on record.

6. There is no dispute with regard to the application dated 20.01.2022 made by the respondent seeking voluntary retirement, which was received by the appellant authorities on 25.01.2022 as evident from the counter affidavit filed by the authorities in the writ petition.

7. Concededly, the respondent has satisfied all the conditions stipulated in Rule 56(3)(e) of the Tamil Nadu Fundamental Rules, such as, he has completed more than 25 years of service; and at the time of making the application for voluntary retirement, he has not faced any disciplinary proceedings and not faced any prosecution before any court of law with regard to his employment; no adverse report from the Director of Vigilance and Anti-corruption was received nor any enquiry is pending against him; and no contractual obligation exists against him; no dues to be recovered from him. That apart, it is to be noted that Rule 56(3)(f) of the Tamil Nadu Fundamental Rules, which has been extracted by the learned Judge in the order impugned herein, explicitly states that 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 serivce on the expiry of the notice period. In this case, no reply was served on the respondent, by the appellant authorities either accepting or rejecting his application seeking voluntary retirement, within the

notice period and hence, the application submitted by the respondent seeking voluntary retirement, deemed to have been approved, as rightly pointed out by the learned Judge. Furthermore, no enquiry / disciplinary proceedings have been initiated against the respondent, in respect of the alleged internal audit paras or AG defects, till date. Therefore, the learned Judge has correctly set aside the orders passed by the appellant authorities and directed them to accept the application, permit the respondent to retire from service voluntarily and pay the retirement benefits to him, by the order impugned in this appeal, which need not be interfered with, in the hands of this court.

8. In view of the contention made on the side of the appellants that the appointing authority is the first appellant, who has to consider the application of the respondent seeking voluntary retirement, the respondent is directed to send a copy of the application dated 20.01.2022, along with a copy of this order, to the appointing authority viz., the Secretary / Commissioner of Commercial Taxes and Registration Department, Fort St. George, Chennai, in terms of Rule 56(3)(f) of the Tamil Nadu Fundamental Rules, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the said authority is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of three weeks thereafter.

9. With the aforesaid directions, this writ appeal is disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

[R.M.D., J.] **[M.S.Q., J.]**
21.12.2023

Index : Yes / No
Internet : Yes / No
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To

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