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W.P. No. 18236 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P.No. 18236 of 2022

G. Raja

..Petitioner

Vs.

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

..Respondents

Prayer: Petition under Article 226 of the Constitution of India for issue of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent herein in G.O.Ms. No. 1009, Public (Special A) Department dated 30.11.2021, the proceedings in Roc. no. 4019/2018/B1/Spl. Cell dated



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17.12.2021 of the 2nd respondent herein, Notification no. 306/2021 in Roc.

No. 4019/2018/B1/Spl.Cell dated 17.12.2021 of the 2nd respondent herein and the proceedings in Roc. No. 5301/2021/RG-B2 dated 20.12.2021 of the 2nd respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to go on voluntary retirement.

For Petitioner :: Mr.AL. Ganthimathi

For Respondents :: Mr. Karthik Ranganathan
for R2
Mrs. V. Yamuna Devi
Special Govt. Pleader for R1

O R D E R

(Made by *S. Vaidyanathan,J.*)

The present writ petition has been filed challenging the order of the 1st respondent herein in G.O.Ms. No. 1009, Public (Special A) Department dated 30.11.2021, the order dated 17.12.2021 by which the petitioner was relieved from Tamil Nadu State Judicial Service on compulsory retirement and the proceedings dated 20.12.2021 by which the request of the petitioner for voluntary retirement was rejected by the 2nd respondent.

2. The petitioner had joined the service as Civil Judge (Junior



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Division) and posted as District Munsif, Madurai. Thereafter, on 08.05.2009, he was promoted as a Civil Judge (Senior Division) and thereafter, posted as Chief Judicial Magistrate, Namakkal. Thereafter, the petitioner was promoted as District Judge (Entry Level) on 14.09.2015. The petitioner's brother gave a complaint on 14.09.2015 against him regarding disproportionate assets owned by the petitioner. On 30.12.2019, the petitioner was placed under suspension in terms of Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Since there was prolonged suspension, the petitioner filed W.P. No. 6472 of 2021 challenging the order dated 30.12.2019 and the said writ petition was dismissed by order dated 16.03.2021 as against which SLP (Civil) No. 6664 of 2021 was filed. In the meantime, on 23.08.2021, charge memo was issued to the petitioner containing several charges numbering 16 and on 17.09.2021, the petitioner submitted his explanation. On 28.10.2021, the SLP filed by the petitioner came to be dismissed on the ground that the Full Court had resolved to compulsorily retire the petitioner and had forwarded the resolution to the State for appropriate orders and the orders were awaited. Liberty was also given to the petitioner to challenge the order of compulsory retirement in case it was served on him. Subsequently, on 22.11.2021, the petitioner submitted representations to the Government and to the 2nd respondent



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expressing his desire to retire voluntarily. His request was rejected by proceedings dated 20.12.2021 and by the order dated 30.11.2021, the petitioner was directed to be compulsorily retired. By proceedings dated 28.01.2022, the order of suspension was revoked and the period from 01.01.2020 to 16.12.2021 was treated as duty for all purposes and order of relief from Tamil Nadu State Judicial Service was given effect from 17.12.2021. Challenging the aforesaid orders, the present writ petition has been filed.

3. According to the petitioner, after issuance of charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and pursuant to the departmental proceedings, which according to the petitioner were not continued to reach its logical end, a decision was taken to relieve the petitioner on compulsory retirement, which is stigmatic. The benefits that are going to accrue by means of voluntary retirement and compulsory retirement by way of punishment would be the same and hence, instead of sending him on compulsory retirement, he may be allowed to go on voluntary retirement with effect from the date on which the order directing the compulsory retirement of the petitioner was passed. The learned counsel for the petitioner has relied upon the order dated 21.06.2022



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passed by the Division Bench of this Court rendered in W.P. No. 8852 of 2022 wherein the Administrative Committee had taken a decision not to continue the services of the petitioner therein and the said resolution was confirmed by the Full Court. Thereafter, the Government had passed an order compulsorily retiring him from service. The Division Bench was of the view that the prayer of the petitioner therein was not such that it could not be considered and accepted. Moreover, the Division Bench also observed that the retiral benefits arising out of compulsory retirement or voluntary retirement would be the same and that the petitioner therein was not claiming any additional benefits. Therefore, the Division Bench, taking note of the facts of the case, ordered to substitute the order of compulsory retirement to that of voluntary retirement. Similar decision was rendered in the case of the petitioner by order dtd 04.03.2022 in W.P. No. 11885 of 2021, relied on by the learned counsel for the petitioner. On the strength of the said orders, the learned counsel for the petitioner would submit that the petitioner herein is also entitled to such a relief.

4. On the other hand, Mr.Karthik Ranganathan, learned counsel appearing for the 2nd respondent would submit that though the facts narrated by the petitioner are not in dispute, there is a slight difference



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between compulsory retirement and voluntary retirement. He drew the attention of this Court to Rules 56(2) & 56(3) of Fundamental Rules, which deal with compulsory retirement and voluntary retirement. When the Appointing Authority comes to the conclusion that in public interest, it is not advisable to continue a Government Servant in service, who has attained the age of 50 or 55 years, the authority has absolute right to retire him by giving 3 months' notice in writing or 3 months pay and allowances in lieu of such wages, in case of compulsory retirement. In case of voluntary retirement, the Government Servant concerned will have to make an application to the Appointing Authority and there should be no disciplinary proceedings contemplated or pending against the Government Servant for imposition of major penalty. In this case, the charge memo had been issued to the petitioner on 23.08.2021 and sensing he is going to be dismissed from service for a major misconduct, he had made an application for voluntary retirement, more so, after the issuance of the charge memo. He would further submit that the two decisions quoted by the petitioner are not applicable to the facts of this case and are distinguishable

5. Heard both parties.

6. Admittedly, the petitioner had joined the service as Civil Judge

(Junior Division) and posted as District Munsif, Madurai. Thereafter, on



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08.05.2009, he was promoted as a Civil Judge (Senior Division) and thereafter, posted as Chief Judicial Magistrate, Namakkal. Thereafter, the petitioner was promoted as District Judge (Entry Level) on 14.09.2015. Based on the complaint given by the petitioner's brother, he was placed under suspension on 30.12.2019 and the suspension order, that was questioned, was rejected by this Court by order dated 16.03.2021 in W.P. No. 6472 of 2021 and the SLP filed as against the same was also dismissed giving liberty to the petitioner to challenge the same in case it is served on him. Thereafter, the present writ petition has been filed for the following relief:

“To issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent herein in G.O.Ms. No.1009 Public (Special A) Department dated 30.11.2021 the proceedings in Roc. No.4019/2018/B1/Spl.Cell dated 17.12.2021 of the 2nd respondent herein, Notification No.306/2021 in Roc.No. 4019/2018/B1/Spl. Cell dated 17.12.2021 of the 2nd respondent herein and the proceedings in Roc. No. 5301/2021/RG-B2 dated 20.12.2021 of the 2nd respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to go on voluntary retirement”

7. Though it has been pointed out by respondents that the petitioner has sought quashing of compulsory retirement order and



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consequently to permit him to go on voluntary retirement and he did not seek for reinstatement, we are of the view that the order of compulsory retirement cannot be quashed for the simple reason that if it is quashed, the petitioner should be put in service and thereafter, it is for the petitioner to decide whether he can go on Voluntary Retirement or not as the competent authority can take a decision on the application made for Voluntary Retirement and cannot compel a Government Servant to go on Voluntary Retirement. If the Court wants to reinstate the petitioner, then the order of compulsory retirement can be straightaway interfered with for the purpose of reinstating the petitioner, which we are not inclined to. The contention of the learned counsel for the 2nd respondent that sending a person out on compulsory retirement and voluntary retirement stands on a different footing is well-founded. According to him, a person, who is sent out on compulsory retirement is going out without stigma and that it is only a warning signal to those in the departments that they should be careful. We also make it clear that compulsory retirement does not cast a stigma.

8. As far as the submission of the learned counsel for the petitioner that the petitioner could have been permitted to go on voluntary



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retirement, the charge memo had been issued when the petitioner made a request for voluntary retirement and going by Fundamental Rule 56(3) which deals with Voluntary Retirement, when disciplinary proceedings are contemplated for imposition of major penalty, the delinquent officer will not be entitled to the benefit of Voluntary Retirement. The two decisions quoted by the petitioner may not be applicable to the facts of this case and are distinguishable. It has been proceeded on the basis that both Fundamental Rules 56(2) and 56(3) are in pari materia and that no additional retiral benefits could be claimed. A judicial officer, who is sent out on compulsory retirement cannot be considered to be appointed in any judicial posting like that of an Administrative Tribunal member whereas if it is a case of voluntary retirement, certainly, he would be entitled to be considered. The reason quoted in the present case is that in the interest of public, as contemplated under FR 56(2), the petitioner was sent out on compulsory retirement based on past records and as there are 16 charges against the petitioner, the appointing authority has taken a decision to send him on compulsory retirement. The orders of this Court in W.P. Nos. 8852 of 2022 and 11885 of 2021 relied on by the learned counsel for the petitioner may not be applicable to the facts of this case as Fundamental Rules 56(2) and 56(3) are not in pari materia. It would be relevant to extract



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the said provisions hereunder:

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“56 (2): Compulsory retirement- Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in public interest so to do have the absolute right to retire any Government Servant by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service.

56(3)(a): Voluntary Retirement -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 office 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.”

9. The decision taken by the Administrative Committee to retire the petitioner compulsorily as confirmed by the Full Court and the Government Order issued are perfectly in order. The order of Compulsory Retirement cannot be converted into one of Voluntary Retirement as it



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would amount to giving a premium to a delinquent, against whom 16 charges have been framed and it would also defeat the very object and purpose of FR 56(2).

10. In the light of the foregoing discussion, the writ petition stands dismissed. No costs. .

nv

(S.V.N.J.) (K.R.S.J.)
29.09.2023

To

1. The Chief Secretary to
Government,
Public (Special A) Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Registrar General,
High Court of Judicature at Madras,
Chennai – 600 104.

S.VAIDYANATHAN,J.

AND



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K. RAJASEKAR,J.

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