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W.P.(MD) No.1432 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD) No.1432 of 2023

Muthukrishnan

... Petitioner

-vs-

1.The Principal District Judge
Dindigul District
Dindigul

2.The District Munsif-cum-
Judicial Magistrate
Natham, Dindigul

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order made by the first respondent in R.O.C.No.1660/2022/A1, dated 23.12.2022, quash the same as illegal and consequently direct the respondents to accept and permit the petitioner's request for voluntary retirement from service within a time stipulated by this Court.



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W.P.(MD) No.1432 of 2023

For Petitioner : Mr.B.Vinoth Kumar

For Respondents : Mr.D.Sivaraman

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The petitioner, who is aged about 58 years and is working as a Head Clerk in the Principal District Court, Dindigul, challenges the order of the first respondent dated 23.12.2022 rejecting the petitioner's application for voluntary retirement from service.

2. Learned counsel for the petitioner mainly contended that the petitioner is aged about 58 years and on health grounds, he submitted an application for voluntary retirement from service. The petitioner, in his application for voluntary retirement dated 02.09.2022, has stated about his health conditions and his inability to continue in judicial service. However, the learned Principal District Judge, Dindigul, rejected the petitioner's application, on the ground that 11 posts of Superintendent (Upgraded) are vacant and other posts of Bench Clerk-II and III, Assistant, Typist are vacant. Since large number of posts in judicial administration are vacant, learned



W.P.(MD) No.1432 of 2023

WEB COPY

Principal District Judge declined to accept the petitioner's application for voluntary retirement. When the petitioner has raised certain serious health issues and expresses his inability to continue in service, there is no reason to reject the application for voluntary retirement.

3. Learned counsel for the petitioner drew our attention to the order of this Court, dated 26.08.2021 in W.P.(MD) No.5415 of 2021 [***Vetrivel vs. the Principal District Judge, Dindigul District Court, Dindigul and another***] and the relevant portion of the said order reads as under:

“4. When the petitioner is qualified to avail voluntary retirement, the reasoning given by the first respondent for rejecting the application on the ground of existing vacancy cannot be accepted. The Fundamental Rule does not prohibit a staff from availing voluntary retirement when the said person had fulfilled the conditions imposed under Fundamental Rule 56(i)(c)(3). The existence of the vacancy cannot be put against a staff member for accepting the voluntarily retirement application.

5. In such view of the matter, the impugned order passed by the first respondent, dated 17.09.2020 is liable to be set aside and the same is set aside. Accordingly, the Writ Petition stands allowed. No costs.”



WEB COPY

W.P.(MD) No.1432 of 2023

4. In view of the facts and circumstances, the order dated 23.12.2022, passed by the first respondent, is set aside and the writ petition stands allowed. The respondents shall allow the petitioner to go on voluntary retirement, subject to the compliance of the other requisite conditions as stipulated under the Rules. No costs.

[S.M.S., J.]

[V.L.N., J.]

24.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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W.P.(MD) No.1432 of 2023

S.M.SUBRAMANIAM, J.
and
V.LAKSHMINARAYANAN, J.

krk

W.P.(MD) No.1432 of 2023

24.11.2023