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Writ Appeal No.2453 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2024

PRONOUNCED ON : 25.06.2024

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.2453 of 2022

1. Government of Tamil Nadu
Rep., by its Secretary,
Hindu Religious and Charitable
Endowment Department,
Fort, St., George,
Chennai – 09.

2. The Commissioner,
Hindu Religious Charitable &
Endowment Department,
119, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai – 34.

... Appellants

R.Muthusamy

Vs

... Respondent

PRAYERS: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 16.03.2021 made in W.P.No.3470 of 2021.



For Appellants : Mr.N.R.R.Arun Natarajan Spl.G.P., for HR&CE

For Respondents: Mr.V.Prakash Sr., Counsel for
Mr.K.Krishnamoorthy

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

This Intra Court Appeal has been preferred as against the order of the learned Single Judge wherein the order passed by the second Appellant in rejecting the respondent's request for voluntary retirement had been negatived and the prayer sought for in the Writ Petition was allowed, thereby, the respondent was permitted to retire from service.

2. Heard Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the appellants and Mr.V.Prakash, learned Senior counsel appearing for Mr.K.Krishnamoorthy, learned counsel appearing for the sole respondent.

3.The learned counsel appearing for the appellants would submit that the respondent herein had been working as Executive Officer Grade I and that there are certain allegations against him. Knowing that such allegations



have crystalized before any action could have been taken, the respondent herein had forwarded an application for voluntary retirement from service, which had been received by the second Appellant herein (Appointing Authority) on 13.08.2020, which was dated 03.08.2020. On the various allegations as against the respondent on the ground of misappropriation of temple funds, the respondent had been placed under suspension and a charge memo was also issued to him on 21.09.2020. Considering the serious nature of the allegations and pendency of the disciplinary proceedings, the claim of the respondent for voluntary retirement had been rejected by the second Appellant on 05.11.2020. Challenging the said communication, the respondent had approached this Court by contending that he had submitted his application on 03.08.2020 and that any order rejecting his request ought to have been made within three months from the date of his submissions of application and the order impugned had come to be passed only on 12.11.2020 i.e., beyond the said period. The learned Single Judge accepting the claim of the respondent had held that by applying the Fundamental Rule 56, the respondent would have been deemed to have been retired from service on completion of three months of



submission of the application. Further, the order that had been served upon the respondent is beyond the period of three months and therefore, the same is a *non-est* order.

4. In that context, the learned Special Government Pleader would contend that the application of the respondent, had been received by the office of the second Appellant, who is the Appointing Authority only on 13.08.2020, and therefore, the period of three months would only come to an end on 12.11.2020. He would submit that the said decision had been taken by the second Appellant on 05.11.2020 and was communicated to the respondent. However, the order of communication had been signed on behalf of the second Appellant on 12.11.2020, which is also within the said period of three months from the date of receipt of the copy by the second respondent as provided under FR 56. Therefore, he would submit that the learned Single Judge had wholly erred in holding that no orders have been passed by the second Appellant within the time stipulated under FR 56 in setting aside the order passed by the second Appellant and allowed the Writ Petition. Hence, he would seek interference of the orders passed by the



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learned Single Judge. To substantiate the contention, the learned Special Government Pleader had also produced the original files relating to the proceedings.

5.Mr.Prakash learned Senior counsel appearing on behalf of the respondent would contend that the respondent had submitted the application on 03.08.2020, both through e-mail and also to the Joint Commissioner. Infact he would rely upon a communication of the Joint Commissioner, dated 04.08.2020, addressed to the second Appellant, wherein the copy of his application for voluntary retirement had been annexed. Therefore, he would submit that the application had to be presumed to have been submitted by the respondent on 03.08.2020. Counting the period prescribed under FR 56, would make it clear that the said period had come to an end on or before 04.11.2020. According to him, in the present case, even though the order is dated 05.11.2020, the same has been signed only on 12.11.2020, which is beyond the stipulated period under FR 56. He would heavily rely upon the Fundamental Rule, to contend that the respondent is deemed to have been permitted to retire voluntarily on



completion of the said period as there has been no communication whatsoever from the second appellant either accepting or rejecting his claim for voluntary retirement. He would also contend that in that aspect there has been no error apparent in the order passed by the learned Single Judge warranting interference by this Court. He had also placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***State of Haryana & Ors., vs. S.K.Singhal*** reported in (1999) 4 SCC 294 (para 30), ***Dinesh Chandra Sangma vs. State of Assam & Ors.***, reported in (1977) 4 SCC 441 (para 13, 15 & 16) and ***B.J.Shelat vs. State of Gujarat & Ors.***, repoted in (1978) 2 SCC 202 (para 9) and contend that when there has been no communication of rejecting the claim for voluntary retirement, then by invocation of FR 56, he is deemed to have been voluntarily retired and any communication thereafter is a *non-est* communication and the respondent should be permitted to retire and paid all retirement benefits and he is not entitled to be proceeded with departmentally.

6.In reply, the learned Special Government Pleader would contend that there had been no e-mail received by the office of the second Appellant



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and the e-mail communication had been sent to an e-mail address, which does not belong to the second Appellant. He would also contend that a specific ground had been raised indicating that incorrect e-mail ID and the same is not disputed by the respondent. He would further submit that the Appointing Authority is the second Appellant and not the Joint Commissioner to whom the respondent had submitted his application. FR 56 specifically indicates that the time for counting the period of three months could only be taken into account from the date on which the Appointing Authority had received the request and not from any other date.

7.We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

8.The *lis* in this Intra Court Appeal revolves upon the compliance of FR 56(3) particularly clauses a,b,e & f. For better appreciation, the said relevant provisions are extracted hereunder:-

56(3) Voluntary retirement.—(a) 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 106 notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer 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.

Explanation (i).—The term “appointing authority” means the authority which has power to make substantive appointment to the post or service from which the Government servant wants to retire and includes any higher authority to such appointing authority.

Explanation (ii).—The term “qualifying service” means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment without interruption.

(with effect from 14th February 1997.)

[G.O. Ms. No. 39, Personnel & Administrative Reforms (FR. III)

Department, dated 14th February 1997.]

(b) The period of three months notice shall be reckoned from the date of receipt of notice by the appointing authority.

(e) notice of voluntary retirement given by a Government servant shall be accepted by the appointing authority, subject to the following conditions being satisfied namely:-

(i) that no disciplinary proceedings are contemplated or pending against the Government servant concerned for the imposition of a major penalty;

(ii) that no prosecution is contemplated or pending in a Court of Law against the Government servant concerned;



- (iii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;
- (iv) that no dues which cannot be recovered from his Death-cum-Retirement Gratuity are pending to be recovered from the Government servant concerned; and
- (v) that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily.
- (f) The appointing authority shall issue orders before the date of expiry of notice either accepting the voluntary retirement or not. Otherwise, the Government servant shall be deemed to have been retired voluntary from service at the end of the period of notice: Provided that where a Government servant under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The appointing authority may withhold the permission sought for by the Government servant, if any of the conditions specified in clause (e) are not satisfied.

9.From a reading of the same, it envisages that a Government servant, who had attained the age of 50 years or who has completed 20 years of qualifying service may seek to retire from service by giving a notice of not less than three months in writing direct to the Appointing Authority with a copy marked to his immediate superior for information. The said period of



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three months that had been indicated is to be reckoned from the date of receipt of notice by the Appointing Authority. It also further envisages that on receipt of such notice, the Appointing Authority shall issue orders before the expiry of notice period of three months either accepting or rejecting the request. Deemed retirement voluntarily from service has also been contemplated, if no such decision had been taken by the Appointing Authority within the notice period.

10. In the present case, the claim of the respondent is that he had submitted his application for voluntary retirement dated 03.08.2020, both by e-mail and also through the Joint Commissioner and also directly to the second Appellant, who is the Appointing Authority. The e-mail address to which the respondent had sent his application had been disputed by the appellants by claiming that it is not the e-mail ID of the second Appellant, who is the Appointing Authority. This fact had not been disputed by the respondent. Therefore, we do not wish to entertain the claim that the notice had been served through e-mail.



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11.The next contention is that the Joint Commissioner had acknowledged the application which according to the learned Senior counsel appearing for the respondent was based on the alleged communication of the said Joint Commissioner dated 04.08.2020, to the second Appellant. Sub-clause (a) of FR 56(3) contemplates that the application should be given to the Appointing Authority directly only with the copy marked to his immediate superior for information. In the present case, even though the application is dated 03.08.2020, from the records produced before us, we could see that such application had been received by the second Appellant/Appointing Authority only on 13.08.2020. The claim that the application had been submitted by him and acknowledged by the Joint Commissioner does not fulfil the parameters that had been mandated under clause (a) of FR 56(3), as it could not be treated to be an application submitted to the Appointing Authority directly. Only 13.08.2020 can be taken as the date on which the Appointing Authority had received the application. In such view of the matter, the period of three months envisaged would have to be reckoned only from 13.08.2020, as envisaged under clause (b) of FR 56. In the present case, the respondent had claimed



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that he was in receipt of the orders from the second Appellant only on 17.11.2020 and that even though the said letter is dated 05.11.2020, it had been signed only on 12.11.2020. Therefore, it is beyond the period of three months envisaged under FR 56(3).

12. We have perused the Original files. From the original files, it is evidenced that the decision had been taken by the second Appellant namely, the Appointing Authority to reject the claim of voluntary retirement on 05.11.2020. A copy of the same had been forwarded on behalf of the second Appellant on 12.11.2020. Reckoning the date of receipt of the application for voluntary retirement to be as 13.08.2020, the three months period will be ending on 12.11.2020. If that is so, we are of the considered view that the second respondent had taken a decision and passed orders on 05.11.2020 rejecting the application of the respondent, which had also been communicated to the respondent through registered post on 12.11.2020 which is well within the time limit prescribed under FR 56(3). Therefore, there can be no question of dealing provision which would negative the claim of the respondent that he is deemed to have been retired from service.



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13.From the files we also had an occasion to peruse the letter sent by the respondent on 17.11.2020. In the said letter, there is also a reference to the order of the second Appellant dated 05.11.2020, which had been impugned in the Writ Petition. After having elucidated various facts, the respondent himself had requested that his application of voluntary retirement can be considered once the enquiry into the charges had been framed, is completed. This would indicate that he had acquiesced himself of the order of rejection and had submitted for the disciplinary proceedings to be conducted. For better appreciation, the relevant portion of a letter is extracted hereunder:-

“எனவே, எனது குடும்ப சூழ்நிலையின் காரணமாகவே நான் சுய விருப்ப ஓய்வு கோரியுள்ளதால், மேற்படி குற்றச்சாட்டுகளின் மீது விசாரணை முடிந்தவுடனே எனக்கு சுய விருப்ப ஓய்வு வழங்குமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்.”

14.For the above findings and reasoning, we have arrived at a conclusion and we are of the considered view that the learned Single Judge



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had wholly erred in holding that the second Appellant had not passed any orders rejecting the claim of the respondent for voluntary retirement within the notice period and therefore, he is deemed to have been voluntary retired on completion of the three month period. In view of the same, we are inclined to set aside the order passed by the learned Single Judge.

15. In fine, the Writ Appeal is allowed and the order passed by the learned Single Judge in W.P.No.3470 of 2021, dated 16.03.2021, is set aside. However, there shall be a direction to the disciplinary authority to conclude the proceedings, within a period of six months from the date of receipt of a copy of this order. The respondent shall also cooperate with the enquiry. However, there shall be no order as to costs.

(D.K.K.,J.)

(K.B., J.)

25.06.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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