



WP(MD) No.2176 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.2176 of 2024

and

W.M.P(MD)Nos.2186, 2188 & 2189 of 2024

C.Yesu

... Petitioner

Vs.

1.The Regional Joint Director

O/o. the Regional Joint Director,
Tirunelveli.

2.The Secretary

St. Johns College,
Palayamkottai - 627 002,
Tirunelveli.

3.The Principal (I/c)

St. Johns College,
Palayamkottai - 627 002, Tirunelveli.



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4.G.Jeyachandran

The Secretary,

St. Johns College,

Palayamkottai - 627 002,

Tirunelveli.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in No.048/2023 dated 04.12.2023 on the file of the respondent No.2 and to quash the same as illegal and consequentially for a direction, directing the respondent No.2 to accept the Voluntary Retirement application dated 31.10.2023 and to grant Voluntary retirement from service to the petitioner from the post of the Associate Professor in the 2nd respondent College along with all consequential benefits.

(Prayer is amended as per the order of this Court dated 25.04.2024 made in W.M.P(MD)No.8413 of 2024)



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For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.T.Amjadkhan – for R1

Government Advocate

Mr.P.P.Alwin Balan - for R2 & R4

Mr.K.K.Udhayakumar – for R3

ORDER

The petitioner has filed this Writ Petition seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in No.048/2023 dated 04.12.2023 on the file of the respondent No.2 and to quash the same as illegal and consequentially for a direction, directing the respondent No.2 to accept the Voluntary Retirement application dated 31.10.2023 and to grant Voluntary retirement from service to the petitioner from the post of the Associate Professor in the 2nd respondent College along with all consequential benefits.



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2. Heard Mr.S.Rajasekar, learned counsel for the petitioner, Mr.T.Amjadkhan, learned Government Advocate for the first respondent, Mr.P.P.Alwin Balan, learned counsel for the respondents 2 and 4 and Mr.K.K.Udhayakumar, learned counsel for the third respondent.

3. The petitioner was working as HOD and Associate Professor in Tamil Department in the second respondent College. As the petitioner was suffering from health issues, due to stroke suffered by him in the year 2020, he was not in a position to perform his duties in a satisfactory manner. The petitioner was frequently on leave and on 31.10.2023, he joined duty by producing a medical certificate. But on the same day itself, the petitioner had offered a letter for permitting him to go on voluntary retirement by giving 90 days notice.

4. However, based on the direction of the Medical Board opinion the petitioner was ordered to be placed under Compulsory retirement w.e.f., 01.11.2023. The petitioner claims



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that the impugned order has been passed on 04.12.2023 by giving retrospective effect to the Compulsory retirement w.e.f., 01.11.2023. He further submitted that the petitioner's request for Voluntary retirement could have been considered instead of compelling the petitioner to go on Compulsory retirement.

5. The learned counsel for the respondent College submitted that the opinion of the Medical Board would only show that the petitioner is not capable of performing the duties as a Teacher. No doubt, the Medical Board opinion would say that the petitioner has lost his speaking ability and it is not possible to take classes for the students. However, it is certified that the petitioner's limbs got recovered and hence he is eligible to be considered for any alternate appointment. But the second respondent has taken a decision to relieve the petitioner on Compulsory retirement w.e.f., 01.11.2023.

6. No doubt, the petitioner is not capable of handling classes to the students and in a way the decision taken by the second



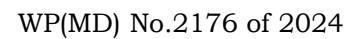
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respondent that the petitioner is unfit to take classes, is correct.

However, the medical opinion also states that the petitioner is fit for any alternate employment though he cannot take classes.

7. However, the petitioner himself had offered Voluntary retirement, but, he did not prefer to fit himself in any alternate employment. Instead of allowing him to go on voluntary retirement, he was not permitted to work from 01.11.2023 from which date, the notice period started for voluntary retirement and thereafter he was sent on Compulsory retirement w.e.f, 01.11.2023. Before taking a decision to send the petitioner on Compulsory retirement, the petitioner's request to allow him to go on Voluntary retirement could have been considered, especially, in the light of the medical opinion given by the Medical Board that the petitioner is fit for alternate employment.

8. The only consideration that was made while passing the impugned order is that the petitioner was unfit to continue as a Teacher. If the petitioner had chosen to fit himself in any alternate



9. Since the petitioner had not chosen to handle any employment, but to go on Voluntary retirement, the should have been considered positively instead of passing relieve the petitioner on Compulsory retirement 01.11.2023. Since the petitioner did not apply for any leave upto his joining on 31.10.2023, he ought to have been to sign the attendance register for making his presence, decision taken on 04.12.2023. But for the reasons known and respondent, an order has been passed on 04.12.2023 effect to the Compulsory retirement w.e.f., 01.11.2023. The order does not say whether the petitioner was either present or absent from the date of his joining, i.e., from 31.10.2023.



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10. However, it is clear that the petitioner joined duty on 31.10.2023. If the petitioner had not reported duty from the next date i.e., 01.11.2023, appropriate notice ought to have been issued to the petitioner calling for explanation either to treat his leave period as unauthorised absence or otherwise. The petitioner has not claimed that he has submitted any leave application from 01.11.2023. So, without considering the significance of the notice period involved between 01.11.2023 and 29.01.2024, the impugned order has been passed to relieve the petitioner on Compulsory retirement. To his surprise, the same was communicated to him on 04.12.2023.

11. Considering the fact that the petitioner was eligible to be given with any alternate employment, I feel that the respondents can reconsider the petitioner's request to allow him to go on Voluntary retirement favourably and pass appropriate orders by considering the notice period as duty.



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12. In view of the above stated reasons, the Writ Petition is **allowed** and the impugned order, dated 04.12.2023 passed by the second respondent is set aside. The second respondent is directed to pass orders to accept the petitioner's Voluntary retirement application, dated 31.10.2023 and pass orders to allow him to go on Voluntary retirement by treating the whole period as duty with all its monetary and attendant benefits. No costs. Consequently, connected miscellaneous petitions are closed.

25.04.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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R.N.MANJULA, J.

RM

To

- 1.The Regional Joint Director
O/o. the Regional Joint Director,
Tirunelveli.

Order made in
W.P.(MD)No.2176 of 2024
(2/2)

25.04.2024