



W.P.(MD)No.7337 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2024

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THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.7337 of 2017

and

W.M.P.(MD)No.5762 of 2017

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: Petitioner

Vs.

1.The Chairman,

VO Chidambaranar Port Trust,
Thoothukudi – 628 004.

2.The Secretary,

VO Chidambaranar Port Trust,
Thoothukudi – 628 004.

3.The Traffic Manager,

VO Chidambaranar Post Trust,
Thoothukudi – 628 004.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records relating to the proceedings of the impugned order No.T-12/2/2016-E/D.918 dated 17.04.2017 on the file of the third respondent and quash the same.



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For Petitioner : Mr.Vinoharan
for Mr.G.Prabhu Rajadurai
For Respondent No.1 : MrM.Karthick Ramkumar
For Respondents 2 & 3 : No appearance

ORDER

This Writ Petition has been filed challenging the impugned order dated 17.04.2017 issued by the third respondent stating that the petitioner has been relieved of her duties in the traffic department with effect from 23.04.2017 pursuant to her request for voluntary retirement.

2.The petitioner was working as Upper Division Clerk in the third respondent Port Trust. On 24.01.2017 she had made a written request to the respondent Port Trust for voluntary retirement from service in the respondent Port Trust in accordance with the Rules for voluntary retirement. The petitioner had given three months notice in her written request dated 24.01.2017. If the request of the petitioner is accepted, the effective date of the voluntary retirement of the petitioner in the respondent Port Trust will be on 23.04.2017. However, according to the petitioner, since she has withdrawn her request for voluntary retirement through her letter dated 02.03.2017 even prior to the expiry of the three months notice period, the



question of acceptance of her request for voluntary retirement does not arise. According to the petitioner, arbitrarily and by total non-application of mind, the third respondent has issued the impugned order dated 17.04.2017, accepting the earlier request made by the petitioner for voluntary retirement though the same was subsequently withdrawn and has relieved the petitioner of her duties in the traffic department of the respondent Port Trust with effect from 23.04.2017.

3.A counter affidavit has been filed by the respondents reiterating that only in accordance with the Rules of the respondent Port Trust, the petitioner's earlier request for voluntary retirement was accepted and thereafter the impugned order dated 17.04.2017 came to be passed relieving the petitioner of her duties in the traffic department with effect from 23.04.2017, which is the date on which the three months notice period expires from 24.01.2017 when the petitioner had made a written request for voluntary retirement.

4.Learned Counsel for the petitioner drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Shambhu Murari Sinha Vs. Project & Development India and another*** reported in ***(2000) 5 SCC 621***, involving an identical case. In that case also, the employee who had initially made a request for



voluntary retirement had subsequently withdrawn the same prior to the expiry of the three months notice period. The Hon'ble Supreme Court in the aforesaid decision by following three other decisions namely ***Balram Gupta Vs. Union of India, J.N.Srivastava Vs. Union of India and Power Finance Corpn Ltd., Vs. Pramod Kumar Bhatia***, has held that it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective.

5. In the case on hand also, it is an admitted fact as seen from the counter affidavit filed by the respondents before this Court that the petitioner had withdrawn her request for voluntary retirement even before the said voluntary retirement comes into effect. If the earlier request for voluntary retirement was accepted by the respondents, it comes into effect only on 23.04.2017 as the earlier written request made by the petitioner for voluntary retirement is dated 24.01.2017. However, even before the voluntary retirement became effective, the petitioner withdrew her request for voluntary retirement through her letter dated 02.03.2017. The acceptance of the voluntary retirement request made by the petitioner by the respondents on 01.03.2017 also makes it clear that the voluntary retirement is accepted only with effect from 23.04.2017. Since the petitioner has withdrawn her voluntary



retirement request prior to the date when the voluntary retirement came into effect, the decision of the Hon'ble Supreme Court relied upon by the learned Counsel for the petitioner referred to supra is clearly applicable to the facts of the instant case.

6.As observed earlier, the Hon'ble Supreme Court has made it clear that it is always open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. It is also to be noted that this writ petition was filed in the year 2017 and the petitioner is having the benefit of *status quo* order with regard to the operation of the impugned order even since 20.04.2017 and the petitioner continues to remain in service with the respondent Port Trust. The petitioner is now aged 57 years and is on the verge of her retirement. No prejudice will also be caused to the respondents if the petitioner is allowed to remain in the service of the respondent Port Trust till the date of her retirement.

7.For the foregoing reasons, necessarily the impugned order dated 17.04.2017 passed by the third respondent has to be quashed and the writ petition will have to be allowed. Accordingly, the impugned order dated 17.04.2017 passed by the third respondent is hereby quashed.



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8.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index :Yes / No

Internet : Yes / No

NCC : Yes/No

MR



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To

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ABDUL QUDDHOSE, J.

MR

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