
(1982) 06 MAD CK 0025
In the Madras High Court

A. Sivaraman

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board

RESPONDENT

Date of Decision : 14-06-1982

Acts Referred:

Citation : (1983) ILR (Mad) 371 : (1983) 2 MLJ 263

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

S. Padmanabhan, J.—By qualification the petitioner is an Engineer. He entered service of the Tamil Nadu Government on 23rd May, 1950. On 23rd May, 1980, he had completed 30 years of service. On that date he was employed as the Superintending Engineer of the Tamil Nadu Water Supply and Drainage Board, Madras.

2. On 1st June, 1980, the petitioner wrote to the Managing Director of the Tamil Nadu Water Supply and Drainage Board stating; that he was opting to retire voluntarily with effect from 31st August, 1980. He also stated¹ that he was proceeding on leave for three months on 1st June, 1980 to 31st August, 1980. On 3rd September, 1980, the Managing Director, Tamil Nadu Water Supply and Drainage Board, sent Memorandum No. 50602/Estt./A1/78 informing the petitioner that his request for voluntary retirement was refused and that he shod join duty forthwith. Thereafter, on 26th November, 1980, a charge memo, was served on the petitioner. It contained the following two charges

1. That the petitioner had unauthorisedly absented himself from 11th November, 1979, i.e., the date on which five year period of foreign assignment in Zambia ended and did not join duty as ordered for personal gains;

2. That he wilfully disobeyed the order of the Board for personal gains even after his request for voluntary retirement was negatived and he was asked to join duty in the Board.

3. The petitioner submitted his explanations to the charge-memo, on 17th

August, 1981. The Board held that the charges against the petitioner were proved and imposed a cut of Rs. 100 per month in the pension due to the petitioner. It is under these circumstances that the petitioner filed this writ petition to quash the order passed by the Board and direct the respondent to pay the arrears of salary, pension and retiring gratuity due to him, without any further delay.

4. Mr. Kunchithapadam, learned Counsel for the petitioner raised the following contentions "before me

(1) Under Rule 56(d) of the Fundamental Rules the petitioner having completed the requisite 25 years of service was entitled to exercise the option of voluntary retirement by giving three months" notice to the appropriate authority. In this case, the petitioner had¹ given such a notice to the appropriate authority. On 3rd September, 1980, the Managing Director of the Board wrote to the petitioner that his request for voluntary retirement was negated. The Managing Director has no power to veto the option exercised by the petitioner. Only in the event of there being any disciplinary proceedings pending at the time a Government servant sought to voluntarily retire or he is under suspension, at that time can the appropriate authority refuse to permit a Government servant to voluntarily retire. In this case, in the submission of Mr. Kunchithapadam, no disciplinary proceeding was pending against the petitioner at the relevant time, nor was he under suspension. Consequently, no permission was called for from the appropriate authority, and, the moment the three months period expired, the petitioner must be deemed to have retired voluntarily, as provided for under Rule 56(d) of the Fundamental Rules.

(2) Once it is accepted that the petitioner had retired, then the respondent had no power to frame any charges and impose the punishment of a cut of Rs. 100 per month from the pension of the petitioner. The learned Counsel also emphasised upon the fact that out of the two charges framed against the petitioner the first charge related to the petitioner"s overstaying the leave on 1st November, 1979 and the second, charge related to the petitioner disobeying the orders of the appropriate authority which had negated the petitioner"s request for voluntary retirement.

5. Mr. Chinnaswami, the learned Government Pleader argued that prior permission of the appropriate authority was necessary before a person could voluntarily retire. The learned Government Advocate further stated that under Explanation IV to Rule 56(d), when disciplinary proceedings are pending against a Government servant or when he is under suspension, he should obtain prior permission of the authority for exercising the option to voluntarily retire.

6. Rule 56(d) of the Fundamental Rules reads as follows

Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it "is in the 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, after he has attained the age of fifty years or after he has completed twenty-five years of qualifying service. Any Government servant who has attained the age of fifty years or who has completed twenty-five years of qualifying service may likewise retire from service by giving notice of not less than three months in writing to the appropriate authority.

Explanation IV runs thus

When a Government servant under suspension or against whom disciplinary action is pending, seeks to retire voluntarily under the sub-rule, the specific permission of the appropriate authority for such voluntary retirement is necessary. The appropriate authority may withhold the permission sought by the Government servant.

It is, therefore, clear that any Government servant who has attained the age of 50 years or who has put in 25 years of qualifying service can retire from service by giving notice of not less than three months in: writing to the appropriate authority. The rule does not say that, in such cases, the prior permission of the appropriate authority is necessary or the appropriate authority has to permit the Government servant who has attained the age of 50 years or who has completed 25 years of qualifying service for him to voluntarily retire. On the language of Rule 56(d), I am unable to accept the contention of the learned Government advocate that prior or subsequent permission of the appropriate authority is needed for a Government servant to exercise his option to voluntarily retire from service. A Government servant can exercise the option to voluntarily retire, provided either of the two conditions is satisfied, namely, he must have either attained the age of 50 years or completed 25 years of qualifying service on the date on which he exercises the option to voluntarily retire.

7. The Explanation clearly states that if, at the time a Government servant seeks to voluntarily retire, he is under suspension or disciplinary proceedings are pending against him, he should obtain the specific permission of the authority. The Explanation gives a discretion to the appointing authority to withhold the permission sought by the Government servant if, at the time of seeking his voluntary retirement, he is under suspension or disciplinary proceedings are pending against him.

8. In this case, on 1st June, 1980, when the petitioner sent his notice of voluntary retirement, he was admittedly not under suspension. No disciplinary proceedings were pending against him on that date. In any event, my attention has not been drawn by the learned Government advocate to any record which would show that a disciplinary proceeding was pending against the petitioner either on 1st June, 1980 or on 4th September, 1980 on which date alone, according to the learned Government advocate the period of three months notice would expire. In the circumstances, I am of the view that Explanation IV to Rule 56(e) is not attracted at all to the facts of this case.

9. Mr. Chinnaswami, the learned Government advocate, drew my attention to the letter, dated 20th December, 1979, addressed by the Managing Director of the Water Supply and Drainage Board whereby the petitioner had been informed that his stay in Zambia was unauthorised. By this communication it cannot be said that the appropriate authority had initiated any disciplinary proceedings at all against the petitioner. Consequently, I am unable to accept the contention of Mr. Chinnaswami that even prior to 1st June, 1980, the appropriate authority, namely, the Managing Director of the Water Supply and Drainage Board, had initiated disciplinary proceedings against the petitioner. In this context I may also make a reference to the fact referred to by Mr. Kunchithapadam that the petitioner received the communication only on 14th January, 1980 and that immediately he applied to the Zambian Government for being relieved and that he was relieved on 31st March, 1980. Apart from the reference to the over-stay of the petitioner in Zambia unauthorised in the communication, dated 20th December, 1979, my attention has not been drawn to any record which would show that disciplinary proceedings had been initiated against the petitioner earlier and they were pending either on 1st June, 1980 or at least on 4th September, 1980.

10. When once I come to the conclusion that no disciplinary proceedings were pending against the petitioner on 16th June, 1980 or even 4th September, 1980 on which date, according to the learned Government advocate, the three months notice expired, it must necessarily follow that the petitioner had an untrammelled right to exercise his option to voluntarily retire by giving three months notice in terms of Rule 56(d) and that such an option could not be vetoed, as has been done in this case by the Managing Director¹ of the Water Supply and Drainage Board. It is equally necessary to state, in this context that in the communication, dated 3rd September, 1980, by which the request of the petitioner for voluntary retirement from service has been rejected, no reasons have been given. If really there was any disciplinary proceeding pending against the petitioner as on that date, one would have expected the Managing Director to have informed the petitioner that such disciplinary proceedings were pending against him and that consequently in terms of Explanation IV to Rule 56(d) permission to the petitioner to voluntarily retire from service was being withheld. The learned Government advocate was compelled to admit that there was no such reason behind the order, dated 3rd September, 1980. I, therefore hold that in the case of a Government servant who is not under suspension and against whom no disciplinary proceedings are pending on the date on which he seeks voluntary retirement in terms of Rule 56(d) of the Fundamental Rules, no sanction of the appropriate authority is necessary. The only, sine qua non for exercising the option is he must have either completed 25 years of qualifying service or attained 50 years of age. In this case the petitioner had completed 25 years of service as on 1st June, 1980. I have already found that he was neither under suspension nor disciplinary proceedings were pending against him. He had, therefore, untrammelled right to voluntarily retire. The order passed by the

Managing Director of the Board on 3rd September, 1980, rejecting the request of the petitioner to voluntarily retire is without jurisdiction.

11. Mr. Chinnaswami, the learned Government advocate, then sought to contend that the notice given by the petitioner was not valid and that the petitioner had not given: three months notice. The learned Government advocate himself conceded that this contention had not been raised in the counter-affidavit and further, the rejection of the request of the petitioner to retire voluntarily was not on the ground that the petitioner had not given a proper notice as required under Rule 56(d). In the circumstances, I do not consider it appropriate to permit the learned Government advocate to raise this contention at this late hour.

12. When once I come to the conclusion that the petitioner must be deemed to have retired from service with effect from 31st August, 1980, or at least from 4th September, 1980, on which date as I have already pointed out the three months period expired according to the learned Government advocate, the charge memo, issued to the petitioner cannot be sustained and has necessarily to be quashed. The disciplinary proceedings initiated by the issue of the charge memo dated 26th November, 1980, is bad and the impugned order passed on the said charge memo, has necessarily to be quashed. In the circumstances, I quash the impugned order and direct the respondent to give the petitioner all the benefits which he would be entitled to if he is deemed to have retired voluntarily with effect from 31st August, 1980 as per his notice.

13. The writ petition is allowed. The petitioner will be entitled to his costs. Advocate's fee Rs. 500.