

(2010) 04 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 17979 of 2009 and M.P. No's. 1 to 3 of 2009

P. Ravikumar

APPELLANT

Vs

Directorate of Technical Education and The Principal, VLB
Janakiammal Polytechnic College

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0113

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Kalyanasundaram, for the Appellant; E. Renganayaki, G.A. for R1 and V. Sanjeevi, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The prayer of the petitioner as amended by amendment made in M.P. No. 4 of 2009 dated 27.11.2009 is for quashing the

letter dated 11.06.2007 passed by the first respondent - Directorate of Technical Education and the subsequent impugned order of the second

respondent dated 13.07.2007 and after setting aside the same seeks for a direction to permit the petitioner to go on voluntary retirement with all

service benefits in terms of G.O.Ms. No. 829 P & AR Department dated 26.08.1985.

2. When the writ petition came up on 03.09.2009, private notice was directed to be ordered to the respondents. Accordingly on behalf of the first

respondent a counter affidavit dated Nil 2009 and on behalf of the second respondent, a counter affidavit dated 23.10.2010 were filed. The

counter affidavit filed by the State was also supported by supporting documents.

3. It is the case of the petitioner that he was appointed as a Lab Assistant

(Physics Department) in the second respondent college on 25.06.1984.

It is an aided polytechnic. His appointment was also approved on 19.10.1985. Subsequently he was promoted as a Junior Assistant on

16.07.1989. He was also promoted as an Assistant and finally he was working in the post of Assistant with effect from 01.04.1996. After

completing 22 years of service, he decided to go on voluntary retirement and he approached the second respondent on 18.12.2006. The second

respondent accepted his request and hence, he gave a letter dated 18.12.2006 to go on voluntary retirement.

4. According to the petitioner, as per the Government order, he should give three months" notice in advance to avail the benefit of voluntary

retirement. As advised by the second respondent, he had mentioned in the letter that the letter can be treated as three months" notice given in

advance. Therefore, he stopped attending the college. It is claimed that as per the Government Order, the respondents ought to have considered

his letter within the period of 90 days and if there was any defect, it should be informed to him. Since there was no communication within the

stipulated time, he was deemed to got retired on voluntary retirement. He did not receive any communication from the respondents on his

application to go on retirement on voluntary retirement. By a letter dated 13.07.2007, the second respondent stated that they could not accept his

request for voluntary retirement, but instead it can be treated as a resignation from service. The petitioner gave a letter dated 27.07.2007 to the

second respondent stating that earlier he gave a letter dated 18.12.2006 that he intend to go only on voluntary retirement and never wanted to

resign. Since there was no response, the petitioner moved the authorities. It is under these circumstances, he came to challenge the order of the first

respondent dated 11.06.2007 and the subsequent order of the second respondent dated 13.07.2007 refusing to accept his letter to go on

voluntary retirement

5. In the letter dated 11.06.2007, it was stated as follows:

In this connection, I have to point out that normally the notice of Voluntary Retirement should be given 3 months in advance. In the case of Thiru P.

Ravikumar, the request for Voluntary Retirement has been received on 18.12.2006 and he has been relieved on the same day. Remittance of three

months" salary in lieu of the statutory notice, is not applicable in the case of Voluntary Retirement.

Disciplinary action ought to have been initiated against the individual for his unauthorised absence for such a long period. But this has not been

done in the case of Thiru P. Ravikumar, and he has been permitted to resume duty at his own will and pleasure. On a close scrutiny of the relevant

records, it is observed that the rules have been circumvented to facilitate the individual to quit service on Voluntary Retirement thereby enable him

availing of terminal benefits.

6. The learned Counsel for the petitioner contended that as a matter of right he is entitled to go on voluntary retirement. After 90 days" of his

request for voluntary retirement, if there was no communication to the contrary, he is entitled to presume that it has been accepted by the

authorities.

7. In the counter affidavit filed by the first respondent, it was claimed that the Management cannot relieve any person who tenders voluntary

retirement notice and that it requires the approval of the Government. Therefore, the action of the Management was irregular. Before the

acceptance of any request for voluntary retirement, it requires several clearances such as a report from the Vigilance department confirming that no

enquiry is pending. It was also stated that the formalities in accepting voluntary retirement has been overlooked by the second respondent

Management.

8. In page 4 of the counter affidavit, it was claimed as follows:

It is also submitted that when the second Respondent Management was requested to offer his remarks for not following the prescribed procedures

laid down regarding the acceptance of voluntary retirement, he has replied that the individual was leave on loss of pay for a period of 9 months

from 4.3.2006 to 5.12.2006 and joined duty on 6.12.2006 and expressed his inability to come to duty and thereafter opted for voluntary

retirement on 18.12.2006 and the management immediately relieved him from service on that day itself. Inasmuch as the relevant rules governing

the matter of voluntary retirement have been circumvented by the second respondent management to facilitate the individual to quit service on

voluntary retirement thereby enable him availing of terminal benefits, this

respondent did not accept the action of the second respondent

management and informed him that the petitioner may be deemed to have left the service by resigning from service and accordingly the petitioner

was informed by the second respondent management.

9. In the counter filed by the second respondent, it was stated that the petitioner was not at all interested in attending to his work. He had availed

358 days of medical leave, 330 days of loss of pay, 343 days of earned leave, besides encashing 165 days of his earned leave during his tenure of

23 years. He also suffered attachment of his salary. He was under the threat of arrest warrant from the sub-court which had made him kept away

from his office work. He was absented without permission from 12.09.2005. Though a letter was sent asking to join duty immediately, he

submitted the leave letter with medical certificate for the period from 12.09.2005 to 26.09. 2005. Again from 04.03.2006, he was absent. Several

reminders were sent to join duty. But he wanted to go on voluntary retirement and could not even wait for completion of the three months" notice

period. The Governing Council permitted the Principal to accept the petitioner"s request for voluntary retirement and it was forwarded to the first

respondent. After the exit of the petitioner, vacancy was notified and subsequently after going through the process of selection, another candidate

has been appointed and hence there is no scope for the petitioner for joining the duty in the institution in the event of non accepting his voluntary

retirement.

10. In the present case, it is the petitioner who has to blame himself for giving a letter without knowing the procedure for going on voluntary

retirement. He has unilaterally absented without serving his notice period and also did not offer the pay in lieu of three months notice. In any case

since the second respondent institution is only an aided institution, the Government Rules will not directly apply. In case of voluntary retirement, it

requires the approval of the Director as they are the pension sanctioning authorities. Since the petitioner has not followed these procedure but went

on leave on his own and considering his track record, it is not a fit case where any relief can be given to the petitioner. Hence, the writ petition

stands dismissed. However, no costs. Consequently, connected miscellaneous petitions are closed.