
(2015) 06 MAD CK 0324
In the Madras High Court
Case No : Writ Petition No. 17292 of 2015

R. Lakshmi

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Citation : (2015) 06 MAD CK 0324

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : S. Padma, for the Appellant; M.E. Rani Selvam, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J—The petitioner joined as Junior Assistant in Motor Vehicles Maintenance Department in the year 1978. She was promoted as Assistant in 1986. In the year 1998, she was transferred to Department of Environment as Assistant on deputation. She was again reverted to the parent department on 09.04.2015. According to the petitioner, she rendered 37 years of service. She gave a request dated 20.04.2015 to the 2nd respondent seeking permission to go on voluntary retirement. While so, the second respondent passed the impugned order dated 15.05.2015 refusing to accept the request of the petitioner to go on voluntary retirement.

2. The petitioner has filed this writ petition to quash the aforesaid order dated 15.05.2015 and for a direction to relieve her with effect from 31.07.2015 and to settle her terminal benefits accordingly.

3. When the matter came up for admission on 18.06.2015, this Court passed the following order:-

"The learned counsel for the petitioner submits that the petitioner is not permitted to retire voluntarily as per Rule 56(3)(f) of the Fundamental Rules.

2. The learned counsel for the petitioner relied on my Judgment in W.P. No.7038 of 2013 dated 24.6.2014. Rule 56(3)(f) of the Fundamental Rules, empowers the Government to reject request for retirement under Voluntary Scheme only on the ground of pendency of disciplinary proceedings or the post which the Government servant is holding is a scarce one. But the reason stated in the impugned order is not on the basis of Rule 56(3)(f) of Fundamental Rules.

3. Mr. Jayaprakash Narayanan, Special Government Pleader who took notice on behalf the respondents seek time to get instructions.

4. Accordingly, post the matter on 26.06.2015, at the end of motion list. Registry is directed to print the name of Mr. Jayaprakash Narayanan, Special Government Pleader, appearing for the respondents. "

4. It is relevant to extract the impugned order dated 15.05.2015:-

5. The second respondent relied on Rule 56(3)(f) of Fundamental Rules while passing the impugned order. Hence, it is relevant to extract Rule 56(3)(f):-

"56.(3)(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. Provided further that the appointing authority may also withhold the permission for voluntary retirement sought for by a Government servant if the post held by him has been declared as "Scarce Category" by the administrative department concerned in Secretariat and whose continuation in Government service is absolutely essential in public interest."

6. In fact Rule 56(3)(f) refers to Rule 56(3)(e). It is relevant to extract Rule 56(3)(e):-

"56.(3) (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."

7. A person seeking voluntary retirement shall be allowed to retire voluntarily as per Rule 56(3)(f) of the Fundamental Rules, unless there is any disqualification as per Rule 56(3)(e) of the Rules.

8. The learned Additional Government Pleader submits that none of the disqualification as per Rule 56(3)(e) of the Rules would attract in the case of the petitioner. However, the learned Additional Government Pleader has submitted that the petitioner was imposed with the punishment of stoppage of increment for three years with cumulative effect vide G.O.(2D)No.4 Transport Department, dated 21.02.2005 and the petitioner has questioned the aforesaid Government Order in W.P. No.10252 of 2005. Hence, the same is the disqualification, according to the learned Additional Government Pleader.

9. In my view, Rule 56(3)(e) places restriction for going on voluntary retirement, only if, disciplinary proceeding is contemplated or pending. In this case, already punishment was imposed. Hence, the same cannot be a disqualification for the petitioner to opt to go under voluntary retirement.

10. In fact, I have considered in detail Rule 56(3)(e) and 56(3)(f) of Fundamental Rules in the judgment reported in Muthusamy Vs. Secretary to Government, Health and Family Welfare Department, (2014) 8 MLJ 701 .

11. Taking into account the aforesaid facts, the impugned order is liable to be quashed. Accordingly, the impugned order is quashed and the respondents are directed to relieve the petitioner from 31.07.2015 and settle her terminal benefits accordingly. The writ petition is allowed. No costs.