
(2015) 09 AHC CK 0041

In the Allahabad High Court

Case No : Writ-A Nos. 34284 and 34289 of 2015

Rama Srivastava

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (2015) 9 ADJ 158 : (2015) 6 AWC 5965 : (2016) 1 ESC 225 : (2015) 4 UPLBEC 2767

Hon'ble Judges : Sudhir Agarwal, J;B.K. Srivastava, J

Bench : Division Bench

Advocate : S.P. Shukla, for the Appellant

Final Decision : Allowed

Judgement

Sudhir Agarwal, J—The petitioner after being selected through U.P. Public Service Commission against the post of Medical Officer in Public, Medical and Health Services (hereinafter referred to as the "PMHS"), was appointed as "Women Medical Officer" vide letter of appointment dated 09.11.1999. She was posted at Primary Health Center, Dalmau, District Rai Bareilly where she joined on 21.02.1991. She was transferred to Silver Jubilee Maternity Home, Lucknow, where she joined on 14.07.1992 and thereafter continued to work thereat. While working at Lucknow she fell ill and proceeded on casual leave on 12.09.2002. She actually suffered cervical disc prolapse and was under treatment of Dr. Sanjay Jha, Neurophysiology in the Department of Neurology, Sanjay Gandhi Post Graduate Institution, Lucknow. Since her illness continued, she applied for medical leave w.e.f. 16.09.2002. Competent authority, however, compelled the petitioner to join her duty on 30.12.2002 and thereafter she was transferred to Hardoi, in public interest, vide transfer order dated 17.06.2003. On 22.06.2005 petitioner submitted her joining in the office of Chief Medical Officer but since her ailment had continued, she proceeded on leave on medical ground w.e.f. 23.06.2005. It is alleged that petitioner went to join her duty from Lucknow to

Hardoi by Car and during road travel her ailment of cervical disc prolapse revived causing petitioner bed ridden and hence she proceeded on leave on medical ground. Thereafter she continued to send applications seeking leave on medical ground but was not communicated any decision by competent authority. Ultimately, she submitted application seeking retirement voluntarily on 07.12.2006 under Fundamental Rule 56, since she had completed minimum required service, and, was eligible therefor. Neither any decision was taken in respect of her leave applications nor on application dated 07.12.2006 seeking retirement voluntarily, compelling petitioner to file Writ Petition No. 1785(SB) of 2008 (renumbered as W.P. No. 34289 of 2015) (hereinafter referred to as "First Petition") seeking a mandamus to respondents to accept her voluntary retirement application. Prayer in this writ petition reads as under:

"a. ISSUE, a writ order or direction in the nature of MANDAMUS commanding the respondents to accept the voluntary retirement application of the petitioner and grant her voluntary retirement w.e.f. 01.07.2005 and further command them to settle the dues of the petitioner including the terminal dues, salary and medical claims and also fix her pension as admissible under Rules along with interest at the rate of 18% per annum as the Authorities are to blame themselves for such a long delay in taking the decision in the matter."

2. The petitioner in the meantime also sent application, requesting respondents to settle her outstanding dues towards unpaid salary and other terminal dues, like medical reimbursement etc. Instead of taking any action on petitioner's applications, respondents initiated disciplinary inquiry vide office memo dated 27.02.2009. Thereafter it appears that dispensing with disciplinary inquiry the State Government in purported exercise of power under Article 311(2) and (3) passed an order dated 03.05.2010 dismissing/removing petitioner alongwith 41 other women Medical Officers, on the ground of their continuous and long absence, dispensing disciplinary inquiry. It is also interesting to note that inquiry report was submitted on 10/11.11.2010 by Inquiry Officer pursuant to disciplinary inquiry initiated upon letter dated 17.03.2009 of Additional Director, Health to C.M.O., Hardoi. Even before submission of inquiry report, petitioner was dismissed/removed from service, vide order dated 03.05.2010, by dispensing with disciplinary inquiry. Consequently, the application of petitioner seeking voluntary retirement was rejected vide order dated 10.05.2011, which has been challenged in the W.P. No. 34284/2015 (hereinafter referred to as "Second Petition").

3. In the Second Petition, the petitioner has prayed for following reliefs:--

"a. ISSUE a writ, order or direction in the nature of CERTIORARI quashing the impugned uncommunicated termination order said to be dated 03.05.2010 and also the impugned order dated 10.05.2011 as contained in Annexure No. 1.

b. ISSUE a writ, order or direction in the nature of MANDAMUS commanding the respondent No. 2 to sanction/consider the leave application of the petitioner and

then grant Voluntary Retirement to the petitioner with effect from 01.07.2005 and settle her terminal dues and salary etc., in accordance with law without any further delay along with interest at the rate of 18% per annum."

4. On behalf of respondents, a counter affidavit has been filed annexing a copy of dismissal order dated 03.05.2010 as annexure CA-1, wherein it is mentioned that despite public notice published in daily newspapers "Amar Ujala", "Hindustan Times" and "Dainik Jagran" and also placing information on the website of uphealth.nic.in, petitioner and other Medical Officers did not submit their joining on duty. Their absence since long shows that they are not willing to serve Government service. On account of their unauthorized absence, maintenance of health service in State was in difficulty and new appointments also could not be made. Since absentee Medical Officers, despite notice, had failed to join and are absent unauthorizedly from place of their posting since long, they are being dismissed from service. Name of petitioner is at serial No. 11 in the said order. It is further stated that on account of continuous unauthorized absence, petitioner was issued charge sheet dated 27.02.2009 (Annexure-2 to the counter affidavit in the first petition), which contains a single charge that she has been unauthorizedly absent for the last two years and has not complied with the orders of competent authority for joining her service, hence she is guilty of dereliction of duty. The Inquiry Officer, i.e., Additional Director, Medical, Health and Family Welfare, Lucknow Region, Lucknow submitted his report dated 10/11.11.2010, stating that since petitioner has not submitted reply to charge sheet, therefore, after perusing documents he is submitting report holding petitioner guilty.

5. It is said that the charge sheet was duly received by petitioner whereafter she sent letter dated 22.03.2009 requiring the respondents to take a decision on her application for voluntary retirement. In para 4 it is said that inquiry report held petitioner guilty and petitioner was dismissed from service. The relevant averment in the counter affidavit contained in para 4, reads as under:

"4. The the contents of paragraph 2 of the writ petition are misconceived, hence denied. It is submitted that the petitioner was already dismissed from service; therefore, she was not eligible for Voluntary Retirement. The order dated 10.05.2011 was passed in compliance of the order dated 30.11.2010 passed by this Hon"ble Court in writ petition No. 1721 of 2010. It is respectfully submitted that it is a clever move of the petitioner that she is making use of order dated 10.05.2011 to rake up the issue of her dismissal which is already a dead matter as she was dismissed from service by means of order dated 03.05.2010. The petitioner remained quiet for such a long period and suddenly woke up to raise the issue of dismissal in the grab of this order dated 10.05.2011."

6. Challenging the charge sheet the petitioner submitted letter dated 27.02.2009 on the ground that her application for voluntary retirement has been submitted which is still pending and without taking a decision, charge sheet has been issued. The petitioner then filed writ petition 1721 (SB) of 2010, which was

disposed of finally by Division Bench on 30.11.2010 passing the following order:

"Heard learned counsel for the petitioner, learned standing counsel and perused the record.

Present petition has been preferred under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari, quashing the impugned letter dated 27.2.2009, along with chargesheet and also the disciplinary proceedings with consequential benefits. The impugned Office memo has been issued against the petitioner for her indulgence in private practice. Prior to issuance of the Office memo, the petitioner has submitted her representation for voluntary retirement but the same is pending.

Accordingly, we direct that before proceeding with the disciplinary proceeding to its logical end, the respondents shall decide petitioner's representation for voluntary retirement by passing a speaking and reasoned order in accordance with law expeditiously and preferably say, within three month from the date of receipt of a certified copy of this order and communicate decision.

The writ petition is finally disposed of."

7. A supplementary counter affidavit has been filed by respondents, stating that dismissal order dated 03.05.2010 was passed after approval by U.P. Public Service Commission, who advised that the State Government is competent enough to take action under Article 311(2) and (3) and thereafter dismissal order was passed.

8. Petitioner has filed rejoinder and supplementary rejoinder affidavit reiterating the basic facts stated in writ petition.

9. Sri Umesh Chandra, learned Senior Advocate advanced, in substance, the following submissions:

"I. Once departmental inquiry was already initiated, without holding and completing the same in accordance with U.P. Government Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the "Rules, 1999"), the respondents have dismissed the petitioner illegally.

II. Dismissal/removal of petitioner, under Article 311(2) second proviso by dispensing with disciplinary inquiry, particularly when the same was already pending, is clearly illegal, void ab initio and not only it violates the preconditions of attracting Article 311(2) proviso, clause (b), but also a pretext on the part of respondents to deny constitutional protection available to petitioner under Article 311(2), i.e. adequate opportunity of defence.

III. Once an application under Fundamental Rule 56(c) and (d) was submitted seeking voluntary retirement it was incumbent upon respondents to take decision thereon first but keeping such application pending for years together and thereafter rejecting the same on the ground that petitioner has been dismissed/ removed from service by order dated 03.05.2010 is nothing but a camouflage to

deny legally vested rights to petitioner if she would have been allowed voluntary retirement."

10. Learned Standing Counsel, on the contrary, submitted that petitioner was absent for years together, unauthorizedly and illegally, hence her request for voluntary retirement could not have been accepted. Her application, therefore, had rightly been rejected and she has been dismissed from service after dispensing with disciplinary inquiry, since she was absent for a long period.

11. The first question which has to be considered by this Court is whether dismissal of petitioner by dispensation of disciplinary inquiry, while it was pending, and charge sheet was already served, by exercising power under Article 311(2) second proviso is justified or not.

12. Article 311(2) reads as under:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."

13. Learned Standing Counsel at the outset, submitted that clauses (a) and (c) of Second Proviso to Article 311(2) are not attracted in case in hand and the impugned order of dismissal dated 3.10.2011 has to be tested on the anvil of Article 311(2) second proviso, clause (b). It provides that a disciplinary inquiry would not be necessary if competent authority empowered to dismiss or remove or reduce in rank a public servant, is satisfied that for some reason to be recorded by that authority in writing, it is not "reasonably practicable" to hold such inquiry. Therefore, in order to justify exercise of power under Article Article 311(2) second proviso, clause (b), competent authority is obliged to record a finding with reasons that disciplinary inquiry is not "reasonably practicable" in the entire order of dismissal dated 3.5.2010. There is not even a whisper that the disciplinary enquiry is not reasonably practicable what to say, mention of reasons

therefor. The only thing which has been repeated in the entire order is that Medical Officers including petitioner were absent from duty since long and did not join duty which is an act or omission, constituting misconduct on the part of holders of civil post. This action or inaction showing "misconduct" on the part of petitioner and other Medical Officers covered by impugned dismissal order dated 3.5.2010 would have justified disciplinary enquiry against them as contemplated under Article 311(2) read with procedure prescribed in Rules, 1999, but this cannot be construed so as to satisfy the requirement of Article 311(2) second proviso, clause (b). We have no hesitation in holding that the impugned order in this writ petition nowhere even suggests that disciplinary inquiry is not reasonably practicable. The reason for it is also conspicuously missing.

14. Holding of departmental inquiry before dismissal or removal, is mandatory under Article 311(2) read with procedure prescribed under Rules, 1999. A heavy onus lay upon respondent to show that from all the angles, the case is covered by one of the grounds on which departmental inquiry may not be held or dispensed with i.e. when it is not "reasonably practicable". Article 311(2)(b) was considered by a Constitution Bench in *Union of India and Another Vs. Tulsiram Patel and Others*, AIR 1985 SC 1416 : (1985) 3 CompLJ 45 : (1985) 51 FLR 362 : (1985) 2 LLJ 206 : (1985) 2 SCALE 133 : (1985) 3 SCC 398 : (1985) 2 SCR 131 Supp : (1985) 2 SLJ 145 , and the Court said:

"130. The condition precedent for the application of Clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by Clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by Clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

(Emphasis added.)

15. Again the Court explained circumstances in which departmental inquiry can be dispensed with by resorting to Article 311(2) Second Proviso, Clause (b) in *Jaswant Singh Vs. State of Punjab and others*, AIR 1991 SC 385 : (1991) 62 FLR 137 : (1990) 4 JT 554 : (1990) 2 SCALE 1152 : (1991) 1 SCC 362 : (1990) 3 SCR 354 Supp : (1991) 1 UJ 276 . This decision has been followed very recently

in *Risal Singh Vs. State of Haryana and Others*, (2014) AIRSCW 4420 : (2014) 7 SCALE 473 . Therein following a sting operation by a Television channel in which appellant Police Officer was found indulged in an act of corruption, he was dismissed from service without any inquiry by resorting to Article 311(2) second proviso (b). The Court held that before resorting to Article 311(2) second proviso (b), appropriate and valid reasons have to be recorded, as contemplated in the Constitution. Dispensation of departmental inquiry, a constitutional protection available to civil servant, cannot be taken away or denied on whims and caprices of appointing authority or the disciplinary authority.

16. Unauthorized absence, no doubt, is a mis-conduct and, if proved in departmental inquiry conducted in accordance with the rules, appropriate punishment can be imposed upon the concerned government servant by appointing authority. Dispensation of departmental inquiry is an exception and cannot be resorted to in a cursory, casual and whimsical manner. The authority, if resorted to this exception, owe a heavy responsibility to show that all circumstances and conditions justifying such recourse are strictly followed and adhered to.

17. In view of the aforesaid exposition of law and considering the fact that the impugned order of dismissal nowhere suggests or even touches on the satisfaction of competent authority that disciplinary inquiry is not reasonable practicable, we have no hesitation in holding that it is a nullity and void ab initio, being unconstitutional and violative of Article 311(2) Second Proviso, clause (b) of Constitution.

18. Then comes the second question, whether respondents could have proceeded to initiate departmental enquiry when an application seeking voluntary retirement was already pending with the respondents. In the present case, admittedly, application seeking voluntary retirement was submitted by petitioner on 7.12.2006. Charge sheet was issued to petitioner vide office memo dated 27.2.2009 and inquiry report was submitted by Enquiry Officer on 10/11.11.2010 which was received by State Government on 1.12.2010 as stated in the order dated 10.05.2011 passed on application seeking voluntary retirement.

19. It is also admitted that no final order in the said enquiry has been passed by respondent No. 1 at any point of time. The question is whether initiation of disciplinary enquiry after three years of receiving application for voluntary retirement is permissible or not. It would be appropriate for the said purpose to have a perusal of Fundamental Rule 56(c) and (d) which read as under:

"56 (c) Notwithstanding anything contained in clause (a) or clause (b) the appointing authority may at any time by notice to any Government servant (whether permanent or temporary) without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service for twenty

years."

(d) The period of such notice shall be three months: Provided that:

(i) any such Government servant may, by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of 50 years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or, as the case may be, for the period by which such notice falls short of three months, at the rates at which he was drawing them immediately before his retirement;

(ii) It shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted;

Provided also that the notice once given by a Government servant under Clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority;

(emphasis added)

20. Fundamental Rule 56(d) prevents a Government Servant from withdrawing a notice given seeking voluntary retirement without permission of appointing authority meaning thereby once such notice is given, so far as a Government Servant is concerned, his part is over. He/she cannot withdraw the same without permission of appointing authority.

21. It may also be noticed hereat that Fundamental Rule 56 itself, though termed as "Rule", but has come on the statute book by virtue of an Act of U.P. Legislature i.e. UP Act U.P. Act No. 33 of 1976 U.P. Fundamental Rule 56 (Amendment and Validation) Act, 1976] and therefore, is a principal legislation.

22. A careful reading of FR-56(c) further shows that a Government Servant can be retired by employer prematurely without assigning any reason after he attains the age of fifty years by giving three months notice at any time. The said Government Servant can also voluntarily retire at any time after attaining the age of forty five years giving a similar three months notice. The proviso of FR-56 (c) further provides that the Government Servant may be retired by the employer giving a shorter notice or without any notice but in such a contingency, he may be entitled to claim such amount for the period of notice by which such notice falls short of three months. Similarly, where the Government Servant tenders notice, it is open to appointing authority to allow him to retire without

any notice or for a shorter period of notice without incurring any liability to pay any penalty on account of such permission. It further provides, where a disciplinary proceeding is pending or contemplated, the notice shall be effective only if it is accepted by appointing authority, provided that in a case of contemplated enquiry, the government Servant is informed before expiry of period of notice that the same has not been accepted. Therefore, the proviso restrict the right of Government Servant to retire by tendering three months notice, where a departmental enquiry is pending and in such a case, voluntary retirement would be effective only after the said notice is accepted by appointing authority, even if the period of notice is expired, but where enquiry is only contemplated, in such a case, acceptance of notice would be necessary provided the Government Servant is informed by the employer before expiry of period of his notice that it has not been accepted.

23. A somewhat similar provision contained in Rule 161 of Bombay Civil Service Rules came up for consideration before Apex Court in *B.J. Shelat Vs. State of Gujarat and Others*, AIR 1978 SC 1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 . Rule 161 of Bombay Civil Service Rules empowered the Government Servant to retire by giving a three months notice in writing after attaining the age of 55 years. However, proviso under Rule 161(2)(ii) restricted such right of Government Servant where departmental enquiry is pending or contemplated or the Government Servant is under suspension and the said proviso reads as under :

"Provided that it shall be open to the appointing authority to withhold permission to retire to a Government Servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-section."

24. It was held that but for the proviso, a Government Servant would be at liberty to retire by giving not less than three months notice to the appointing authority after attaining the prescribed age. However, proviso empowered the appointing authority to withhold permission to retire. The Court took the view that the proviso which empowered the appointing authority to withhold such permission contemplated a positive action by appointing authority. It has to communicate its intention of withholding of permission to the Government Servant. Where no such decision is taken and communicated to the Government Servant and the period of notice is allowed to expire, then it would result in allowing the Government Servant to retire without taking any action. In order to operate the proviso, it was necessary that the Government should not only take a decision but communicate it to the Government Servant. It also held, where no such decision is taken and communicated to the Government Servant, after expiry of the period of notice, no disciplinary action can be taken against such Government Servant. The Court relied on an earlier three Judges Judgment in *Dinesh Chandra Sangma Vs. State of Assam and Others*, AIR 1978 SC 17 :

(1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 , where it was held that for retiring voluntarily under FR-56(c), a Government Servant does not require any positive order of appointing authority unless required by the Rules otherwise. Both the aforesaid judgments have been followed in Union of India and others Vs. Sayed Muzaffar Mir, AIR 1995 SC 176 : (1994) 6 JT 288 : (1995) 1 LLJ 157 : (1994) 4 SCALE 258 : (1995) 1 SCC 76 Supp : (1994) 3 SCR 729 Supp , while considering a pari materia provision under Article 1801(d) of Railways Establishment Code and in para-4 and 5 of the judgment, it was held :

"4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the Government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the concerned authority thought that it would be better to see off the respondent by allowing him to retire.

5. The second aspect of the matter is that it has been held by a three Judges Bench of this Court in Dinesh Chandra Sangma Vs. State of Assam and Others, AIR 1978 SC 17 : (1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 , which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the Government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three Judges Bench in B.J. Shelat Vs. State of Gujarat and Others, AIR 1978 SC 1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 ."

(emphasis added)

25. The aforesaid decisions have been followed in Surendra Narain Singh v. D.I.G., Special Appeal No. 649 of 1994 decided on 31st January 1995 and State of U.P., The Engineer-in-Chief (Head of the Department), Irrigation Department, The Superintending Engineer, Gandak Flood Circle, Gorakhpur and The Superintending Engineer, Gandak Flood Circle, Basti Vs. Krishna Chandra Agarwal, (2007) 112 FLR 996 : (2007) 2 UPLBEC 69 and by learned Single Judge in Chandra Bahadur Pandey Vs. State of U.P. and Others, (2011) 1 ADJ 311 : (2011) 3 AWC 2489 : (2011) 128 FLR 607 : (2011) 2 UPLBEC 992 .

26. In the present case, at the time when petitioner applied for voluntary retirement, neither any disciplinary inquiry was pending nor contemplated. Therefore, without taking decision on petitioner's application for voluntary

retirement initiation of disciplinary inquiry by respondents was clearly illegal and without jurisdiction.

27. In view of the above discussion, both the writ petitions are hereby allowed. Dismissal order dated 3.5.2010 and the order dated 10.05.2011 are hereby quashed. Respondent No. 1 is further directed to take appropriate decision on petitioner's application seeking voluntary retirement in the light of discussion made above and in accordance with law, within three months.

28. So far as question of consequential relief is concerned, petitioner's continuous absence from duty without sanction of leave is admitted. We, therefore, leave it to competent authority to take appropriate decision in accordance with Rules; whether period of absence of petitioner is to be regularized against leave admissible and whether petitioner would be entitled to salary for such period. It would pass an appropriate reasoned order after it takes decision on petitioner's application seeking voluntary retirement but not beyond three months from the date the decision is taken on the application for voluntary retirement.