

(2023) 09 CAL CK 0068
In the Calcutta High Court
Case No : WP.ST No. 80 Of 2017

State Of West Bengal & Others

APPELLANT

Vs

Dr. Ashok Kumar Maiti & Others.

RESPONDENT

Date of Decision : 19-09-2023

Acts Referred:

West Bengal Service Rules Part I, 1971 — Rule 75, 75(aa), 75(aaa), 75(aaaa)

Citation : (2023) 09 CAL CK 0068

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Tapan Kumar Mukherjee, Pinaki Dhole, Somnath Naskar, Bikash Ranjan Bhattacharyya, Samim Ahammed, Arka Maiti

Final Decision : Allowed

Judgement

Debangsu Basak, J

1. State has assailed an order dated January 3, 2017 passed by the West Bengal Administrative Tribunal in OA 346 of 2015.

2. By the impugned order, the Tribunal has held that, right to retire voluntarily from service accrues immediately on fulfilment of the preconditions laid down for such purpose under Rule 75 of the West Bengal Service Rules Part I, 1971 before the insertion of new Sub-Rule 75 (aaaa) therein. It has held that, as and when the incumbent serves notice on the authorities expressing his desire to voluntarily retire from service, it is a step taken to enforce the right that had already accrued to him. The tribunal has held that, incumbents who fulfilled the preconditions laid down for such purpose in Sub-Rule 75 (aaa) of the Rules of 1971 before the date of insertion of the new subrule 75 (aaaa), the right to voluntarily retire from service had already accrued to them and therefore, irrespective of whether or not they have submitted notice for voluntary retirement prior to the date of insertion of the new subrule, they shall have the right to voluntarily retire from service in accordance with subrule 75 (aaa) of the

rules of 1971 and that the new subrule 75 (aaaa) of the rules of 1971 shall not be applicable to them.

3. Learned Senior Advocate appearing for the State has contended that, the issue of voluntary retirement and the insertion of Rule 75 (aaaa) to the Rules of 1971 has been considered by the Supreme Court in 2019 Volume 16 Supreme Court Cases 348 (State of West Bengal and others versus Dr. Tanmoy Mondal). He has contended that, public interest can be invoked by the Government when voluntary retirement is sought by an employee and a request for voluntary retirement can be rejected on the ground of public interest.

4. Learned Senior Advocate appearing for the State has contended that, the Tribunal did not declare Rule 75 (aaaa) of the Rules of 1971 as ultra vires any provision of law. Therefore, it should not have held that, a request for voluntary retirement of employees who were employed prior to the insertion of such rule would not be governed by the new Rule.

5. Learned Senior Advocate appearing for the State has submitted that, the ratio of Dr. Tonmay Mondal (supra) has been applied in WPST No. 103 of 2022 (The State of West Bengal and others versus Trilokendu Das) and 2023: CHC-A.S.: 44492-DB (The State of West Bengal and others versus Dr. Partha Sanyal).

6. Learned Senior Advocate appearing for the State has submitted that, the application for voluntary retirement made by the respondent No. 1 which was initially rejected, was subsequently accepted. Therefore, with such acceptance, respondent No. 1 has lost his cause of action. He has pointed out that, the respondent No. 2 is not contesting the writ petition any further.

7. Learned Senior Advocate appearing for the respondent No. 1 has contended that, Rule 75 (aaaa) was inserted with effect from February 7, 2014. Such Rule cannot be given effect to retrospectively and has prospective application only. The Tribunal has held to such effect. Therefore, the decision of the Tribunal should not be upset.

8. Learned Senior Advocate appearing for the respondent No. 1 has submitted that, the aspect of retrospectivity of Rule 75 (aaaa) of the Rules of 1971 was not agitated and raised in any of the 3 authorities relied on by the State. He has contended that, an incumbent who had entered into service prior to the insertion of rule 75 (aaaa) to the Rules of 1971 is covered by the situation prevailing prior to such insertion. He has also referred to the concession recorded in the impugned order, made on behalf of the State.

9. The impugned order has been passed by the Tribunal in an original application instituted by 2 persons. The first original applicant before the Tribunal was a medical officer. He had applied for voluntary retirement before the authority by a letter dated December 2, 2011. He had received a letter dated February 13, 2012 from the authorities requesting for further documents for his request for voluntary retirement to be considered. He had, by his letter dated February 29,

2012 sent the further documents as was asked for. However, the authorities had rejected his application for voluntary retirement on February 1, 2013. He had however been allowed to retire during the pendency of the original application.

10. An association of Health Services Doctors had joined the original applicant No. 1 in the original application as original applicant No. 2. Such association has in course of hearing of the present writ petition gone on record to state that they are no longer contesting the present writ petition.

11. So, in the facts of the present case, out of the 2 original applicants who had approached the Tribunal, on the issue of voluntary retirement governed by Rule 75 (aaaa), one of them was allowed voluntary retirement by the State during the pendency of the original application before the Tribunal and the other has expressed its intention not to contest the present writ petition.

12. Both the original applicants had assailed the notification dated February 7, 2014 by which, Rule 75 (aaaa) was introduced to the Rules of 1971 as unconstitutional, before the Tribunal. By the impugned order, the Tribunal did not strike down Rule 75 (aaaa) as unconstitutional. However, it has observed that, incumbents who were in service prior to the insertion of Rule 75 (aaaa) were not governed thereby. It is this aspect which has prompted the State to prefer the present writ petition.

13. Rule 75 has provided for retirement on attaining the age of superannuation, compulsory retirement and voluntary retirement. Rule 75 (a) has dealt with retirement on attaining the age of superannuation. Rule 75 (aa) has dealt with compulsory retirement and Rule 75 (aaa) has dealt with voluntary retirement.

14. Right to reject a prayer for voluntary retirement of an incumbent in public interest has been held to be permissible in 2018 Volume 17 Supreme Court Cases 578 (State of UP Vs. Achal Singh). Achal Singh (supra) has been quoted in extenso in Dr. Tanmoy Mondal (supra). Achal Singh (supra) has noted that the subject of public interest can be invoked by the Government when the voluntary retirement sought for by the employee is against public interest. Such provision has been held not to be violative of any rights.

15. Dr. Tanmoy Mondal (supra) has been noted Trilokendu Das (supra) and Dr. Partha Sanyal (supra). All of them have held that, State has a right to reject an application for voluntary retirement on the ground of public interest.

16. The Tribunal in the impugned order has held that, the right to apply for voluntary retirement had accrued to an incumbent on the date of his joining in the service and therefore, such right can be exercised despite the insertion of the notification dated February 7, 2014. We are however, unable to accept such a proposition in view of the fact that, a right may have accrued prior to the insertion but such right has to be exercised prior in point of time than the coming into effect of the notification dated February 7, 2014. Even independently, State has the right to adjudge an application for voluntary retirement on the

touchstone of public interest and decide thereon.

17. In such circumstances, the impugned order dated January 3, 2017 passed in OA 346 of 2015 is set aside. We clarify that, the voluntary retirement granted to the respondent No. 1 will not be affected by this judgement and order.

18. WP.ST 80 of 2017 is allowed without any order as to costs.

19. I agree.