

(2012) 01 MAD CK 0021
In the Madras High Court
Case No : Writ Petition No. 26101 of 2011

V. Sathi	Vs	APPELLANT
The Transport Commissioner, Chepauk, Chennai-5		RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Fundamental Rules — Rule 56(3)

Citation : (2012) 01 MAD CK 0021

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Ravi Shanmugam, for the Appellant; R. Ravichandran, AGP, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The petitioner has approached this Court with a prayer for issuance of a writ in the nature of Certiorari, to quash the order dated

23.09.2011 rejecting the request of the petitioner for voluntary retirement. The petitioner joined as Junior Assistant on compassionate ground on

27.07.1987. Inclusive of the probation period petitioner has completed 25 years and 5 months of service. The grievance of the petitioner is that

due to the non grant of increment, juniors to the petitioner were getting higher pay than the petitioner.

2. The petitioner, invoked the provision of Fundamental Rule 56 (3)(a) to seek Voluntary Retirement by giving three months notice.

3. The Fundamental Rule stipulates that the appointing authority is under a legal obligation to accept the voluntary retirement request, if no

disciplinary proceedings are contemplated or pending against an employee.

4. The case of the petitioner is, that there is no departmental proceeding pending or contemplated. Therefore, there was no reason whatsoever

with the respondent to reject the request of the petitioner for voluntary retirement. It is also the case of the petitioner that the immediate superior

authority of the petitioner had recommended the acceptance of the request of voluntary retirement. Inspite of the recommendation no order on the

request was passed by the respondent.

5. The petitioner filed W.P.No.521 of 2011, seeking permission to voluntary retire under Fundamental Rule 56(3). The writ petition was disposed

of on 14.02.2011.

6. The operative part of the order passed by this Court reads as under:

Under such circumstances, to meet the ends of justice, the petitioner, if he is interested in securing voluntary retirement, he is at liberty to resubmit

that application form to the respondent department within a period of ten days from the date of receipt of a copy of this order and on resubmission,

within a period of two weeks, the respondents are directed to pass orders.

7. In pursuance to the decision of this Court, the petitioner again submitted his request for voluntary retirement which stands declined by way of

impugned order.

8. The request of the petitioner has been rejected the order dated 23.09.2011, on the ground that the request for voluntary retirement could not be

accepted with retrospective effect.

9. The counter has been filed, wherein, the stand taken by the respondent is that the request of the petitioner for voluntary retirement will be

accepted, in case of submitting fresh application for voluntary retirement.

10. On consideration, I find that the stand of the respondent cannot be accepted. Once, an employee fulfill the condition stipulated under

Fundamental Rule 56(3), there is no reason for the respondent not to accept the request for voluntary retirement. It may however, be observed

here that the respondents are right in coming to the conclusion that voluntary retirement cannot be accepted with retrospective effect, but at the

same time, there is no justification to reject the request of the petitioner for voluntary retirement, for this reason, as it was open to the respondent to

accept the request prospectively. Consequently, the writ petition is allowed, the

impugned order is set aside, with a direction to the respondent to accept the request of the petitioner for voluntary retirement within 15 days of receipt of certified copy of this order. No costs.