

R. Muthulakshmi Vs. Union of India, Rep. by the Chief Postmaster General, Anna Salai, Chennai and Others

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Court : Chennai

Decided On : Dec-01-2016

Judge : S. Manikumar & N. Authinathan

Appeal No. : Writ Petition No. 35028 of 2013 & M.P. No. 1 of 2013

Appellant : R. Muthulakshmi

Respondent : Union of India, Rep. by the Chief Postmaster General, Anna Salai, Chennai and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records pertaining to the order of the 5th respondent which is made in O.A.No.1146 of 2012 dated 22.11.2013 and quash the same and consequently direct the respondents 1 to 4 to permit the petitioner to go on retirement on medical grounds.)

S. Manikumar, J.

1. Challenge in this writ petition is to an order made in O.A.No.1146/2012 dated 22.11.2013, by which, the Central Administrative Tribunal, Madras Bench, has declined to quash the order of the Superintendent of Post Offices, Dindigul

Division, Dindigul - 624 001/Respondent No.4 dated 21.09.2012 and consequently, declined to issue any direction to the respondents, to permit the petitioner to go on retirement, on medical grounds.

2. Facts leading to the writ petition are that the petitioner, entered postal service in the year 1983 as Reserved Training Pool candidate against the quota reserved for ST community. After completion of training, she joined as RTP at Dindigul Head Office. Alleging that the community certificate issued by Tahsildar, Usilampatti, was cancelled by the District Collector, Madurai, on 27.02.1986, she was terminated from service. Thereafter, she filed a Writ Petition No.2046 of 1986 before this court, challenging the cancellation of the community certificate. Pursuant to an order of this court, allowing the writ petition, the writ petitioner was reinstated in service as Postal Assistant and accordingly, she joined duty on 05.04.1995.

3. The writ petitioner has stated that she appeared in the confirmation examination and came out successful. The Community certificate was once again cancelled in the year 1995 and W.P.No.15594 of 2015 was filed.

4. According to the petitioner, from 1996 onwards, she was unwell. She availed medical leave from time to time. Due to her health condition, she could not stand for more than half an hour. Therefore, she made a representation dated 30.08.2012 to the respondents to retire her from service on medical grounds, with effect from 01.09.2012. The Superintendent of Post Offices, Dindigul Division, Dindigul/respondent No.4, passed an order dated 21.09.2012, rejecting the request of the petitioner, for retirement, on medical grounds. Being aggrieved by the same, the petitioner has filed O.A.No.1146/2012, for the relief as stated supra.

5. Before the Tribunal, the respondents, in their counter affidavit, submitted that the community certificate of the petitioner was forwarded to the District Collector, Madurai, for verification and vide proceedings dated 16.02.1986, the District Collector, Madurai, cancelled the community certificate. Pursuant to the above, writ petitioner, was terminated on 27.02.1986. She challenged the cancellation of the community certificate in W.P.No.2046/1986. Vide order dated 30.06.1994, this Court, set aside the proceedings of the District Collector and further directed him,

to issue a show cause notice, calling upon the writ petitioner to submit relevant documents to substantiate her contention that she belongs to Kammara Community (Adi Dravidar community).

6. The respondents have further submitted that, as per the directions of this court, the District Collector, enquired and verified the community status of the writ petitioner and, once again, vide order dated 26.10.2005, cancelled the community certificate. Being aggrieved by the same, writ petitioner filed W.P.No.15594/2005 and there was an interim stay of operation of the order of the District Collector dated 26.10.2005.

7. Before the Tribunal, respondents have further contended that a direction was issued by the District Revenue Officer to the writ petitioner to attend his office on 30.04.2007 for verification and enquiry, regarding the community status of the writ petitioner, but she did not appear. According to the respondents, community status of the writ petitioner is still pending.

8. When the matter stood thus, Medical Board vide letter dated 21.06.2012, certified that the writ petitioner was fit for duty from 21.06.2012 and under such circumstances, by invoking Rule 38 of CCS (Pension) Rules, she was not permitted to retire on medical grounds. The respondents have further contended that she reported for duty on 21.06.2012 and proceeded on leave from 22.06.2012 for more than a year, without sanction of the competent authority. She was directed to attend the Medical Board for the second time on 08.08.2012 and 16.08.2012 respectively, but she failed to attend the Board.

9. Before the Tribunal, the writ petitioner has filed a rejoinder, denying the above averments and reiterated that she was confirmed in service. She was denied financial upgradation on the ground that her community status is under dispute. Her request for mutual transfer was not acceded. She has contended that she has not committed any fraud and only due to her ill health, she requested permission to go on voluntary retirement.

10. Adverting to the above submissions, the Central Administrative Tribunal, Madras Bench in O.A.No.1146 of 2012 dated 22.11.2013, at paragraph Nos.5 and

6, ordered as hereunder:

"5. We have heard the learned counsel appearing for both sides. We have carefully gone through the records. We have also carefully considered the arguments made by both sides. Admittedly, the caste certificate issued to the appellant is in dispute. In spite of directions given to the applicant, she did not attend the DRO's office along with records regarding her community status. Further the medical board certifies that the applicant is fit to continue in service and on the basis of the fitness/medical certificate she joined duty on 21.06.2012. The applicant herself stated that from 22.06.2012 onwards she was not attending office. It is also seen that the services of the applicant had not been confirmed since her caste status is in dispute. Further the respondents have rejected the request of the applicant seeking retirement on medical grounds vide communication dated 21.09.2012. Vide the above letter the respondents have directed to applicant to submit her explanation on or before 05.10.2012. It is seen that the applicant did not submit any explanation till now. They have further stated that if the applicant did not join duty immediately, disciplinary action will be initiated against her.

6. In view of the above discussion, the applicant has not made out any case for the grant of relief. The OA is devoid of any merit and therefore it is liable to be dismissed. As the respondents themselves vide their communication dated 21.09.2012 stated that disciplinary action would be initiated if the applicant fails to report for duty immediately, they are at liberty to proceed against the applicant as per rules. Hence the O.A is dismissed. No order as to costs."

11. Being aggrieved by the aforesaid order, instant writ petition has been filed.

12. Record of proceedings shows that, taking note of the contentions of the writ petitioner that she was suffering from various diseases, this court has directed appearance of the writ petitioner before the Director, JIPMER, Pondicherry, who would constitute a Medical Board to assess the health condition of the petitioner to issue a certificate to that effect. Along with the report, the Director, JIPMER, has filed a counter affidavit stating that the health condition of the writ petitioner was ascertained. The report reads as hereunder:

1. Patient has morbid obesity with bilateral knee osteoarthritis with sever restriction disability for routine activities.

2. Is an old case of tuberculous meningitis (treated) and has undergone hysterectomy for fibroid uterus.

13. Material on record discloses that, vide order dated 10.04.2014 in M.P.No.3 of 2014, State of Tamil Nadu, represented by Chairman, State Level Scrutiny Committee and the Secretary to Government, Adi-Dravidar and Tribal Welfare Department, Secretariat, Chennai - 600 009 and Revenue Divisional Officer, Dindigul District, Dindigul - 624 001, have been, impleaded as respondents 6 and 7 respectively in W.P.No.35028 of 2013. On the aspect as to whether verification of the community certificate is still pending, we directed Mr.K.V.Dhanapalan, learned Special Government Pleader to produce the files.

14. At this juncture, it should be noticed that earlier, when the writ petitioner filed W.P.No.15594/1995 to quash the order dated 26.10.1995 of the District Collector, Madurai, cancelling the community certificate, with a consequential prayer to restrain the District Collector, Madurai, the Revenue Divisional Officer, Dindigul and Senior Superintendent, Department of Posts, Dindigul Division, Dindigul, respondents 1 to 3 therein, from in any way interfering with her rights to continue in the services of the Postal Department, this court, vide order dated 26.02.2014 in W.P.No.15594 of 1995, while quashing the order dated 26.10.1995 of the District Collector, Madurai, has directed the District Collector, Madurai, to forward the papers to the State Level Scrutiny Committee, for verification of the community certificate of the petitioner, issued by the Tahsildar, Usilampatti, on 30.07.1983 and if any such reference is made, the State Level Scrutiny Committee has been directed to consider the same, by following the Government Orders in G.O.Ms.No.108, Adi-Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and G.O.Ms.No.106, Adi-Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012 and to pass appropriate orders on merits in accordance with law, within a period of eight weeks from the date of receipt of papers from the District Collector.

15. It is unfortunate that though this court in W.P.No.15594/1995 has issued the above said directions, as early as on 26.02.2014, the District Collector, Madurai has sent the same only on 24.11.2016, after this court, wanted to ascertain the status of the verification directed to be done by the State Level Scrutiny Committee. After two years, files have been sent by the District Collector to State Level Committee. There is no explanation for the delay.

16. Order dated 21.09.2012 of the Superintendent of Post Offices, Dindigul Division, Dindigul, is extracted here under:

DEPARTMENT OF POSTS, INDIA

From To

The Supdt. of Pos, Smt.R.Muthulakshmi

Dindigul Division PA, Dindigul HO on leave @

Dindigul - 624 001 No 59/15B Thirunagar,

G.T.N. Salai, Dindigul - 5

No.BI/PF/RM dated at Dindigul-1, the 21.09.2012

Sub : Request for retirement on medical

grounds - C/o Smt.R.Muthulakshmi, PA,

Dindigul HO - reg

Ref : Your request for retirement dt.30.08.2012

Please refer to the letter cited under reference. You have submitted a representation seeking permission for retirement on medical grounds. Your case has been perused and it is informed that you had applied for leave on medical grounds. You have been directed by this office vide this office memo

No.B1/PF/Rm dt.06.06.12 to appear before medical board for IInd medical examination. As per orders of Divisional office you had appeared before the Joint Director of Health Services, Dindigul on 20.06.2012. The medical board has examined to your case and certified that you are fit for duty on 21.06.2012. On the basis of proceedings of the medical board report dt.20.06.2012, you are fit for duty. Hence your representation for retirement on medical grounds has been considered and rejected. You are hereby directed to rejoin the duty immediately without calling any letter from this office.

Besides, you have been directed by this office to attend the second medical opinion. The Joint Director of Health services had called for IInd medical opinion on 08.08.12 and 16.08.2012. But you did not appear before the JDHS, Dindigul and submitted a medical report from AJ hospital, Manaparai, that you have taking treatment there. You have not obtained any prior permission from higher ups to leave from headquarters with violation of Rule 30-A of CCS conduct rules 1964. This is highly irregular and not acceptable one. Also, you had not obeyed the directions given by the JDHS for attending the medical board. It is evidently shows that your course of action is willfully insubordination or disobedience of reasonable order of the superior as per rule 3-C of CCS (Conduct) Rules, 1964. In the view of the above, you are hereby directed to submit your explanation as to why disciplinary action should not be taken against you. Your representation should reach this office on or before 05.10.2012. As could seen from the above, your request for retirement on medical grounds has been considered and rejected. You are hereby directed to rejoin the duty immediately without fail failing which disciplinary action will be initiated against you.

/A.SORANAM/

Superintendent of Post offices

Dindigul Division, Dindigul 624 001."

The above-said order pertains to rejection of the request of the petitioner for retirement on medical grounds. But from the averments of the writ petitioner, made in the rejoinder, pending disposal of the verification of community status, she had

not been confirmed in service. Unless and until, there is a logical conclusion to the verification of community status by the State Level Scrutiny Committee, petitioner cannot be said to have been confirmed in service and consequently, entitlement for retirement on medical grounds. Earlier when her medical fitness was tested, the Board certified her, to be fit for duty from 21.06.2012. It is the case of the respondents that she proceeded on leave from 22.06.2012, without sanction.

17. Even the medical certificate dated 09.08.2014 issued by the Medical Board, JIPMER, pursuant to the directions of this court dated 26.02.2014, reads her health condition as, (1) Patient has morbid obesity with bilateral knee osteoarthritis with sever restriction disability for routine activities; and (2) Is an old case of tuberculous meningitis (treated) and has undergone hysterectomy for fibroid uterus. Certificate issued by the Board does not state anything about fitness or unfitness of the writ petitioner to continue in service. From the order dated 21.09.2012 of the Superintendent of Post Offices, Dindigul, impugned before the Central Administrative Tribunal, Madras Bench, it could be deduced that, earlier when the request of the writ petitioner for retirement on medical grounds was rejected, she was directed to join duty immediately and later on, directed to appear before the Board. She did not appear and proceeded on leave and therefore, the Superintendent of Post Offices, Dindigul, by the aforesaid letter, has sought for an explanation, as to why disciplinary action, should not be taken against the writ petitioner, for violation of Rule 30-A of CCS (Conduct) Rules, 1964, and for the failure to obtain prior permission from higher authorities to leave the headquarters.

18. From the material on record, it could be deduced that the writ petitioner has not made out a case for retirement on medical grounds for two reasons: (1) As early as on 20.06.2012, she was found fit for duty. Thereafter, she reported for duty and went on leave. (2) Even the Medical Report of JIPMER, Pondicherry, has not stated about her unfitness to continue in service. Verification and enquiry on the community status is yet to be concluded and even from her own version she has not been confirmed in service.

19. On the facts and circumstances of the case, we find no infirmity in the order of the Tribunal in O.A.No.1146/2012, dated 22.11.2003, but, deem it, fit to direct the

State Level Scrutiny Committee, to complete the enquiry, on the community status of the writ petitioner, as directed by this court in W.P.No.15594/1995 dated 26.02.2014, within four weeks from the date of receipt of a copy of this order, after providing a reasonable opportunity to the writ petitioner. Ms.Jasmene Padma, learned counsel for the writ petitioner submitted that the writ petitioner, would cooperate in the enquiry proceedings, on the community status, without taking any adjournments, except for bona fide and genuine reasons. Submission is placed on record. On the conclusion of enquiry/verification, the State Level Scrutiny Committee, shall forward the verification report to the Superintendent of Post Offices, Dindigul, respondent No.4, for further action.

We do not find any infirmity in the impugned order. Writ petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to cost.

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