

P. Ravikumar Vs. Directorate of Technical Education Rep. by the Commissioner and

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Court : Chennai

Decided On : Apr-30-2010

Judge : K. Chandru, J.

Appeal No. : W.P. No. 17979 of 2009 and M.P. Nos. 1 to 3 of 2009

Appellant : P. Ravikumar

Respondent : Directorate of Technical Education Rep. by the Commissioner And; the Principal, Vlb Janakiammal Poly

Advocate for Def. : E. Renganayaki, G.A. for R1 and; V. Sanjeevi, Adv. for R2

Advocate for Pet/Ap. : K. Kalyanasundaram, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Chandru, J.

1. The prayer of the petitioner as amended by amendment made in M.P. No. 4 of 2009 dated 27.11.2009 is for quashing the letter dated 11.06.2007 passed by the first respondent - Directorate of Technical Education and the subsequent

impugned order of the second respondent dated 13.07.2007 and after setting aside the same seeks for a direction to permit the petitioner to go on voluntary retirement with all service benefits in terms of G.O.Ms. No. 829 P & AR Department dated 26.08.1985.

2. When the writ petition came up on 03.09.2009, private notice was directed to be ordered to the respondents. Accordingly on behalf of the first respondent a counter affidavit dated Nil 2009 and on behalf of the second respondent, a counter affidavit dated 23.10.2010 were filed. The counter affidavit filed by the State was also supported by supporting documents.

3. It is the case of the petitioner that he was appointed as a Lab Assistant (Physics Department) in the second respondent college on 25.06.1984. It is an aided polytechnic. His appointment was also approved on 19.10.1985. Subsequently he was promoted as a Junior Assistant on 16.07.1989. He was also promoted as an Assistant and finally he was working in the post of Assistant with effect from 01.04.1996. After completing 22 years of service, he decided to go on voluntary retirement and he approached the second respondent on 18.12.2006. The second respondent accepted his request and hence, he gave a letter dated 18.12.2006 to go on voluntary retirement.

4. According to the petitioner, as per the Government order, he should give three months' notice in advance to avail the benefit of voluntary retirement. As advised by the second respondent, he had mentioned in the letter that the letter can be treated as three months' notice given in advance. Therefore, he stopped attending the college. It is claimed that as per the Government Order, the respondents ought to have considered his letter within the period of 90 days and if there was any defect, it should be informed to him. Since there was no communication within the stipulated time, he was deemed to got retired on voluntary retirement. He did not receive any communication from the respondents on his application to go on retirement on voluntary retirement. By a letter dated 13.07.2007, the second respondent stated that they could not accept his request for voluntary retirement, but instead it can be treated as a resignation from service. The petitioner gave a letter dated 27.07.2007 to the second respondent stating that earlier he gave a

letter dated 18.12.2006 that he intend to go only on voluntary retirement and never wanted to resign. Since there was no response, the petitioner moved the authorities. It is under these circumstances, he came to challenge the order of the first respondent dated 11.06.2007 and the subsequent order of the second respondent dated 13.07.2007 refusing to accept his letter to go on voluntary retirement

5. In the letter dated 11.06.2007, it was stated as follows:

In this connection, I have to point out that normally the notice of Voluntary Retirement should be given 3 months in advance. In the case of Thiru P. Ravikumar, the request for Voluntary Retirement has been received on 18.12.2006 and he has been relieved on the same day. Remittance of three months' salary in lieu of the statutory notice, is not applicable in the case of Voluntary Retirement.

Disciplinary action ought to have been initiated against the individual for his unauthorised absence for such a long period. But this has not been done in the case of Thiru P. Ravikumar, and he has been permitted to resume duty at his own will and pleasure. On a close scrutiny of the relevant records, it is observed that the rules have been circumvented to facilitate the individual to quit service on Voluntary Retirement thereby enable him availing of terminal benefits.

6. The learned Counsel for the petitioner contended that as a matter of right he is entitled to go on voluntary retirement. After 90 days' of his request for voluntary retirement, if there was no communication to the contrary, he is entitled to presume that it has been accepted by the authorities.

7. In the counter affidavit filed by the first respondent, it was claimed that the Management cannot relieve any person who tenders voluntary retirement notice and that it requires the approval of the Government. Therefore, the action of the Management was irregular. Before the acceptance of any request for voluntary retirement, it requires several clearances such as a report from the Vigilance department confirming that no enquiry is pending. It was also stated that the formalities in accepting voluntary retirement has been overlooked by the second respondent Management.

8. In page 4 of the counter affidavit, it was claimed as follows:

It is also submitted that when the second Respondent Management was requested to offer his remarks for not following the prescribed procedures laid down regarding the acceptance of voluntary retirement, he has replied that the individual was leave on loss of pay for a period of 9 months from 4.3.2006 to 5.12.2006 and joined duty on 6.12.2006 and expressed his inability to come to duty and thereafter opted for voluntary retirement on 18.12.2006 and the management immediately relieved him from service on that day itself. Inasmuch as the relevant rules governing the matter of voluntary retirement have been circumvented by the second respondent management to facilitate the individual to quit service on voluntary retirement thereby enable him availing of terminal benefits, this respondent did not accept the action of the second respondent management and informed him that the petitioner may be deemed to have left the service by resigning from service and accordingly the petitioner was informed by the second respondent management.

9. In the counter filed by the second respondent, it was stated that the petitioner was not at all interested in attending to his work. He had availed 358 days of medical leave, 330 days of loss of pay, 343 days of earned leave, besides encashing 165 days of his earned leave during his tenure of 23 years. He also suffered attachment of his salary. He was under the threat of arrest warrant from the sub-court which had made him kept away from his office work. He was absented without permission from 12.09.2005. Though a letter was sent asking to join duty immediately, he submitted the leave letter with medical certificate for the period from 12.09.2005 to 26.09. 2005. Again from 04.03.2006, he was absent. Several reminders were sent to join duty. But he wanted to go on voluntary retirement and could not even wait for completion of the three months' notice period. The Governing Council permitted the Principal to accept the petitioner's request for voluntary retirement and it was forwarded to the first respondent. After the exit of the petitioner, vacancy was notified and subsequently after going through the process of selection, another candidate has been appointed and hence there is no scope for the petitioner for joining the duty in the institution in the event of non accepting his voluntary retirement.

10. In the present case, it is the petitioner who has to blame himself for giving a letter without knowing the procedure for going on voluntary retirement. He has unilaterally absented without serving his notice period and also did not offer the pay in lieu of three months notice. In any case since the second respondent institution is only an aided institution, the Government Rules will not directly apply. In case of voluntary retirement, it requires the approval of the Director as they are the pension sanctioning authorities. Since the petitioner has not followed these procedure but went on leave on his own and considering his track record, it is not a fit case where any relief can be given to the petitioner. Hence, the writ petition stands dismissed. However, no costs. Consequently, connected miscellaneous petitions are closed.

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