

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).17016/2011

(From the judgement and order(s) in WA No. 2636/2010 dated
11 of The HIGH COURT OF MADRAS)

03-JAN-

SECRETARY TO HEALTH & FAMILY WELF.&ANR.

Petitioner(s)

VERSUS

DR. N. PARAMASIVAM

Respondent(s)

(With prayer for interim relief and office report)

Date: 23/08/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr.Subramaniam Prasad, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioners are aggrieved by the order of the Division Bench of the Madras High Court whereby the writ appeal preferred by them against the order of the learned Single Judge, who quashed the rejection of the respondent's application for voluntary retirement was dismissed.

After completing more than 21 years' service, the respondent, who was then holding the post of Assistant professor in Pharmacology submitted application dated 14.11.2007 for voluntary retirement from service. His request was rejected by the Secretary

to Government, Health and Family Welfare Department vide letter

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dated 30.11.2007 on the ground that the post held by him falls in

the 'Scarce Category' specified in G.O. (Ms.) No.201 dated 3.11.2006.

The learned Single Judge allowed the writ petition filed

by the respondent by relying upon the judgment of the Division

Bench in Writ Appeal No. 544/2008 - The Secretary to Government,

Health and Family Welfare Department and another v. Dr. V.

Balasubramanian.

The Division Bench approved the order of the learned Single Judge and dismissed the appeal filed by the petitioners.

Shri Subramaniam Prasad, learned counsel appearing for the petitioners relied upon notification dated 29.9.2008 vide which Fundamental Rule 56(3)(f) was amended w.e.f. 3.11.2006 and argued that in view of the amended rule, the order passed by the Division Bench in Writ Appeal No. 544/2008 could not have been relied upon for the purpose of quashing the State Government's refusal to accept the application of the respondent.

We have considered the submission of the learned counsel but have not felt impressed. The proviso to Rule 56(3)(f) of the Fundamental Rules, which was added by notification 29.9.2008 reads as under:

"Provided further that the appointing authority may also withhold the permission for voluntary retirement sought for by a Government servant, if the post held by him has been declared as "Scarce Category" by the administrative department concerned in Secretariat and whose continuation in Government service is absolutely essential in public interest."

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If letter dated 30.11.2007 by which the respondent's request for voluntary retirement was rejected is read in the light of the proviso, it becomes clear that the same is not in conformity with the amended rule. In terms of the proviso, the power to withhold permission for voluntary retirement can be exercised if the post has been declared as a Scarce Category and continuation of the concerned Government servant is considered absolutely essential in public interest.

Though, communication dated 30.11.2007 makes a mention of the fact that the post held by the respondent was declared as a Scarce Category, but there is nothing in the said letter to indicate that the continuation of the respondent was considered absolutely essential in public interest so as to deny him the right to seek voluntary retirement.

With the above observations, the special leave petition
is dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master