

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 25457 of 2012 (F)

PETITIONER:

**K.V.PAUL, AGED 51 YEARS
S/O K.G. VARGHESE, WORKING AS CONDUCTOR, K.S.R.T.C.
CHALAKKUDY, AND RESIDING AT KALLINGAL HOUSE
WEST CHALAKKUDY, NEAR IRMLP SCHOOL, CHALAKUDY**

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

- 1. THE KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM
REPRESENTED BY ITS MANAGING DIRECTOR, 695001**
- 2. THE FINANCIAL ADVISOR & CHIEF ACCOUNTS OFFICER,
K.S.R.T.C., TRANSPORT BHAVAN, FORT
THIRUVANANTHAPURAM 695001**
- 3. THE DISTRICT TRANSPORT OFFICER,
KSRTC, CHALAKUDY 680307**

**BY ADVS. SRI. M. GOPIKRISHANAN NAMBIAR, SC, KSRTC
DR. SMT. THUSHARA JAMES, SC, KSRTC
SRI.BABU JOSEPH KURUVATHAZHA, SC, KSRTC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1	TRUE COPY OF DISCHARGE CERTIFICATE DATED 22-08-1998
EXT. P2	TRUE COPY OF DISABILITY CERTIFICATE DATED 10-10-2001
EXT. P3	TRUE COPY OF DISCHARGE SUMMARY CERTIFICATE DATED 22-06-2005
EXT. P4	TRUE COPY OF THE TREATMENT SHEET DATED 08-12-2005
EXT. P5	TRUE COPY OF THE DISCHARGE SUMMARY CERTIFICATE DATED 26-02-2006
EXT. P6	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 24-02-2009 ISSUED BY DR. K. BALAGOPAL, ASSISTANT PROFESSOR AND ORTHOPEDIC SURGEON, MEDICAL COLLEGE, THRISSUR
EXT. P7	TRUE COPY OF MEMO NO E1-873/09/CLDY DATED 06-05-2009
EXT. P8	TRUE COPY OF THE MRI CERVICAL SPINE SCAN CERTIFICATE ISSUED BY DR. ABRAHAM SEBASTIAN, JUBILEE MEDI SCAN CENTRE, THRISSUR
EXT. P9	TRUE COPY OF CERTIFICATE DATED 20-07-2010
EXT. P10	TRUE COPY OF REPRESENTATION DATED 24-07-2010 SUBMITTED BY PETITIONER
EXT. P11	TRUE COPY OF REPRESENTATION DATED 16-08-2010 SUBMITTED BY THE PETITIONER
EXT. P12	TRUE COPY OF MEDICAL CERTIFICATE DATED 20-07-2010
EXT. P13	TRUE COPY OF INTERIM ORDER DATED 04-10-2010 IN WPC NO 27262/2010
EXT. P14	TRUE COPY OF MEMORANDUM NO PL 11/030648/10 DATED 19-10-2012
EXT. P15	TRUE COPY OF MEMORANDUM NO PL-11/030648/10 DATED 25-10-2010
EXT. P16	TRUE COPY OF LETTER DATED 28-10-2010
EXT. P17	TRUE COPY OF MEMORANDUM NO PL. 11/30648/10 DATED 08-11-2010

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EXT. P18 TRUE COPY OF ORDER NO PL 11/30648/10 DATED 08-11-2010

**EXT. P19 TRUE COPY OF JUDGMENT DATED 24-08-2011 IN WPC NO
27262/2010**

EXT. P20 TRUE COPY OF REPRESENTATION DATED 31-08-2011

**EXT. P21 TRUE COPY OF ORDER NO. ORDER NO. PL 11/030648/10
DATED 06-01-2012**

RESPONDENT(S)' EXHIBITS:-

**EXT. R1(a): COPY OF THE APPLICATION DATED 30.05.2013 SUBMITTED BY THE
PETITIONER**

**EXT. R1(b): COPY OF THE POSTER PUBLISHED BY THE PETITIONER IN
CONNECTION WITH THE SAID ELECTION.**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 25457 OF 2012

Dated this the 05th day of March, 2015

JUDGMENT

The petitioner while working as a conductor in the Kerala State Road Transport Corporation ('KSRTC' for short) suffered serious ailments. Exts. P1 to P6 medical certificates show that he was in and out of hospital for long. Ext. P9 certificate issued by the Medical Board attached to the District Hospital, Thrissur reads as follows:-

“Cervical Spondylosis with posterior disc prolapse at multiple levels. He is permanently and totally unfit for the job of bus conductor.”

2. The petitioner put in Ext. P10 application seeking permission to retire from service on invalid pension. The petitioner invoked Rule 42 of Part III of the Kerala Service Rules in that regard. The same was supported by Ext. P12 medical certificate issued by the District Hospital, Thrissur. Ext. P12 certificate reflected that the petitioner is 'completely and permanently

incapacitated for further service as conductor in KSRTC'. Ext. P10 application followed by Ext. P11 letter and Ext.P12 medical certificate was engaging the attention of the KSRTC.

3. It was at that time did the petitioner thought of tendering his resignation from the KSRTC even. The petitioner did put in his resignation by letter dated 30.09.2010 addressed to the KSRTC. W.P.(C).No. 27262/2010 filed by the petitioner for expeditious action on Ext. P10 application and P11 representation was pending at that time. Ext. P13 interim order was also passed therein directing the KSRTC to take action on Ext. P10 application and Ext. P11 representation. But the KSRTC refused to consider the letter of resignation due to the pendency of W.P.(C). No. 27262/2010. This is discernible from Ext. P14 communication which states that the resignation will be considered only if W.P.(C). No. 27262/2010 is withdrawn.

4. Neither was W.P.(C).No.27262/2010 withdrawn nor the resignation letter dated 30.09.2010 considered by

the KSRTC. Ext. P15 notice of hearing was served on the petitioner pursuant to Ext. P13 interim order. The petitioner even before the hearing submitted Ext. P16 letter withdrawing the resignation letter dated 30.09.2010. Ext. P16 letter inter alia states as follows:-

“I hereby withdraw my resignation letter and therefore, no question of withdrawal of WP(C) arises.”

The KSRTC has no case in their counter affidavit that Ext. P16 letter of withdrawal was not received by them.

5. It can therefore be safely concluded that the resignation letter dated 30.09.2010 was withdrawn by Ext. P16 letter on 28.10.2010. Ext. P16 letter routed through the proper channel would have reached the concerned officer atleast within a couple of days. It was only ten days after did the KSRTC issue Ext. P17 order. Ext. P17 order dated 08.11.2010 surprisingly accepts the resignation retrospectively from 30.09.2010. Ext. P18 order was consequentially issued stating that the petitioner has been removed from the rolls of the KSRTC.

W.P.(C). No. 27262/2010 was eventually disposed of permitting the petitioner to submit representations against Exts. P17 and P18 orders.

6. Ext. P20 representation thereafter submitted by the petitioner has been rejected by Ext. P21 order. The question whether the resignation letter was withdrawn before it was accepted has not been considered therein. The only reason stated is that the petitioner being an employee of the KSRTC was disqualified to contest in the Municipal Election. True it is that there is such an embargo under Section 86 of the Kerala Municipality Act, 1994. The likely invalidity of the election does not mean that the petitioner has already resigned from the KSRTC.

7. Here is a case where the resignation letter was refused to be considered due to the pendency of W.P.(C). No. 27262/2010. The KSRTC took an adamant stand that the resignation letter would be considered only if W.P.(C). No. 27262/2010 was withdrawn. W.P.(C). No. 27262/2010 was not withdrawn by the petitioner and was instead prosecuted. The resignation letter pending consideration

was at any rate withdrawn before it was finally dealt with. Ext. P17 order accepting resignation with retrospective effect is a belated after thought of the KSRTC. It is trite law that a letter for resignation or voluntary retirement can be withdrawn before it is accepted by the employer. I have no doubt in my mind that there was no valid resignation letter (which was not withdrawn) for consideration by the KSRTC.

8. Resultantly Exts. P17, P18 and P21 orders are hereby quashed. The petitioner shall be treated as on duty from 30.09.2010 and all eligible benefits accorded. The further question to be considered is as to whether the petitioner is eligible for invalid pension. Whether the medical certificates already produced by the petitioner are sufficient to arrive a firm conclusion is yet another aspect.

9. I do feel that an opportunity should be afforded to the petitioner to pursue Ext. P10 application for permission to retire on invalid pension. The first respondent KSRTC shall reconsider Ext. P10 application

with notice to the petitioner within a period of one month. Sufficient opportunity should be afforded to the petitioner to produce supplemental medical certificates if any. There is urgency for the course of action since the petitioner attains the age of superannuation on 30.04.2015.

The writ petition is allowed. No costs.

**V. CHITAMBARESH
JUDGE**

DCS