

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.625 of 2015

A.Senthil Kumar .. Appellant/Petitioner

Vs.

- 1.The State of Tamilnadu,
rep by its Principal Secretary to Government,
Municipal Administration and Water Supply
(O.P.1) Department,
Secretariat, Chennai-600 009.
- 2.The Deputy Secretary to Government,
Municipal Administration and Water Supply
(O.P.1) Department,
Secretariat, Chennai-600 009. ... Respondents /Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 02.04.2014 in W.P.No.9529 of 2014.

presented under Article 226 of the Constitution of India to issue a writ of Mandamus directing the first respondent to permit the petitioner to rejoin duty as Assistant Section Officer, with immediate effect with all attendant and consequential benefits arising thereof.

For Appellant : Mr.R.Venkatesan

For Respondents : Mr.N.Sakthivel, GA

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The writ petitioner/appellant herein, who is an ex-employee of the first respondent, was selected by the Tamil Nadu Public Service Commission for the post of Assistant Section Officer in the Tamil Nadu Secretarial Service for the year 2009-2011. Thereafter, the writ petitioner was allotted to the first respondent Department and he joined duty on 04.02.2013. Immediately thereafter, after about two

months, the writ petitioner proceeded on medical leave from 29.4.2013 to 28.5.2013. After completion of the medical leave, the writ petitioner continued to remain unauthorisedly absent.

2. The petitioner was noticed by letters dated 4.6.2013 and 13.6.2013, directing him to join duty within seven days, which had gone unheeded. Thereafter, on 19.7.2013, the writ petitioner sent a communication to the second respondent for relieving him permanently from duty and to treat the letter as resignation letter. Subsequently, one more letter was sent on 12.11.2013, requesting permission to join duty, which was not allowed. Being aggrieved, the writ petitioner has come up with the instant petition seeking a direction to the first respondent to permit him to rejoin duty with immediate effect.

3. The sole contention of the writ petitioner before the learned Single Judge was that since no order was passed on his request for resignation, as provided under the provisions of Rule 41-A of the Tamil Nadu State and Subordinate Service Rules, the writ petitioner be deemed to have continued in service. The learned Single Judge considered all facts and dismissed the writ petition, observing as under :

" 7. Whether the petitioner suffers from deemed acceptance of the resignation or not, need not be gone into in this writ petition. The petitioner admittedly has been unauthorisedly absent for duty from 29.05.2013 onwards. It is also on record that despite repeated reminders and letters, sent by the respondents, the petitioner did not turn up to join duty. Such a person who has got no regard for the system and for law cannot expect any relief from the Court of law. The relief under the writ jurisdiction is, in a way, discretionary relief which can be granted to the person who has come to the Court with clean hands. Since, the petitioner has not come forward with clean hands, I am not inclined to grant any relief to the petitioner. Hence, I am inclined to dismiss the writ petition."

4. We have examined the facts of the case. The learned counsel appearing for the writ petitioner / appellant has reiterated the same contention that the resignation of the petitioner can be accepted only in case there is no disciplinary proceedings. In this case, there is no disciplinary proceedings and as such, in the facts of the case, the letter cannot be deemed to have been accepted on the expiry of the period of notice. It is further contended that the writ petitioner ought not to have been declined to join duty as no disciplinary proceedings was initiated against him to establish the unauthorised absence and the learned Single Judge erred in taking the stand while dismissing the writ petition.

5. We have examined carefully the contentions of the learned counsel for the appellant, as also the documents appended thereto. The writ petitioner has sent a resignation letter only on 19.7.2013, however remained absent unauthorisedly, notwithstanding the fact that the petitioner was asked on two occasions to join duty within seven days. Thus, this is a case of abandonment of service. Even after tendering the resignation, the writ petitioner had sent a subsequent letter on 12.11.2013 to withdraw the resignation letter when in the resignation letter, he had sought for relieving him permanently with immediate effect and as such, the said letter came into effect forthwith. Secondly, withdrawal cannot be taken as a ground for the relief sought for in the writ petition. Even otherwise, looking into the over all conduct, which is not disputed by the writ petitioner in his petition, no useful purpose would be served by initiating proper departmental enquiry before passing the order, as the petitioner had declined to join duty.

6. In view of the foregoing, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Principal Secretary to Government,
The State of Tamilnadu,
Municipal Administration and Water Supply
(O.P.1) Department,
Secretariat, Chennai-600 009.
- 2.The Deputy Secretary to Government,
Municipal Administration and Water Supply
(O.P.1) Department,
Secretariat, Chennai-600 009.

1 cc to Government Pleader, Sr.No.21033

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W.A.No.625 of 2015

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