

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM:

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

W.P.No.12670 of 2016
and
WMP.No.11036 of 2016

M.Mohammed Akbar Basha ... Petitioner

Vs.

1. The Registrar General,
High Court, Madras.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Judicial Magistrate-VI,
Coimbatore. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records of the Second Respondent in proceedings R.No.580/2014 dated 05.02.2014 and to quash the same.

For Petitioner : Mr.Nizamuddin
for N.A.Nissar Ahmed

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has focused the instant Writ Petition praying for passing of an order by this Court in calling for the records of the Second Respondent/Chief Judicial Magistrate, Coimbatore, in his proceedings R.No.580/2014 dated 05.02.2014 and to quash the same.

2.According to the Petitioner, he was appointed as night Watchman in the Court of Judicial Magistrate-VII through the District Employment Exchange, Coimbatore. Thereafter, he was promoted as Office Assistant on 11.02.2013 and posted at Manapparai. Later, he was transferred to the Judicial Magistrate Court-I (Fast Track Level), Coimbatore.

3.The categorical stand of the Petitioner is that he was ill treated and required to do domestic work even on holidays as against the Government Orders and to clean lavatory and other menial work, he became desperate and tendered his resignation on 06.06.2013. As a matter of fact, the Second Respondent/Chief Judicial Magistrate, Coimbatore has not accepted the same and treated his absence period as leave on loss of pay as per proceedings dated 07.06.2013.

4.The plea of the Petitioner is that even when he was posted at the Court of Judicial Magistrate-VI, Coimbatore, there also he had suffered the same treatment and constrained to submit his resignation through letter dated 31.01.2014. Indeed, the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore vide proceedings dated 05.02.2014 informed that his resignation was accepted with effect from 01.02.2014 and his appointment was terminated with immediate effect as per proceedings dated 05.02.2014.

5.The Learned counsel for the Petitioner emphatically contends that the representation of the Petitioner dated 03.09.2014 addressed to the Director, National Commission for Scheduled Caste & Tribes and other Backward Classes, Chennai and the Department of Minorities Welfare (Tamil Nadu Government), Chennai-2 had not met with any positive response and therefore, he again made a representation on 30.10.2014 to the First Respondent stating that his resignation would be reviewed and that he may be graciously reinstated into service taking into consideration that he had submitted his resignation only out of deep frustration and furthermore, in his representation the Petitioner submitted that he has a big family to maintain. Since there is no response to the said representation from the First Respondent, he has preferred the instant Writ Petition.

6.At this stage, this Court pertinently points out that the Petitioner was appointed as night watchman on 16.06.2011 in the Court of Judicial Magistrate Court-VII, Coimbatore and in fact, he had clearly stated in his letter dated 31.01.2014 addressed to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore to the effect that he joined as Office Assistant at the said Court and that because of his family problems, he had wished to resign his job and prayed for acceptance of his letter and further, made a request that his 15 months deduction of CPS amount from his salary may be paid to him.

7.A cursory perusal of the proceedings of the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore in R.No.580/2014 dated 05.02.2014 (addressed to the Petitioner) unerringly points out that the resignation of the Petitioner

as Office Assistant of the Third Respondent Court was accepted with effect from 01.02.2014 Fore Noon and added further, his appointment was terminated with immediate effect as per proceedings of the Second Respondent in R.No.580/2014 dated 05.02.2014. Besides this, in the representation dated 03.09.2014, the Petitioner had addressed the Director, National Commission for Scheduled Caste & Tribes and other Backward Classes, Chennai and another, whereby and whereunder he had ultimately, prayed for action to be taken to revoke the order passed by the Learned Chief Judicial Magistrate, Coimbatore in his proceedings R.No.580/2014 dated 05.02.2014 and to reinstate him into service. Also, he made representation dated 30.10.2014 to the First Respondent/Registrar General, High Court, Madras, wherein he had made a similar request of taking action to revoke the order passed by the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore dated 05.02.2014.

8.It is to be noted that the term 'Resignation' means the act of giving up or relinquishing the office. To constitute a 'Resignation', it must be an unconditional one and with an intent to operate as such. In reality, a 'Resignation' of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment. Suffice it for this Court to point out that 'Resignation' means a spontaneous relinquishment of one's own right and in relation to an office. In general, juristic sense, in order to constitute a complete and operative resignation, there must be an intention to give up or relinquish the office and the concomitant act of its relinquishment as per decision Mothiram Vs. Param Dev reported in AIR 1993 SC at page 1662.

9.The relinquishment of one's own right meaning 'Resignation' is conveyed by the Latin maxim 'Resignation est juris propii spontanea refutatio'. In relation to the office, resignation connotes 'to lose hold of the office' or 'to leave the job'. Indisputably, the resignation of an employee from a particular office when it was accepted by the authorities, then terminates the status of 'Master and Servant'. In Law, an employee had no Locus Paenitentiae to withdraw his offer of resignation after it was accepted.

10.In this connection, it is not out of place for this Court to make a relevant mention that the Hon'ble Supreme Court in the decision of Dr.Prabha Atri V. State of Uttar Pradesh reported in Air 2003 SC at page 534 had observed that 'to constitute resignation the letter of resignation must be unconditional and with an intention to operate as such. Where a person submits a resignation, then in such contingency, the question of holding an enquiry never arises and the authorities are left with no alternative but to terminate his

services as per decision R.N.Mahindra V. State of Himachal Pradesh reported in AIR 1953 HP at page 125. After all, 'Resignation' is a 'Bilateral Concept'. The service of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the authorities as per decision Raj Narain V. Srimathi Indira Gandhi reported in AIR 1973 SC at page 1302. Moreover, acceptance of resignation does not amount to 'dismissal'.

11.Be that as it may, in the present case on hand, the Petitioner in his letter dated 31.01.2014 addressed to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore had in a clear cut fashion mentioned that because of his family problems, he is willing to give resignation and prayed for acceptance of his letter. In fact, his resignation was accepted by the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore as per proceedings dated 05.02.2014 with effect from 01.02.2014 forenoon. Resultantly, his appointment was terminated with immediate effect. In the present Writ Petition, the Petitioner has come out with a plea that the order of accepting his resignation by the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore must be reviewed. In this regard, he assigns a reason that only out of depression and frustration, he had submitted his resignation letter dated 31.01.2014 to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore.

12.This Court, on going through the contents of the letter dated 31.01.2014 addressed to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore comes to an inescapable and irresistible conclusion that the Petitioner in fact, had submitted his letter of resignation owing to his family problems as such, in its considered opinion at this distant point of time, it is not open to him to take an altogether different stand that he had tendered the 'resignation letter' under depression and frustration. In short, the plea of depression and frustration is only a ruse to get over the predicament, amount to which the petitioner is now placed. Furthermore, after the Second respondent/Learned Chief Judicial Magistrate, Coimbatore accepting his resignation of the Petitioner dated 31.01.2014 with effect from 01.02.2014 Forenoon and terminating his appointment with immediate effect vide proceedings R.No.580/2014 dated 05.02.2014, the same cannot be reviewed. Also, there is no rule dealing with employment after resignation is accepted in relevant time and such a plea made on behalf of the Petitioner in the present Writ Petition, based on the facts and circumstances of the present case is not legally tenable. Looking at from any angle, the Writ Petition filed by the Petitioner sans merits.

13.In fine, the Writ Petition is dismissed.
Consequently, connected Miscellaneous Petition is also closed.
No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

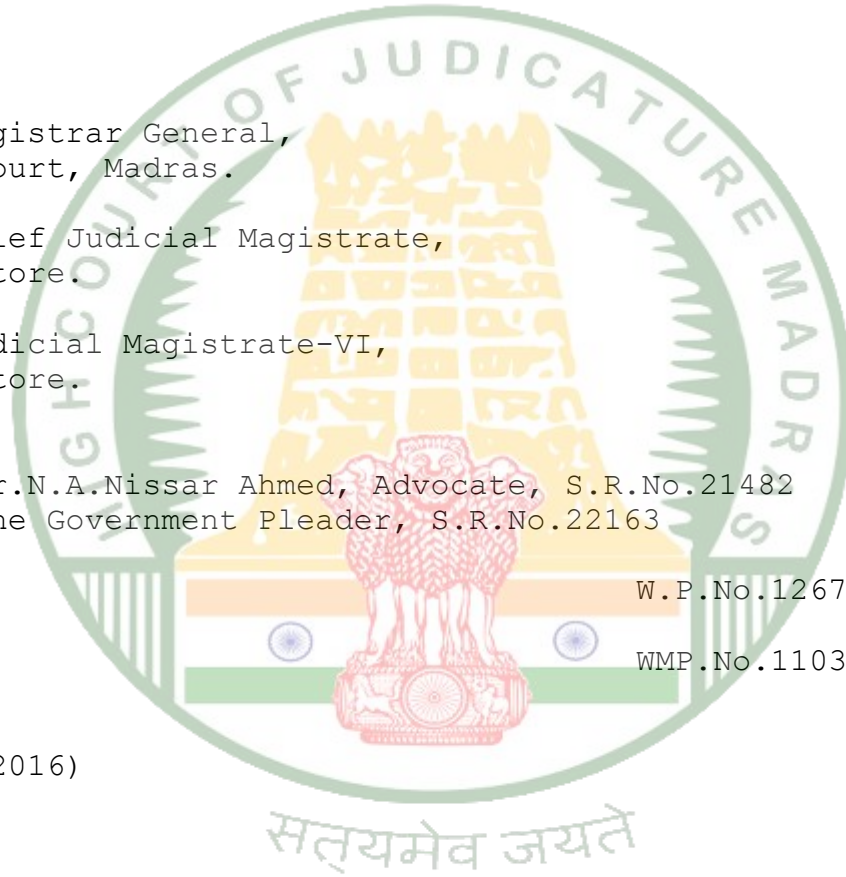
To

1. The Registrar General,
High Court, Madras.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Judicial Magistrate-VI,
Coimbatore.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.21482
+1cc to the Government Pleader, S.R.No.22163

W.P.No.12670 of 2016
and
WMP.No.11036 of 2016

SKS (CO)
CA(26/04/2016)



WEB COPY