

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 29.09.2016)

DATED : 03.11.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.1454 of 2015
and
M.P.No.1 of 2015
and
W.M.P.No.17933 of 2016

M.Paul Perinbam Petitioner
Vs.

1.The Secretary,
Government of Tamil Nadu,
Tamil Development, Information &
Public Relations Department,
Secretariat,
Fort St. George, Chennai-600 009.

2.The Director-cum-Join Secretary,
Government of Tamil Nadu,
Tamil Development, Information &
Public Relations Department,
Secretariat,
Fort St. George, Chennai-600 009.

3.The Public Relation Officer,
Tamil Development, Information &
Public Relations Department,
Krishnagiri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with his proceedings No.15029/Nir2/2013, dated 05.11.2013 and to quash the same and consequently, to direct the respondents to accept the representation dated 28.10.2013 withdrawing the resignation dated 28.06.2013 and permit the petitioner to join duty with continuity of service.

For Petitioner : Mrs.T.Ananthi
For respondents : Mr.S.Gunasekaran, AGP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the file of the 2nd respondent in connection with his proceedings No.15029/Nir2/2013, dated 05.11.2013 and to quash the same and consequently, to direct the respondents to accept the representation dated 28.10.2013 withdrawing the resignation letter dated 28.06.2013 given by the petitioner and to permit the petitioner to join duty with continuity of service.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner was appointed as Guide, in the Office of the 3rd respondent on regular time scale of pay as per G.O.(P).No.284 TDHR & Information Department, dated 16.07.2007 and consequential proceedings of the 2nd respondent dated 16.07.2007. The petitioner joined service on 23.07.2007. The petitioner's probation in service was declared with effect from 21.07.2009, as per proceedings of the 2nd respondent dated 16.11.2010. Thereafter, his service was regularised with effect from 23.07.2009. The petitioner was recommended by the 3rd respondent vide his proceedings dated 22.09.2011 for promotion to the post of 'Care Taker' and he was awaiting for promotion order.

2-2.While so, due to his family circumstances and health condition of his aged parents, he was forced to be present at his native place. Hence, he forwarded a resignation letter dated 28.06.2013 to the 2nd respondent, resigning his post with effect from 01.07.2013. But, no order was passed accepting his resignation till completion of four months. Therefore, it is clear that the petitioner was not relieved from his duty. In the meantime, the petitioner has set right his personal issues and become ready to continue his service. Hence, the petitioner forwarded a letter dated 28.10.2013 to the 2nd respondent, withdrawing his resignation and requesting to permit him to join duty. But, his shock and dismay, the impugned order dated 05.11.2013 has been passed by the 3rd respondent, rejecting the request of the petitioner to withdraw his resignation, stating that the resignation must be withdrawn within a period of three months ie., 21.10.2013, but the petitioner has given his letter to withdraw his resignation only on 28.10.2013, with a delay of seven days. Aggrieved over the same, the petitioner has come forward with the present writ

petition.

3.The respondents have filed a detailed counter contending that the petitioner sent a resignation letter dated 28.06.2013 resigning his job with effect from 01.07.2013, to the 3rd respondent and the same was forwarded to the office of the 2nd respondent and it was duly received by the office of the 2nd respondent on 22.07.2013. In order to accept the resignation of the petitioner, the 2nd respondent has to follow the mandatory requirements set out under Rule 41-A(d) of the Tamil Nadu State and Subordinate Service Rules. As such, on 01.08.2013, the 3rd respondent was directed to obtain and forward reports as to whether any disciplinary proceedings is pending against the petitioner and any subsisting case with Department of Vigilance and Anti-Corruption and any dues to the Government pending, during the statutory notice period of three months. The 3rd respondent by his letter dated 11.09.2013 informed the 2nd respondent that no disciplinary proceedings is pending with the Department and no case is pending with the Vigilance and Anti-Corruption Department. The 3rd respondent has also forwarded a report along with his letter. But, the petitioner sent a letter to withdraw his resignation only on 28.10.2013 i.e., after the expiry of statutory period of three months. The petitioner ought to have sent his letter to withdraw his resignation within the statutory period of three months i.e on or before 21.10.2013. Hence, the request of the petitioner to withdraw his resignation was rejected. Thus, the respondents sought for dismissal of the writ petition.

4.The learned counsel for the petitioner would submit that the impugned order accepting his resignation was passed only on 05.11.2013; but, even prior to the acceptance of his resignation, the petitioner has sent a letter dated 28.10.2013 withdrawing his resignation. Hence, the respondents ought to have accepted the withdrawal of the resignation of the petitioner and thereby should have permitted the petitioner to join duty. In support of his contention, the learned counsel for the petitioner has also relied upon the decision reported in (2001) 1 SCC 158 [Union of India Vs. Wing Commander T.Parthasarathy] and submitted that the petitioner has a right and is entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective. For the same proposition, the learned counsel for the petitioner has also relied upon the decisions reported in (2005) 8 SCC 314 [Srikanth S.M. Vs. Bharath Earth Movers Ltd] and 1987 (Supp) SCC 228 [Balram Gupta Vs. Union of India and another].

5.Per contra, the learned Additional Government Pleader appearing for the respondents would contend that as per Rule 41-

A(c) of the Tamil Nadu State and Subordinate Service Rules, if no order is passed with regard to the acceptance of the resignation within the statutory period of three months, the resignation shall be deemed to have been accepted by the authority. Once three months statutory period is lapsed, neither the petitioner nor the respondent has no role to play. Though Rule 41-A(b) of the said Rules contemplates that the Government Servant can withdraw the notice of this resignation before it's acceptance, but it is subject to other provisions under Rule 41-A more particularly Rule 41-A(c) of the said Rules. Thus, the learned Additional Government Pleader opposed the prayer of the petitioner.

6. Keeping in view the submissions made on either side, I have carefully perused the materials available on record.

7. It is the main submission of the learned counsel for the petitioner that the impugned order rejecting his letter for withdrawal of resignation letter dated 28.06.2013, was passed by the 2nd respondent only on 05.11.2013, but even prior to the date of rejection, the petitioner has sent a letter on 28.10.2013 withdrawing his resignation. Hence, according to the learned counsel for the petitioner, the impugned order is not legally sustainable. But, I am not inclined to accept the submission made by the learned counsel for the petitioner, since in the instant case, the petitioner sent his resignation letter on 28.06.2013. But, he has sent his letter of withdrawal of his resignation only on 28.10.2013 ie., after the expiry of statutory period of three months. The Rule 41-A(c) of the Tamil Nadu State and Subordinate Service Rules, makes it very clear that if no order is passed with regard to the acceptance of the resignation within the statutory period of three months, the resignation shall be deemed to have been accepted by the authority. In the case on hand, since the resignation came into vogue on expiry of three months statutory period ie., even prior to the withdrawal of the resignation by the petitioner, the 2nd respondent has rightly rejected the request of the petitioner for withdrawal of his resignation and thus, accepted the resignation of the petitioner. Under such circumstances, this Court cannot give any direction in this matter as sought for by the petitioner. The judgments relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case as the said judgments have been delivered in different factual aspects.

For the forgoing reasons, the writ petition is liable to be dismissed and accordingly the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Secretary,
Government of Tamil Nadu,
Tamil Development, Information & Public Relations Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Director-cum-Join Secretary,
Government of Tamil Nadu,
Tamil Development, Information & Public Relations Department,
Secretariat, Fort St. George, Chennai-600 009.
- 3.The Public Relation Officer,
Tamil Development, Information &
Public Relations Department,
Krishnagiri District.

+1cc to Mr.T. Aananche, Advocate, S.R.No.62776
+1cc to the Government Pleader, S.R.No.62824

ala(CO)
md(28/11/2016)

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