

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.6.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.19361 of 2014

G.Parameshwari

Petitioner

Versus

1 The Registrar General
High Court Madras-104

2 The District Judge
Thiruvarur

3 The District Munsif Cum
Judicial Magistrate Nannilam

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the entire proceedings in R.O.C. No. 1098/2013/C1 dated 20.6.2014 on the file of the 1st respondent and quash the same.

For petitioner : Mr.V.Bhiman

For Respondents : Mr.B.Vijay

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. From the contentions of both sides, it transpires that the petitioner lady was originally appointed as Office Assistant on 18.6.2008 in the Judicial Magistrate Court, Nagapattinam and after having met with several transfers, submitted her resignation, but, sought for cancellation of the same within a period of two months and since the same was not acceded by the respondents, she is before this court.

3. Before proceeding to examine the case of the petitioner, let us see what is the law relating to resignation by a Government servant. Rule 41-A of the Tamil Nadu State & Subordinate Service Rules reads as under:-

"Acceptance of resignation (a) - A Government servant may resign his appointment by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The period of three months notice shall be reckoned from the date of receipt of such notice by the appointing authority.

(b) The Government servant may withdraw the notice of his resignation before its acceptance. Withdrawal of resignation will not be permitted after its acceptance by the appointing authority.

(c) The appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons therefor. If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice.

(d) Notice of resignation given by the Government servant shall be accepted by the appointing authority, subject to the condition:-

(i) that not disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;

(ii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iii) that no dues are pending to be recovered by the Government from the Government servant concerned.

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government servant during the period in which the Government servant concerned seeks to resign.

(e) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (d), where a Government servant, under suspension or against whom disciplinary or criminal action or vigilance enquiry is pending, seeks to resign, the appointing authority shall examine

the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of the notice of resignation."

4. It appears that the application for resignation was submitted by the petitioner, on 5.8.2013 and the District Judge has proceeded to accept the same on 12.8.2013. But, the petitioner had chosen to file her review petition on 1.10.2013 viz., before the waiting period of 90 days.

5. It is submitted by the learned counsel appearing for the petitioner that the petitioner was under pressure of work and she was constrained to tender her resignation due to the mental stress she had developed, but, however, even before expiry of 90 days from the date of resignation, she had submitted her application seeking cancellation of the resignation, but, by that time, her resignation was accepted. The learned counsel further submitted that the petitioner had not made up her mind to tender resignation, but, only due to the mental stress that she had developed due to the work load, she was made to resign and in such circumstances, it is not her voluntary resignation. He further submitted that there is a waiting period of 90 days as contemplated under Rule 41A of the Tamil Nadu State & Subordinate Service Rules, but, however, the District Judge has proceeded to accept the resignation in a hurried manner, much less within a period of one week and hence, the same is bad in law.

6. On the other hand, the learned counsel appearing for the respondents, placing much reliance upon clause (b) of Rule 41-A, would submit that once the resignation is accepted, the question of withdrawal of resignation will not be permitted and sought for dismissal of the writ petition.

7. In all fairness, a reading of clause (a) of Rule 41-A of the Tamil Nadu State & Subordinate Service Rules itself makes it clear that a Government servant, who intends to resign from service, is required to give a notice of resignation of not less than three months, in writing and the period of three months notice shall be reckoned from the date of receipt of such notice by the appointing authority and thereby the Rule insists upon the period of notice required for tendering resignation.

8. Rule 41-A contains three components, viz., (i) tendering of notice of resignation of not less than three months, (ii) its acceptance by the authority and (iii) withdrawal of resignation tendered. For the purpose of tendering of notice of resignation, three months notice is contemplated in clause (a) of Rule 41-A itself. So far as its acceptance is concerned, the competent authority is provided with sufficient time to pass orders either accepting or rejecting, but, giving reasons therefor, till the date of expiry of the notice period. Clause (c) of Rule 41-A provides such time to the authority while making it clear that even if the authority does not pass any such order, the resignation shall be deemed to have been

accepted on the expiry of the period of notice so as to facilitate the Government servant to retire peacefully. In such a way, the said clause is also in favour of the Government servant viz., if any delay occurs at the hands of the authority in passing orders on the notice of resignation in either way that should not hamper the peaceful retirement of the Government servant, who intends to resign. Further, clause (d) of Rule 41-A imposes certain conditions upon acceptance of the resignation tendered by the Government servant.

9. In PUNJAB NATIONAL BANK v. P.K.MITTAL (1989 SUPP (2) SCC 175), the Supreme Court had dealt with a case of a Bank employee who had tendered his resignation on 21.1.1986 giving notice to resign with effect from 30.6.1986, but, the bank had accepted the same and relieved him from services with effect from 7.2.1986 and held that the resignation could take effect either on the date chosen by the employee and mentioned in the notice viz., 30.6.1986 or on the expiry of the three months period viz., on 21.4.1986, but, the Bank could not have accepted it on any earlier date. The Supreme Court had also observed in para 7 of the said decision as under:-

"... It is a common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation."

10. In the case on hand, it is clear that no emergent situation is portrayed for passing the orders on the notice of resignation before the waiting period of 90 days which is available to the Government servant to withdraw the resignation at a later date. Assuming for the sake of argument the petitioner tendered outright resignation, the order accepting the resignation was passed instantaneously without even resorting to any steps to recover salary in lieu of the three months notice contemplated under the Rule. Brushing aside the

above aspects and placing much reliance upon clause (b) of Rule 41-A, the learned counsel appearing for the respondents would contend that withdrawal of resignation will not be permitted after its acceptance by the appointing authority, which we cannot endorse, especially when the order accepting the resignation is passed in a hurried manner, within a period of one week from the date of its submission.

11. In the above circumstance, following the dictum laid down by the Supreme Court in P.K.MITTAL's case (supra), this court holds that resignation could only take effect either on the date chosen by the employee and mentioned in the notice or on the expiry of the statutory period of three months and it could not have been accepted on any earlier date. In the case on hand, the resignation has been accepted in a hurried manner, moreso when the petitioner has not even asked for waiver of notice period.

12. In the facts and circumstances, the writ petition is allowed. The impugned order is set aside. The petitioner is directed to be taken back into service within a period of fifteen days from the date of receipt of copy of this order. However, it is made clear that during the period from 12.8.2013 upto this date, the petitioner would not be entitled to any arrears of salary on the basis of the principle that "no work no pay". No costs. However, she is entitled for continuity of service for the said period.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Registrar General
High Court Madras-104
- 2 The District Judge
Thiruvavur
- 3 The District Munsif Cum
Judicial Magistrate Nannilam

+1cc to Mr.V. Bhiman, Advocate, S.R.No.33242

PUR(CO)
EU(18/07/2016)

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