

In the High Court of Judicature at Madras

Dated : 14.06.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.13189 of 2015

K.Supriya

Petitioner

Vs.

1. Union of India, by Government of Puducherry, rep.by its Chief Secretary, Chief Secretariat, Puducherry.
2. The Special Secretary, DP & AR, Government of Puducherry, Chief Secretariat, Puducherry.
3. The Judicial Department by Head of Office, Government of Puducherry, New Court Complex, Puducherry.

(R3 impleaded as per order dated 09.3.2017
in WMP.No.6297 of 2017)

Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking to issue a Writ of Certiorari to call for the records on the file of the Chief Judge of Puducherry dated 18.12.2014 in file No.1296/JD/A/2014 and quash the same in so far as it relates to modifying the Chief Judge earlier office order dated 06.11.2014 in number 1104/JD/A/2014 as regards the nature of acceptance of the petitioner's resignation.

For petitioner
For respondents

Mr.J.Srinivasa Mohan
Mr.Syed Mustafa, Addl. Govt. Pleader

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

This writ petition is instituted calling in question the correctness and validity of the orders passed on 18.12.2014 by

the Chief Judge, Puducherry, accepting the resignation submitted by the writ petitioner as one of simpliciter, but, not on technical formality.

2. The writ petitioner submits that the Government of Puducherry, in its Department of Personnel and Administrative Reforms, initiated process of direct recruitment to the posts of Upper Division Clerks (UDCs) and Senior Clerks in the Judicial Department vide their Notification dated 20.04.2012. The selection process comprises a written examination and hence, candidates were also required to indicate their preference for recruitment as UDC or Senior Clerk and if they prefer to be considered for both, the first priority amongst those two categories.

3. On 10.01.2014, based upon the merit ranking at the examination, the writ petitioner was offered appointment as a Senior Clerk in Judicial Service. Accordingly, the writ petitioner joined the service on 27.01.2014 as a Senior Clerk. A little more than six months thereafter, the Department of Personnel and Administrative Reforms, Government of Puducherry, published the list of candidates selected for the posts of UDC that became available due to non reporting/non joining of selected candidates. From out of this list of candidates, who have been short-listed for appointment as UDC against the resultant or consequential vacancies of UDCs, seven of them are found appointed and working in the Judicial Service. The writ petitioner is one amongst those seven. Therefore, all those seven candidates have been offered appointments as UDCs not in Judicial Department, but, in various other Departments.

4. The Department of Personnel and Administrative Reforms, Government of Puducherry, by its communication dated 20.10.2014, offered the writ petitioner, appointment to the post of UDC (Group C) with a pay structure of Rs.5200-20200 and a grade pay of Rs.2400/- in the Directorate of Accounts and Treasuries, Puducherry. In paragraph 8 of this offer of appointment, it was set out that if the candidate accepts the offer on the terms and conditions spelt out therein, she should report to duty before the Head of Department immediately and in any case, not later than 05.11.2014.

5. In those circumstances, which are similar to everyone, all the seven Senior Clerks working in the Judicial Department have tendered resignation. Taking into account the same, the Chief Judge, Puducherry, by his communication in letter No.1085/JD/A/2014 dated 31.10.2014, informed the Special Secretary to Government, Department of Personnel and Administrative Reforms (Personnel Wing), Puducherry, that the seven Senior Clerks of the Judicial Department have submitted letters of resignation for joining the post of UDC in various

Government Departments in pursuance of the offer received by them and that they will be relieved upon the other candidates, to whom, the appointment as Senior Clerks from out of the additional merit list is offered, turn up and join duty, so that work in the Courts does not get affected.

6. It will also be relevant to note the contents of the Order No.1104/JD/ A/2014 dated 06.11.2014 has been passed by the Chief Judge, Puducherry, which reads as follows :

"Government of Puducherry
Judicial Department
No.1104/JD/A/2014 Puducherry dt.06.11.2014
Order
Sub : Judicial Department, Puducherry -
Estt. -
Senior Clerks tendered
resignation -
acceptance - regarding.

Whereas the following Senior Clerks have tendered resignation on selection as Upper Division Clerk in other Government Departments.

Sl. No.	Name	Present Place of Posting
	Tvl./Tmt.	
1.	B.Salinkumar	District Court, Puducherry
2.	A.Sheckouzan	Industrial Tribunal-cum-Labour Court, Puducherry.
3.	E.Baskar	Karaikal Courts, Karaikal
4.	P.Suresh	Karaikal Courts, Karaikal
5.	Ravi Kiran Palli	Munsif Courts, Puducherry
6.	K.Supriya	Sub-Court, Puducherry
7.	V.Vijayabalan	Karaikal Courts, Karaikal

The letter of resignations submitted by the above Senior Clerks have been considered by the undersigned.

There is no disciplinary proceedings pending against them as on date.

Hence, the letters of resignation submitted by the above Senior Clerks are accepted by the undersigned as a technical formality.

The Head of Office, Judicial Department/
Industrial Tribunal-cum-Labour Court, U.T.
Puducherry shall relieve the Senior Clerk
concerned on the joining of new candidates
posted as Senior Clerk.

Sd/-
(P.Velmurugan)
Chief Judge,
Puducherry"
(emphasis is now brought out)

7. Thus, from a perusal of the above order, it becomes clear that the resignations submitted by the seven Senior Clerks are accepted by the Chief Judge, Puducherry as a technical formality and the orders have also been communicated not only to the Government of Puducherry, but also to the individuals concerned. Thus, the offer of resignation made by the seven Senior Clerks stood accepted by the Chief Judge, Puducherry on 06.11.2014 treating the same as a technical formality.

8. Through a memorandum dated 07.11.2014, the Department of Personnel and Administrative Reforms, Government of Puducherry, passed orders granting extension of time till 19.12.2014 for the seven Senior Clerks working in the Judicial Department to join as UDCs in the various offices, to which, they stand posted. The writ petitioner figures at S.No.2 of this memorandum dated 07.11.2014. Paragraphs 2 and 3 of the said memorandum dated 07.11.2014 read as under :

"They are directed to report on or before the above mentioned date, failing which, the offer of appointment issued to them will automatically stand cancelled without any further intimation.

No further communication will be entertained in this regard."

9. Thus, the Government of Puducherry has made it very clear that the seven selected candidates, to whom, the offer of appointments as UDCs has been made, have to report as such to the offices where they are posted on or before 19.12.2014, failing which, the offer of appointment made to them on 20.10.2014 shall stand withdrawn automatically without any further intimation.

10. In those set of circumstances, the writ petitioner submitted a representation on 18.12.2014 to the Chief Judge, Judicial Department, Puducherry, which runs as under :

"I humbly thank your Honour of accepting my resignation as a technical formality vide letter No.1104/JD/A/2014 dated 06.11.2014, in continuation to which, a substantial time

period of more than forty days have lapsed and yet I have not been relieved from duty, whereas my juniors have been relieved. Having received no appropriate response regarding the time frame by which I would likely to be relieved from duty, I am hereby forced to relinquish the charges of the post of Senior Clerk in the Sub-Court this afternoon to join the Directorate of Accounts and Treasuries, prior to the expiry of the time limit (i.e 19.12.2014) prescribed by the Department of Personnel and Administrative Reforms, Government of Puducherry."

11. From the above, it is clear that the writ petitioner has made an issue that her juniors have been relieved from the post of Senior Clerks and hence, she was forced to relinquish the charge in the post of Senior Clerk in the Sub-Court, Puducherry on that afternoon, to join the Directorate of Accounts and Treasuries prior to the expiry of the time limit i.e. 19.12.2014.

12. In response to this representation of the writ petitioner, the following order has been passed by the Chief Judge, Puducherry on 18.12.2014 :

"Government of Puducherry
Judicial Department
No.1296/JD/A/2014 Puducherry dt.18.12.2014

Order
Sub : Judicial Department, Puducherry -
Estt. -
Tmt.K.Supriya, Senior Clerk,
Sub-Courts,
Puducherry - tendered
resignation -
acceptance - regarding.

Ref : 1. Letter of resignation on
technical formalities dated 27.10.2014

2. This office order NO.1104/JD/A/2014
dated 06.11.2014

3. Letter of resignation dated 18.12.2014

By the order cited, the letter of
resignation submitted by the seven Senior

Clerks had been accepted by the undersigned as a technical formality and the Head of Office, Judicial Department/Industrial Tribunal-cum-Labour Court, U.T. Puducherry were directed to relieve the Senior Clerk concerned on the joining of new candidates posted as Senior Clerk.

Tmt.K.Supriya, Senior Clerk, Sub-Courts, Puducherry, submitted that she may be permitted to resign the post and relieved immediately without acceptance of resignation on technical formalities on the ground that the time for joining the new post in the Government Department is expiring on 19.12.2014.

Considering her submissions, the resignation submitted by Tmt.K.Supriya, Senior Clerk, Sub-Courts, Puducherry is accepted simpliciter without acceptance of resignation on technical formalities and the Head of Office, Sub-Courts, Puducherry shall relieve her immediately.

The order second cited stand modified to the above aspect in respect of Tmt.K.Supriya alone.

Sd/-

(P.Velmurugan)
Chief Judge,
Puducherry"

(emphasis is mine)

13. It is the above order, which is challenged in this writ petition for its sustainability.

14. We have heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

15. It is urged by the learned counsel for the writ petitioner that when once the writ petitioner has been selected based upon her merit ranking at the common competitive examination for appointment to the superior post of UDC, which is higher in status, salary and allowances to that of a Senior Clerk, resignation offered by such a selected candidate from the post of Senior Clerk is a mere technical formality. Individuals, who are serving the same Government, but in a different Department, have to tender resignation from the service where they are appointed and working and then alone, can take up the appointment at the new office/establishment. Therefore, they tender resignation to the former service, only to enable them to join the next service, as otherwise, a Government servant cannot abandon his former employment and report to the new

Department/establishment. Therefore, the resignation offered by the writ petitioner cannot be treated as a resignation simpliciter.

16. Per contra, the learned Additional Government Pleader appearing for the respondents would urge that the writ petitioner has been assured by the Chief Judge that she will be relieved as soon as the replacements come and join service. Instead of seeking further extension from the Department of Personnel and Administrative Reforms or from the Directorate of Accounts and Treasuries, the writ petitioner has preferred to resign her service from the post of Senior Clerk, Sub-Court, Puducherry and preferred to go and join the services of the Directorate of Accounts and Treasuries as UDC. It is, therefore, the case of the respondents that the writ petitioner, on her own volition, abandoned her earlier service and preferred to join the new service as UDC in the office of the Directorate of Accounts and Treasuries. Hence, her resignation to the post of Senior Clerk, Sub Court, Puducherry is one of simpliciter.

17. It is also contended by the learned Additional Government Pleader appearing for the respondents that Rule 26 of the Central Civil Services (Pension) Rules, 1972, makes it very clear that resignation from service or a post entails forfeiture of past service. Therefore, it is urged that the service rendered by the writ petitioner prior to 19.12.2014 has been forfeited by her on her resignation. He, therefore, submits that this writ petition deserves to be dismissed.

18. There is no dispute, fortunately, with regard to the facts in this case. The writ petitioner was selected by the Department of Personnel and Administrative Reforms, Government of Puducherry and offered employment to begin with as Senior Clerk in the Judicial Department. She accepted the offer. Consequently, the Chief Judge, Puducherry, by his proceedings dated 10.01.2014, appointed the writ petitioner as Senior Clerk and posted her against an existing vacancy at the Sub Court, Puducherry, where, she joined on the afternoon of 23.01.2014. While she was working there, certain consequential vacancies have arisen in the cadre of UDCs, inasmuch as several candidates who were initially selected by virtue of superior merit ranking than the writ petitioner by the Department of Personnel and Administrative Reforms, Government of Puducherry and offered appointment as UDCs, have either not accepted the offer of appointment or in some cases did not join the service to which they came to be appointed. Consequently, the resultant vacancies have been thrown open to be filled up with the candidates as per the next merit order. Seven such candidates who have now received the offer of appointment as UDCs, are found to be working in the Judicial Department of Puducherry. When they were all offered appointment as UDCs through the

Memorandum dated 20.10.2014 of the Department of Personnel and Administrative Reforms, Government of Puducherry, the Chief Judge, Puducherry, addressed the Government through his communication dated 31.10.2014, that the seven candidates will be relieved as soon as replacements/substitutes come in their places. In the meanwhile, the Chief Judge, Puducherry, by his order dated 06.11.2014, has accepted the resignations submitted by the seven candidates, including the writ petitioner herein. In the order dated 06.11.2014, a decision to that effect has been taken clearly as follows:

"Hence, the letters of resignation submitted by the above Senior Clerks are accepted by the undersigned as a technical formality."

19. From the above communication dated 06.11.2014, it is clear that the Chief Judge, Puducherry has already accepted the resignations submitted by these seven candidates by treating them as a technical formality.

20. There is no dispute on the count that if, one who is serving in one capacity or the other in the Government gets recruited to another post or office in the same Government, one can tender resignation to the former service/post and join the latter service/post and in such an event, the resignation to the earlier service/post is only treated as a mere technical formality, which will not have the effect of forfeiting the length of service put in the former service.

21. In the meantime, the Department of Personnel and Administrative Reforms, Government of Puducherry, has issued posting orders through their Memorandum dated 07.11.2014 to all the seven UDCs working in the Judicial Department. The writ petitioner was posted to the Directorate of Accounts and Treasures, Puducherry. Paragraph no.2 of the said Office Memorandum dated 07.11.2014 made it very clear that they shall join the service before 19.12.2014, failing which, the offer of appointment issued to them will automatically stand cancelled without any further intimation.

22. In those circumstances, the writ petitioner's resignation having already been accepted on 06.11.2014 itself by the Chief Judge, Puducherry, there was no other option left except to relinquish her service as a Senior Clerk and join the service in the Directorate of Accounts and Treasures before 19.12.2014. That was the reason why the writ petitioner submitted a representation on 18.12.2014. In the said representation dated 18.12.2014, the writ petitioner has not offered any fresh resignation. In fact, she could not have done so, as her resignation had already stood accepted on 06.11.2014 itself by the Chief Judge, Puducherry. Far from submitting

resignation, once again, the writ petitioner, in her representation dated 18.12.2014, sought to relinquish the charge of the post of Senior Clerk in the Court of Subordinate Judge, Puducherry.

23. We are, therefore, clearly of the opinion that the writ petitioner's representation dated 18.12.2014, is not a case of offer of resignation afresh, but, is a mere representation to relinquish the charge of post of Senior Clerk in the Court of Subordinate Judge, Puducherry.

24. In those set of circumstances, the order passed by the Chief Judge, Puducherry on 18.12.2014 proposing to accept the resignation from service of the writ petitioner simpliciter without acceptance of resignation on technical formality, is not sustainable. There is no resignation offered by the writ petitioner on 18.12.2014, for the Chief Judge to accept it. A non existing resignation could not have been accepted. Hence, there is no valid basis or substratum for the order dated 18.12.2014 to stand. It is a clear case of mistake of fact.

25. Further, as pointed out supra, the resignation offered by the writ petitioner, along with six others, has already been accepted on 06.11.2014 itself by the Chief Judge, Puducherry. That resignation has not been withdrawn by the writ petitioner at any time later on nor was any fresh letter of resignation submitted by her. The Chief Judge, Puducherry, is clearly in error in construing the writ petitioner's representation dated 18.12.2014 as a fresh case of resignation from service. The error in this regard has clearly vitiated the exercise.

26. This apart, Rule 26 of the Central Civil Services (Pension) Rules, 1972, which governs the conditions of service of the writ petitioner, has made a clear distinction between resignation from service simpliciter and resignation from service with proper permission to take up another appointment. While F.R. 26(1) sets out that resignation from service or post entails forfeiture of service or post, F.R. 26(2) sets out that a resignation shall not entail forfeiture of post or service, if it has been submitted to take up another appointment under the Government where the service qualifies. Thus, the resignation submitted for the purpose of taking up another appointment or joining another service in the same Government, is considered and treated as a mere technical formality. That is what has been done by the Chief Judge, Puducherry on 06.11.2014 itself.

27. Therefore, we have no hesitation to quash the impugned order dated 18.12.2014 passed by the Chief Judge, Puducherry in declaring that the resignation submitted by the writ petitioner is accepted simpliciter without acceptance of resignation on

technical formalities, as it is unsustainable and the respondents will take the necessary follow up action in terms of F.R. 26(2) based upon the order dated 06.11.2014, passed by the Chief Judge, Puducherry, wherein, he has accepted the resignation submitted by seven candidates, including the writ petitioner to the post of Senior Clerks and treating the same as a technical formality.

Accordingly, the writ petition is allowed, however, sans costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rs/cad

To

1. The Chief Secretary to Union of India
Government of Puducherry
Chief Secretariat, Puducherry
2. The Special Secretary
DP & AR, Government of Puducherry
Chief Secretariat
Puducherry.
3. The Judicial Department by Head of Office
Government of Puducherry
New Court Complex
Puducherry

+1cc to Government Pleader in sr.no.42263

+1cc to Mr.J.Srinivasa mohan, Advocate in sr.no.42717

WP.No.13189 of 2015

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