

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

AND

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.9143 of 2018

and

W.M.P.No.10956 of 2018

R.Amutha

... Petitioner

vs.

1.The Principal District Judge,
Namakkal,
Namakkal District.

2.The Sub Judge,
Namakkal,
Namakkal District

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Proceedings No.ROC No.9326/A/2017, dated 04.09.2017, on the file of the First Respondent as well as notice dated 12.10.2017, issued by the First Respondent and to quash the same and consequently direct the First Respondent to re-employ the Petitioner as Masalchi in any vacancy.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.E.K.Kumaresan

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ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard both sides.

2.According to the Petitioner she had completed 11th Standard and applied for the Post of 'Masanchi', pursuant to a Notification, calling upon the perspective candidates to apply for the vacant posts existing in various Courts in Namakkal District. Later, she was called for an interview to be held on 29.1.2017. In fact, she attended the interview and the First Respondent/Principal District Judge, Namakkal, as per Proceedings No.1739/A/17, dated 23.02.2017, had appointed her as 'Masalchi', in Sub-Court, Namakkal, in the existing vacancy.

3.The Petitioner joined duty as 'Masalchi' in Sub Court, Namakkal, on 24.2.2017 and she discharged her duties without any complaint. She fell sick during the last week of August 2017. Further she took treatment at Primary Health Centre, Mudhalipatti, as an Outpatient No.9431. Since she was indisposed, she could not report for duty. Therefore, she had applied before the First Respondent, seeking for grant of 'Sick Leave', on 28.08.2017. As a matter of fact, the First Respondent/Principal District Judge, Namakkal, had rejected her Application praying for the grant of Sick Leave, on 28.08.2017, although the Doctor had advised her to take rest for seven days from 26.08.2017. Since she continued to suffer from her illness and had not recovered immediately, she could not attend to her duties on the one hand and her Application seeking for the grant of 'Sick Leave' was rejected, on the other hand. Further she could not comprehend as to what she could do and was forced to a state of 'Depression'. Because of the aforesaid health condition as well as the Petitioner's state of mind, without comprehending the consequences of her action, she submitted her Resignation Letter to the Second Respondent/Subordinate Judge, Namakkal, Namakkal District, on 04.09.2017. In fact, the said Letter dated 4.9.2017 was transmitted to the First Respondent/Principal District Judge, Namakkal, on the same day itself. In reality, the First Respondent/Principal District Judge, Namakkal, on the same day accepted her resignation as per Proceedings in ROC.No.9326/A/17, dated 4.9.2017. The Second Respondent's Office received the Order accepting the Petitioner's resignation on 04.09.2017 itself. Subsequently, the Second Respondent/Subordinate Judge, Namakkal, sent a notice dated 16.09.2017 to the Petitioner, stating that she was dismissed from service as per Proceedings of the First Respondent in ROC.No.9326/A/2017, dated 4.09.2017.

4.The plea taken on behalf of the Petitioner is that after recovering from her illness partially, she gave a Representation to the First Respondent/Principal District Judge, Namakkal, on 28.09.2017, requesting him to re-employ her. However, the First Respondent had rejected her Representation seeking for 'Re-Employment', as per Order dated 12.10.2017. The Petitioner takes a stand that she addressed a Resignation Letter dated 04.09.2017, due to her ignorance, health condition, her state of mind at that point of time, since she was ill and was also denied the 'Sick Leave', as well as without knowing the consequences of her Letter. She has to meet the Educational expenses of her seven year old daughter Monisha, apart from meeting the expenditure for the sustenance of her family. Therefore, she made a request before the First Respondent to 'Re-employ' her on 'Humanitarian grounds' and 'Mercy', but the same was rejected. Hence, she has filed the present Writ Petition praying for passing of an Order by this Court in calling for the records pertaining to the Impugned Order in ROC No.9326/A/17, dated 04.09.2017, on the file of the First Respondent as well as the Impugned Order dated 12.10.2017,

issued by the First Respondent and to quash the same. Further she has sought for passing of an Order by this Court in directing the First Respondent/Principal District Judge, Namakkal, to 'Re-employ' her as 'Masalchi' in any vacancy.

5. In response, the Learned Counsel for the Respondent 1 and 2 submits that the 'Resignation Letter' of the Petitioner was received in the Office of the First Respondent/Principal District Court, Namakkal, on 04.09.2017, through the Second Respondent/Subordinate Judge, Namakkal and soon after receipt of the same, the Petitioner was personally called for and she was enquired in regard to the reason for resigning her job, for which, she replied that due to her health condition and family circumstances, she had prayed to relieve her immediately. Therefore, the First Respondent/Principal District Judge, Namakkal, considering the Petitioner's request, had accepted her Resignation Letter dated 04.09.2017 and accordingly her services were terminated with effect from 04.09.2017 as per Proceedings in ROC No.9326/A/17, dated 04.09.2017.

6. The Learned Counsel for the Respondents proceeds to point out that the Petitioner was appointed only on temporary basis and also her temporary services were yet to be regularised and by considering her ill-health condition, her Resignation was accepted by the First Respondent/Principal District Judge, Namakkal and her temporary services were terminated with immediate effect. Also it is represented on behalf of the Respondents that the Petitioner submitted a requisition to resign her job within seven months from the date of her joining duty, which exhibited that she had no interest in working in the Judicial Department. Furthermore, it is projected on the side of the Respondents that 'a unwilling person' need not be required to be retained in Government Service any more.

7. The Learned Counsel for the Respondents comes out with the plea that after a lapse of more than 20 days, the Petitioner submitted her Representation on 28.09.2017, before the First Respondent/Principal District Judge, Namakkal, to the effect that she had resigned her job due to her health condition and she may be excused for her act and prayed for 'Re-appointment'. In the present case, the Petitioner's requisition was rejected. Her temporary appointment was terminated before Probation and even before the regularisation of her temporary services.

8. At this stage, the Learned Counsel for the Respondents refers to the ingredients of Section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under:

"S.50. Acceptance of resignation-(1) 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.

(2) The Government servant may withdraw the notice of his resignation before its acceptance and withdrawal of resignation shall be permitted after its acceptance by the appointing authority.

(3) 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."

and submits that in the instant case, the Petitioner's Resignation was accepted on 04.09.2017 itself and inasmuch as she was only temporarily appointed and was inclined to resign her job even before regularisation of temporary services and all the more, when her resignation was accepted, her request seeking for 'Re-employment' could not be considered on any score.

9. Yet another argument advanced on behalf of the Respondents is that in the Appointment Order of the Petitioner dated 23.02.2017 itself, her appointment as 'Masalchi' was mentioned as 'Temporary' and to terminate her 'temporary service', before regularisation, no necessity had arisen to provide an opportunity to her. Hence, the Petitioner could not be reinstated into service.

10. Lastly it is the contention of the Learned Counsel for the Respondents that the Petitioner had not submitted any Leave Application for her illness before the First Respondent, since she was working in Sub Court, Namakkal only. Further she had not produced any scrap of material to establish that she was ill and took treatment in the Government Hospital, also that she had not produced any document at the time of personal enquiry, on 04.09.2017, to exhibit that she took treatment at the Primary Health Centre, Mudhalipatti, as an Outpatient No.9431, during the last week of August 2017.

11. Continuing further, the Learned Counsel for the Respondents submitted that the Petitioner had applied for Casual Leave for one day on 31.08.2017 only for her illness and the same was granted by the Second Respondent/Subordinate Judge, Namakkal. Further, except her Application seeking for one day 'Causal Leave' on 31.08.2017, she had not submitted any Application during the month of August, 2017. The Learned Counsel for the Respondents relies upon the Division Bench Judgment of this Court between M.Mohammed Akbar Basha vs. The Registrar General, High Court, Madras and Others (reported in 2016-3-L.W 443) whereby and whereunder, at Special Page No.445, in Paragraph Nos.8,9 and 12, it is observed as under:-

"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.

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."

12.The learned Counsel for the Respondents also cites the Order of this Court dated 18.07.2018, in W.P.No.35357 between B.Pitchandi vs. 1.The Principal District Judge of Kanchipuram at Chengalpet and another, wherein at Paragraph Nos.4 and 5, it is observed as under:

"4.Learned counsel appearing for the respondents would submit that at the time of relieving, the petitioner never stated about the illness. Therefore, the aforesaid order was passed on the request made by the petitioner. The request made is only an afterthought. There is no right vested with the petitioner with the corresponding duty on the respondents to take him back in the absence of any Rules. Thus the writ of mandamus would not lie.

5.We do not find any merit in the writ petition. Admittedly, the petitioner was appointed on temporary basis as a Night Watchman. He was relieved on his request. The request for relieving did not say anything about the mental illness. The order relieving the petitioner has not been challenged and the present writ petition has been filed after more than three years. There is no law which requires consideration of the petitioner's belated request. The medical certificate produced before this Court cannot be looked into at this stage. Thus, looking from any perspective, we do not find any ground to grant the relief prayed for by the petitioner. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

13.By way of reply, the Learned Counsel for the Petitioner submits that the Petitioner's Leave Applications submitted by her were not entertained and that she produced the Medical Certificates before the Second Respondent/Sub-Judge, Namakkal, along with her Leave Applications, but the same were not entertained and refused to be received. Further it is the stand of the Petitioner that no enquiry was conducted on 04.09.2017 and that the Leave Application submitted by her was not entertained by the Office of the Second Respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

14.The Learned Counsel for the Petitioner contends that though the Petitioner's appointment was a temporary one, she was

appointed to a regular sanctioned post and further, the Petitioner made a requisition before the Respondents to 'Re-employ' her. In other words, she had withdrawn her Resignation within the statutory notice period, as enshrined in Section 50 (1) of the Tamil Nadu Government Servants (Conditions of Service), Act, 2016.

15.As regards the present case is concerned, the Petitioner was appointed as 'Masalchi' temporarily in the Civil Unit of Namakkal District, as per Proceedings of the First Respondent/Principal District Judge, Namakkal, in R.O.C.No.1739/A/2017, dated 23.02.2017. In fact, she was posted as 'Masalchi' at Sub-Court, Namakkal, in the existing vacancy. At the time of her joining duty, the Petitioner was required to submit Physical Fitness Certificate and Employment Identity Card. In fact, the Petitioner submitted a Resignation Letter on 4.9.2017, stating that because of her ill-health, she could not continue to serve in the post of 'Masalchi' and in candid terms, she had mentioned that she was 'Resigning' her post. The Petitioner's Resignation Letter dated 4.9.2017 was received by the First Respondent/Principal District Judge, Namakkal, through proper Channel and ultimately, her Resignation Application was accepted and she was relieved on 04.09.2017 Afternoon and her services were terminated with immediate effect, which was communicated to the Petitioner, also a Notice/Communication dated 16.09.2017 was given by the Second Respondent to the Petitioner in this regard. In fact, this Court, aptly points out that the term 'Resignation' refers to 'lose hold of the Office' or 'to leave the job'.

16.A perusal of the Resignation Letter dated 4.9.2017, of the Petitioner, in unequivocal terms unerringly points out that the Petitioner submitted her Resignation Letter dated 4.9.2017 to the Second Respondent voluntarily in usual course. Really speaking, her Resignation was accepted by the First Respondent/Principal District Judge, Namakkal, through Proceedings in ROC No.9326/A/2017, dated 04.09.2017, and the same was intimated by the Second Respondent to the Petitioner as per Communication dated 16.09.2017. After her resignation being accepted by the First Respondent, there is no Rule, which pertains to an employment and the relief sought for by the Petitioner seeking for 'Re-employment', in the present Writ Petition, is legally unsustainable one. Furthermore, in 'Resignation' there must be an intention to 'give up' or 'Relinquish the Office' and the concomitant act of its Relinquishment. To put it differently, the word 'Resignation' means relinquishment of one's own right in relation to an Office. To put it precisely, the Resignation Letter of the Petitioner dated 4.9.2017 is an unconditional one and with an intent to operate as such. A 'Resignation' of a Public Office, when made with an intention of relinquishing the Office, accompanied by an act of relinquishment, then nothing further is required. Looking at from any angle, the Writ Petition is devoid of merits.

In fine, the Writ Petition stands dismissed. However, there shall be no order as to costs. Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

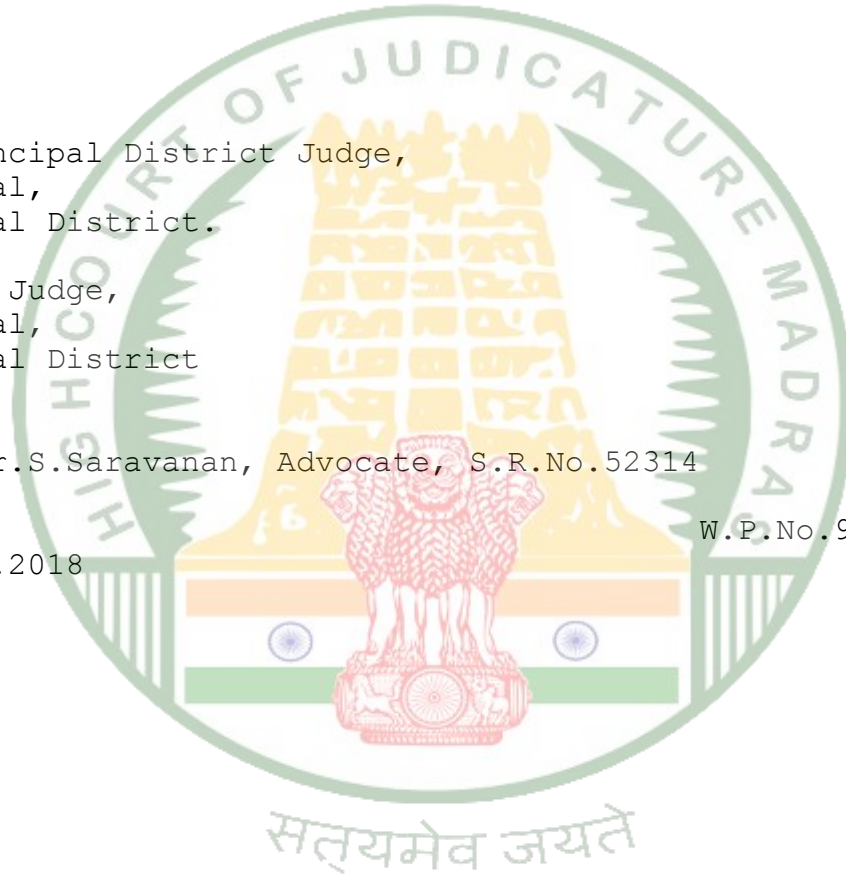
1.The Principal District Judge,
Namakkal,
Namakkal District.

2.The Sub Judge,
Namakkal,
Namakkal District

+1cc to Mr.S.Saravanan, Advocate, S.R.No.52314

SMI/09.08.2018

W.P.No.9143 of 2018



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