

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.03.2018
CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.4 of 2017

M.Paul Perinbam

... Appellant

-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 Joint Secretary,
Government of Tamil Nadu,
Tamil Development, Information &
Public Relations Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 3.The Public Relations Officer,
Tamil Development, Information &
Public Relations Department,
Krishnagiri District. ... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.1454 of 2015 dated 03.11.2016.

WP.No.1454/2015:Writ Petition No.1454 of 2015 has been 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/Nir 2/2013, dated 5.11.2013 and to quash the same and consequently, to direct the respondents to accept the representation dt.28.10.2013 with drawing the resignation dt.28.6.2013 and permit the petitioner to joint duty with continuity of service.

For Appellant :: Ms.T.Aananthi

For Respondents:: Mr.S.T.S.Murthy,
Addl.Advocate General
assisted by
Mrs.P.Rose Kamalam, Government Advocate

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by a learned single Judge of this Court in W.P.No.1454 of 2015 dated 03.11.2016, wherein the prayer made by the appellant herein to quash the proceedings of the second respondent dated 05.11.2013 rejecting the letter of the appellant for withdrawal of his resignation submitted earlier, and for a direction permitting him to join duty with continuity of service, was rejected, on the ground that if no order is passed with regard to the acceptance of resignation within the statutory period of three months as per Rule 41-A(c) of the Tamil Nadu State and Subordinate Service Rules, the resignation shall be deemed to have been accepted by the authority.

2.The facts of the case would run thus:

The appellant was appointed as Guide, in the office of the third 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 second respondent dated 16.07.2007. The appellant joined service on 23.07.2007. The service of the appellant was regularised with effect from 23.07.2009. Thereafter, he was recommended for promotion to the post of 'Care Taker' and he was awaiting for promotion order. 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 his resignation letter dated 28.06.2013 to the second respondent, resigning his post with effect from 01.07.2013. But, no order was passed accepting his resignation till completion of four months. In the meantime, the appellant has set right his personal issues and became ready to continue his service. He forwarded a letter dated 28.10.2013 to the second respondent, withdrawing his resignation and requesting to permit him to join duty. But the order dated 05.11.2013 has been passed by the second respondent, rejecting the request of the appellant to withdraw his resignation, stating that the resignation must be withdrawn within a period of three months ie., 21.10.2013, but the appellant has given his letter to withdraw his resignation only on 28.10.2013, with a delay of seven days. Aggrieved over the same, the appellant filed a writ petition in W.P.No.1454 of 2015 and the same was dismissed by this Court as stated supra.

3.The argument advanced by the learned counsel for the appellant is that there was no communication with regard to acceptance of the letter of resignation which the appellant submitted earlier, by the authorities and hence it is open to the appellant to withdraw his letter of resignation. The learned counsel relied upon a decision of the Hon'ble Supreme Court in Shambhu Murari Sinha v. Project & Development India Ltd.and another, reported in (2002) 3 SCC 437, wherein it has been held that if the relevant scheme not stipulates that an employee

opting for voluntary retirement would be disentitled to withdraw from voluntary retirement, even after the acceptance of the same but before the date of actual release from service, the applicant did have locus poenitentiae to withdraw his proposal for voluntary retirement.

4. However, the learned Addl. Advocate General appearing for the respondents has submitted 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 the stipulated time is lapsed, neither the appellant nor the authorities have any role to play. Stating so, he submitted that the impugned order passed by the learned single Judge requires no interference by this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. 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. The appellant has sent his letter of withdrawal of his resignation only after the expiry of statutory period of three months. Hence the second respondent has rightly rejected the request of the appellant for withdrawal of his resignation. Further, the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant will not come to the rescue of the appellant, as the facts involved in that case is not applicable to the case on hand. The learned single Judge has dealt with the matter in proper perspective and we find no error or infirmity in the impugned order passed by the learned single Judge warranting interference.

7. However, as a matter of special consideration, we leave it to the discretion of the Government to consider the case of the appellant sympathetically, and pass appropriate orders in accordance with law, without being influenced by the observations made above, within a period of three months from the date of receipt of a copy of this judgment.

8. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

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

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

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

+lcc to Government Pleader Sr.No.23362

+lcc to Mrs.T.A.Ananthi, Advocate SR.No.22227

SS(CO)

sm:11.4.2018

W.A.No.4 of 2017

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