

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.14253 of 2018

S.Madhan Kumar

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Home (Police-III) Department,
Secretariat, Chennai - 600 009.

2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

3. The Principal,
Police Training School,
TSP, II Battalion, Avadi,
Chennai - 600 054.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for records and quash the impugned order dated 02.11.2017 issued by the 3rd respondent vide Na.Ka.No.A5/10157/2017, School Order No.1/2017 canceling forthwith petitioner's appointment bearing TNUSRB No.0304763 and consequently direct the 2nd respondent to send the petitioner for training and post him as Grade-II Constable in TSP on par with his batchmates of the year 2017 recruits or in the alternative, to appoint him along with his junior batch of the year 2018 within the time frame to be fixed by this Court.

For Petitioner : Mr.K.Ravi Anantha Padmanaban
For Respondents : Mr.A.N.Thambidurai,
Additional Govt. Pleader for R1 to R3

ORDER

By the proceedings dated 02.11.2017, the resignation letter submitted by the petitioner herein was accepted with effect from 02.11.2017 and he was relieved from the post. Challenging the same, the writ petition has been filed.

2. The petitioner was appointed as Grade-II Police Constable and as per the terms and conditions of the appointment, the petitioner has to undergo training for seven months in addition to one month practical training. The petitioner reported for training on 02.11.2017. Since the petitioner was informed that he could not meet his family members, vis., his children, who were too young, the first child, a daughter is studying in 3rd standard and the younger son is yet to go to school, in frustration, the resignation letter was submitted. Subsequently, the resignation letter has been accepted vide the impugned proceedings. The petitioner has submitted representation seeking cancellation of the proceedings dated 02.11.2017 and for re-appointment.

3. The learned Additional Government Pleader appearing for the respondent submitted that resignation submitted can be withdrawn only before acceptance and not after acceptance and therefore, the claim of the petitioner cannot be considered.

4. The learned counsel appearing for the petitioner submitted that the order accepting resignation was in violation of Rule 36A of Tamil Nadu Special Police Subordinate Service Rule and, therefore, the impugned order is liable to be set aside and the petitioner is entitled to join the training.

5. In this context, learned counsel for the petitioner relied upon the earlier order passed by this court in a similar case (in W.P.Nos.4764 and 4765 of 2014, order dated 24.08.2017), whereunder, the validity of resignation has been considered and it was held that the acceptance of the resignation without appreciating the circumstances under which the resignation has been tendered and without giving waiting time as contemplated under Rule 36 A of the Tamil Nadu Special Police Subordinate Service Rules, 1978, was held not valid. The relevant portion of the said order is extracted hereunder for better clarity :

"5. Learned counsel appearing for the petitioners would at the outset submit that as

per the Tamil Nadu Special Police Subordinate Service Rules, 1978, a member of service may resign his appointment by giving advance notice not less than three months and he may withdraw the notice of his resignation before its acceptance. According to him, the acceptance by the authority concerned without even giving an opportunity to the petitioners within a matter of few days/on the same day is contrary to the provisions as the authority ought to have waited for expiry of three months before the same is accepted or ought to have waited for a reasonable time. According to the learned counsel for the petitioners, the acceptance of the letter on behalf of the principal by the other official is also not a valid acceptance. According to him, the second respondent is the competent authority to accept the resignation. Therefore, in any event, the acceptance of resignation is not valid in the eye of law.

* * * * *

8. Upon consideration of the arguments advanced by the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents, this Court is of the view that there is considerable force in the contentions put forth by the learned counsel for the petitioners as the manner in which the resignation letters had been accepted so promptly without appreciating the circumstances under which the resignation letters were tendered does demonstrate the lack of understanding, as argued by the learned counsel for the petitioner. Moreover, the authority ought to have waited atleast a reasonable time as indicated in Rule 36A of the Tamil Nadu Special Police Subordinate Service Rules, 1978, before the resignation letter came to be accepted. There is also force in the contention that the resignation letters were accepted by the officer, who was not competent to accept the same.

5.1. The order passed in the above writ petition has been confirmed on Appeal in W.A.Nos.632 and 633 of 2018. It is not in dispute that the facts in the present case is similar to the facts in the above writ petitions.

6. Considering the facts placed before this Court and considering the earlier order passed by this Court, the inevitable conclusion is that the impugned order dated 02.11.2017 is liable to be set aside and it is set aside.

7. The petitioner shall be reinstated/reappointed as early as possible and he must be permitted to join training in the batch for whom the training commenced on 02.12.2018 and if not possible he shall be accommodated in the subsequent batch. The writ petition is disposed of in the above terms. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Home (Police-III) Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
3. The Principal,
Police Training School,
TSP, II Battalion, Avadi,
Chennai - 600 054.

+1cc to Mr.K.Ravi Anantha Padmanaban , Advocate SR.No. 82554
+1 CC TO GOVERNMENT PLEADER SR.NO. 83624

W.P.No.14253 of 2018

ASK(05/12/2018)

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