

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.32123 of 2018

M.Paul Perinbam

...Petitioner

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.

...Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring 2nd part of Section 50 (3) of the Tamil Nadu State Government Servants (Conditions of Service) Act, 2016 that "If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice" as null and void being unconstitutional and ultra virus.

For Petitioner : Mrs.T.Aananthi

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner seemed to have submitted a letter dated 28.06.2013, to the Director cum Joint Secretary, Government of Tamil Nadu, Tamil Development, Information & Public Relations Department, the 2nd respondent, seeking permission to resign from the post of Guide. As no order on the request was passed,

it is the contention of the petitioner that terminal benefits should be settled. Thereafter, on 28.10.2013 the petitioner gave a letter withdrawing the resignation. However, on 05.11.2013, 2nd respondent rejected the request to withdraw the resignation.

2. On the above facts, petitioner has now challenged, Section 50(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 on the grounds inter alia that when the petitioner has offered to resign, the 2nd respondent ought to have accepted the same. Petitioner has relied on few judgments supporting her contention which inter alia relates to voluntary retirement.

1. Power Finance Corporation Vs. Pramod Kumar Bhatia, reported in (1997) 4 SCC 280.

2. Shambhu Murari Sinha Vs. Project and Development India Ltd., and Anr. (Shambhu Murari Sinha II), reported in (2002) 3 SCC 437.

3. Srikantha S.M. Vs. Bharath Earth Movers Ltd., reported in (2005) 8 SCC 314.

3. Petitioner has also referred to Sections 4 & 5 of the Indian Contract Act, supporting the arguments. Petitioner has contended that the 2nd limb of Section 50(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2006 is tainted with malafide against the welfare of the Government servant and prayed to declare the same, as ultra vires.

4. Mrs. T. Aananthi, learned counsel for the petitioner, further contended that the resignation ought to have been accepted and the entire service rendered by the writ petitioner, ought to have been recognised and all the terminal benefits ought to have been granted. According to her, resignation is a contract offered by the writ petitioner, which ought to have been accepted by 2nd respondent.

5. Heard Mrs. T. Aananthi, learned counsel for the petitioner and perused the materials available on record.

6. Section 50 of the Tamilnadu Government Servant (Conditions of Service) Act, 2016, deals with Acceptance of resignation. As per sub section 1 of Section 50 of the Act, 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.

7. As per sub section 2 of Section 50 of the Act, a Government servant may withdraw the notice of his resignation before its acceptance and withdrawal of resignation shall not be permitted after its acceptance by the appointing authority.

8. As per sub section 3 of Section 50 of the Act, 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.

9. As per sub section 4 of Section 50 of the Act, notice of resignation given by the Government Servant shall be accepted by the appointing authority, subject to the conditions- (i) that no 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; and (iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period in which the Government servant concerned seeks to resign.

10. As per sub section 5 of Section 50 of the Act, notwithstanding anything contained in clauses (i) and (ii) sub-section (4), 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.

11. Reading of the above makes it clear that within a period of three months from the date of receipt of such notice of resignation submitted, a Government servant may withdraw the notice of resignation, before its acceptance and withdrawal of resignation will not be permitted after its acceptance by the appointing authority.

12. The appointing authority is empowered to issue orders on

the notice of resignation before the expiry of the abovesaid three months period, either accepting or rejecting the resignation, from a date not later than the date of expiry of the notice, by giving reasons therefor. If for any reason, no such order is issued, the resignation shall be deemed to have been accepted on the expiry of the period of notice.

13. Reading of sub section (4) of Section 50 of the Act shows that for accepting the resignation submitted by the Government servant, appointing authority has a duty to verify as to whether any disciplinary proceedings is contemplated or pending against the Government servant under sub Rule (b) of Rule 17 of the Tamilnadu Civil Services (Discipline and Appeal) Rules. Further, the appointing authority has a duty to verify and obtain a report from the Director of Vigilance and Anti Corruption to the effect that no enquiry is contemplated or pending against the government servant; that no dues are pending to be recovered by the Government from the Government servant and that there is no contractual obligations of any kind including contractual obligation to serve the Government, during the period in which the Government servant concerned seeks to resign.

14. In the foregoing paragraphs, we have also extracted sub section 5 of Section 50 of the Act, which provides that notwithstanding anything contained in clauses (i) and (ii) sub-section (4), 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.

15. Acceptance of resignation is not automatic and it is subject to the condition set out in sub section (4) of Section 50 of the Act. Arguments of the learned counsel for the petitioner, that offer of resignation is a contract and reference made to Indian Contract Act are wholly untenable. Reliance on the decisions relating to Voluntary Retirement, cannot be made applicable to the case on hand.

16. Rule 23 of the Tamil Nadu Pension Rules 1978, deals with forfeiture of service on resignation and the same is extracted hereunder.

"23. Forfeiture of service on resignation: - (1)
Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment,

whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."

17. Contention of the learned counsel for the petitioner that the services put in by the writ petitioner ought to have been recognised and that he is entitled to retirement benefits is against the statutory provision which states that resignation from a service or post entails forfeiture of past service. A contract or an alleged breach thereof, can never decide the vires of a Section. There are no merits in the writ petition. Hence, the instant writ petition is dismissed. No costs.

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Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

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.

+1cc to M/s.T.Aanathi, Advocate, S.R.No.84607
+1cc to the Government Pleader, S.R.No.85139.

WP.No.32123 of 2018

KJI(CO)
KAK(04/01/2019)