



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and
THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.P(MD)No.2161 of 2017

Orders reserved on 09.03.2018	Orders pronounced on 15.03.2018
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K.T.Balasubramanian .. Petitioner
Vs.

1. The Principal District Judge,
Principal District Court,
Ramanathapuram.

2. The District Munsif cum Judicial Magistrate,
Rameshwaram, Ramanathapuram District. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in his proceeding in D.No. A1/6662/2016, dated 18.11.2016 and quash the same and consequently direct the first respondent to pay back wages from the date of impugned order passed by him, dated 18.11.2016, to the petitioner.

For Petitioner : Mr.K.Guhan

For Respondents : Mr.D.Sivaraman

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

The petitioner, who was working as a Typist in the District Munsif cum Judicial Magistrate's Court, Rameswaram, has filed this writ petition, challenging the order passed by the first respondent, the Principal District Judge, Ramanathapuram, dated 18.11.2016 and for a direction to be reinstated in service with backwages. By the impugned order, the first respondent declined the request of the petitioner to withdraw his resignation, after the same was accepted by the authority.



2.Mr.K.Guhan, learned counsel appearing for the petitioner submitted that the impugned order has been passed without considering Rule 41-A of the Tamil Nadu State and Subordinate Service Rules and the first respondent failed to consider that the petitioner had sent a review petition on 12.11.2016, which was received on 14.11.2016, i.e., within 90 days and without waiting for the period of 90 days, the resignation was accepted and therefore the petitioner was entitled to withdraw his resignation till the expiry of the 90th day. In support of his contention, the learned counsel appearing for the petitioner placed reliance on the decision of the **Hon'ble Supreme Court** in **Pubjab National Bank v. P.K.Mittal** reported in **AIR 1989 SC 1083** and the decision of the Hon'ble Division Bench of this Court in **G.Parameshwari v. The Registrar General High Court Madras and Others** reported in **CDJ 2016 MHC 2779**.

3.Mr.D.Sivaraman, learned counsel appearing for the respondents submitted that the petitioner had joined duty as Typist on 10.02.2016 and officiated in the said post for six months for the period from 10.02.2016 to 31.08.2016. The petitioner, by letter, dated 31.08.2016, stated that due to family circumstances, he is resigning from the job and on receipt of the said application, the then Principal District Judge, Ramanathapuram, instructed the Chief Administrative Officer, to persuade the writ petitioner to withdraw his resignation and he was contacted over phone, but did not heed to the request and remained absent from duty from 01.09.2016 onwards. In the letter of resignation, the only reason given by the petitioner is on account of the family circumstances, he is resigning his job and the petitioner never pleaded anything about his mother's illness. Thus, his resignation being voluntary and his specific request was to accept the resignation, w.e.f. 01.09.2016, from which date, he did not report for duty. The first respondent did not immediately act on the petitioner's request and was kept pending till 26.09.2016, when the same was accepted and an order to the said effect was passed. The same was communicated to the petitioner immediately.

4.It is further submitted that the petitioner applied for permission to attend a competitive examination for the post of Junior Assistant and Typist, conducted by the Tamil Nadu Public Service Commission on 08.11.2016 and the request to withdraw the resignation was only subsequently given i.e., after the examination was over. Therefore, it is submitted that the petitioner voluntarily and intentionally resigned his job and subsequently has come forward with a different version, which lacks *bona fide*.

5.The learned counsel appearing for the respondents distinguished the decision rendered by the **Hon'ble Supreme Court**



in **P.K.Mittal's case (supra)** on the facts and circumstances of the case, which was dealt with by the **Hon'ble Supreme Court**.

6. Heard the learned counsel for the parties and perused the materials placed on record.

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7. Rule 41-A(b) of the Tamil Nadu State and Subordinate Service Rules reads as follows:

"The Government servant may withdraw the notice of resignation before its acceptance. Withdrawal of resignation will not be permitted after its acceptance by the Appointing Authority".

8. The aforementioned rule enables a Government servant to withdraw his notice of resignation before it expires. Nowhere, the rule stipulate that the appointing authority has to wait for a period of three months for the letter of resignation to be accepted. The rule further mandates that withdrawal of resignation will not be permitted after its acceptance by the appointing authority. Therefore, the first respondent would have no jurisdiction to accept a request for withdrawal of resignation made by the petitioner on and after 26.09.2016. Therefore, the stand taken by the first respondent in the impugned order is fully justified.

9. Insofar as the decision in the case of **G.Parameshwari v. The Registrar General High Court Madras and Others** reported in **CDJ 2016 MHC 2779**, is concerned, the Court placed strong reliance on the decision in case of **P.K.Mittal**. Therefore, we will have to see as to whether the decision in the case of **P.K.Mittal** could be made applicable to the facts in issue as to whether the rules which govern the service conditions in that case was identical to that of the rules to the Tamil Nadu State Subordinate Service Rules. On a perusal of the decision in the case of **P.K.Mittal**, we find that the service rules/regulations governing the conditions of service of the employee concerned, employed with the Punjab National Bank was materially different and the three months outer time limit was stipulated under the rules. However, Rule 41-A, as mentioned above, is quite different and therefore the decision in **P.K.Mittal** can render no assistance to the case of the petitioner and hence, the decision in **G.Parameshwari v. The Registrar General High Court Madras and Others** reported in **CDJ 2016 MHC 2779** is also distinguished.

10. As pointed out earlier, the withdrawal of the resignation will not be permitted after acceptance. The rule does not require the appointing authority to wait for ninety days period. In the facts of the case, the petitioner wanted his resignation to be accepted w.e.f. 01.09.2016 and failed to report for duty thereafter.



11. Thus, for all the above reasons, we find that there is no error in the impugned order, dated 18.11.2016, made in D.No.A1/6662/2016, by the first respondent and accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Principal District Court,
Ramanathapuram.
2. The District Munsif cum Judicial Magistrate,
Rameshwaram, Ramanathapuram District.

+1cc to Mr.K.Guhan, Advocate Sr.No.55438

+1cc to Mr.D.Sivaraman, Advocate SR.No.55516

SMN

VB/JC/SAR3/12.04.2018/4P/5C

**ORDER MADE IN
W.P (MD) No.2161 of 2017
15.03.2018**