

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

*** HON'BLE MS. JUSTICE J. UMA DEVI**

+Writ Petition No.29840 of 2015

Date: -10-2018

#Between:

Dandu Aruna Kumari, D/o D. Ramana,
W/o P. Satyanarayana, D.No.5-17-21,
Reddy Tunglam, BHPV Post,
Visakhapatnam.

... Petitioner

And

The District Judge, Visakhapatnam,
Visakhapatnam and another

... Respondents

! Counsel for the Petitioner : Mr. G.U.R.C. Prasad,

^ Counsel for Respondents : Mrs. V. Uma Devi,

<GIST:

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.29840 of 2015

ORDER: *(per V. Ramasubramanian,J)*

Questioning the refusal of the respondents to allow her to withdraw her resignation letter, the petitioner, who was employed as Office Subordinate in the Court of IV Additional Junior Civil Judge, Visakhapatnam, has come up with the above writ petition.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Smt. V. Uma Devi, learned standing counsel for the respondents.

3. Pursuant to a notification dated 01-11-2013 issued by the District Court, Visakhapatnam, the petitioner was selected and appointed as Office Subordinate against a vacancy earmarked for BC-B (Woman) and posted in the court of III Additional District Judge, Visakhapatnam, vide orders in P.R.No.208-A/2014, dated 27-6-2014. She joined duty on 08-07-2014.

4. Subsequently by the proceedings dated 04-08-2014, she was deputed to work in the Principal District Judge's Court, Visakhapatnam. By another proceedings dated 04-09-2014, she was deputed to work in the court of IV Additional Junior Civil Judge, Visakhapatnam.

5. According to the petitioner, her husband is a coolie and she has two children. The case of the petitioner is that due to serious

family problems and her ill-health, she submitted a letter of resignation on 04-09-2014. It is the case of the petitioner that within 5 days of submission of the resignation letter, she made an oral request to retract. Thereafter she submitted representations dated 28-02-2015 and 22-07-2015 seeking permission to withdraw the resignation letter. But there was no reply. Therefore, contending that she is entitled in law to withdraw her resignation letter, the petitioner has come up with the above writ petition. According to the petitioner, she is entitled to withdraw the letter of resignation, till the acceptance of the resignation is communicated to her in terms of Rule 30 of the Andhra Pradesh State and Subordinate Service Rules.

6. The District Judge, Visakhapatnam has filed a counter affidavit. It is admitted in the counter affidavit i) that by the proceedings dated 27-06-2014, the petitioner was appointed as Office Subordinate; ii) that by the proceedings dated 04-08-2014, she was deputed to work in the District Court; iii) that by the proceedings dated 04-09-2015, she was deputed to work in the court of IV Additional Junior Civil Judge, Visakhapatnam and iv) that the petitioner submitted a letter of resignation on 04-09-2014.

7. But it is claimed in the counter affidavit filed by the District Judge, that after considering the letter of resignation dated 04-09-2014, the District Judge issued orders dated 12-09-2014 accepting the resignation. Therefore, it is claimed by the District Judge in the counter affidavit that the representation dated 28-02-2015 submitted by the petitioner seeking to withdraw her resignation, could not be

acted upon and that by the proceedings dated 11-03-2015, the petitioner was informed of the same in terms of Rule 30 (a) (iii) of the General Rules.

8. In response to the counter affidavit of the District Judge, the petitioner has filed a reply claiming that the order of acceptance dated 12-09-2014 and the order of rejection of her representation dated 11-03-2015 were never communicated to her and that so long as there was no communication of the acceptance of the resignation, she was entitled to withdraw the same, as per the Rules.

9. In the light of the pleadings, two questions arise for consideration namely: a) whether the acceptance of the letter of resignation was communicated to the petitioner; and b) what is the effect of the non-communication of the acceptance, if the answer to the first question is in the affirmative.

10. In the material papers filed along with the counter affidavit, the District Judge has enclosed a copy of the proceeding dated 12-09-2014 by which the resignation of the petitioner is said to have been accepted. But the said proceedings merely contain the signature of the District Judge with date and the rubber stamp and the signature of the Administrative Officer in the Court of District and Sessions Judge, Visakhapatnam. There is not even any indication therein about the receipt of the said communication by the office of the IV Additional Junior Civil Judge's Court, Visakhapatnam, where the petitioner was employed.

11. However, the order dated 11-03-2015 by which the representation of the petitioner dated 28-02-2015 was rejected, contains a reference to the proceedings dated 12-09-2014. It is further indicated in the order dated 11-03-2015 as though the District Court's proceedings dated 12-09-2014 were communicated in Dis.No.7143, dated 15-09-2014. Unfortunately, even this order dated 11-03-2015 does not contain any indication as to how it was communicated to the petitioner.

12. In the light of the specific stand taken by the petitioner that neither the acceptance letter dated 12-09-2014 nor the rejection order dated 11-03-2015 was communicated to her, we passed an order directing the standing counsel for the Registry to produce the records to see as to how the acceptance of resignation was communicated. In response, the standing counsel produced a letter dated 05-07-2018 sent by the Principal District Judge, Visakhapatnam. The first portion of the said letter dated 05-07-2018 reads as follows:

"With reference to the Hon'ble High Court's ROC cited above, I submit that this court issued proceedings in P.R.No.360-A/2014, dated 12.9.2014 accepting the resignation of the writ petitioner and forwarded the same to the individual through the Rent Controller-cum-IV Additional Junior Civil Judge, Visakhapatnam in Dis.No.7143, dated 15-09-2014 for causing service. Subsequently, this court issued official memorandum in Dis.No.8911, dt. 22-9-2015 to the RCC-cum-IV Addl. Jr. Civil Judge, Visakhapatnam to submit the served copy of the said proceedings. In reply to the said Official Memorandum, the said Presiding Officer informed to this Court in letter Dis.No.269, dt. 29-9-2015 that the said proceedings were not served on the writ petitioner. Therefore, this Court issued memo to the Superintendent of the said court who worked during the relevant time calling for explanation. Accordingly, the said Superintendent

submitted her explanation for her failure to serve the proceedings on the writ petitioner and prayed to drop further action.”

13. It is clear from the above that the letter of acceptance dated 12-09-2014 was not served on the writ petitioner. Therefore, our answer to the first question could only be in favour of the writ petitioner.

14. Coming to the second question, the same revolves around Rule 30 of the General Rules for the Andhra Pradesh State and Subordinate Services. It reads as follows:

“30. Resignation: (a) A member of a service may resign his appointment and the acceptance of his resignation by the appointing authority shall take effect:-

(i) in case he is on duty, from the date on which he is relieved of his duties in pursuance of such acceptance;

(ii) in case he is on leave, from the date of communication of such acceptance to the member or if the said authority so directs, from the date of expiry of leave; and

(iii) in any other case, from the date of communication of such acceptance to the member or from such other date, not being earlier than the date on which he was last on duty, as the said authority may, having regard to administrative exigencies, specify.

Provided that the resignation of a member of a service, who is placed under suspension from service, pending investigation or enquiry into grave charges or who is deemed to have been suspended under Rule 8 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 shall not be accepted during the period of such suspension.

Provided further a member of a service may withdraw his resignation before it takes effect.

Provided also that no withdrawal of resignation shall be permitted except with the sanction of the Government, if the withdrawal is made after the resignation takes effect.

(b) If the resignation of a member of a service has been accepted, but has not taken effect and he withdraws his resignation before it has taken effect, he should be deemed to be continuing in service. If the person is permitted to withdraw his resignation after it has taken effect and is re-appointed to the post from which he resigned, such reappointment shall be subject to the conditions specified in sub-rules (c) and (d).

(c) A member of service, shall, if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government.

(d) The reappointment of a person, who has resigned from Government service and who is re-appointed to any service, shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply; and on such re-appointment, he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order.

Provided that nothing contained in this rule shall affect the operation of clause (b) of Article 418 or Article 422 of the Civil Services Regulations or of any other rules similar thereto for the time being in force.

(e) Where a member of a service is selected for appointment by direct recruitment to another post, category or class in the same or different service and is appointed to it, his lien on the service or his probationary right, if any, in the post of the service under the State Government, which he was holding prior to such appointment by direct recruitment, shall be retained for a period of three years or until he becomes an approved probationer in the post, category or class in the same or different service of this State Government, to which he has been selected, whichever is earlier; and if before the expiry of three years he is not an approved probationer in the post to which he was selected for appointment by direct recruitment, in the same or different service of the Government, unless he reverts to the parent Department, he shall be deemed to have resigned from the service of which he was a member prior to such appointment by direct recruitment with effect from the date on which the three years period expires.

Provided that nothing in this sub-rule shall affect the benefits accrued to such member of a service or services in the previous post or posts, except the lien or probationary right, as the case may be, on such post or posts.

Provided further that where a member of a service is selected for appointment by direct recruitment to a post under the service of the Government of India or any other State Government, has lien on a post or probationary right, if any, in the State Government shall be retained for a period of three years or until he becomes an approved probationer in the service of the Government of India as the case may be whichever is earlier, and if before the expiry of three years he is not an approved probationer in any post under the service of that other Government as the case may be, unless he reverts to the services of the State Government, he shall be deemed to have resigned from the service of which he was a member prior to such appointment by direct recruitment, with effect from the date on which the three years period expires"

15. It is clear from Rule 30 (a) (iii) that the acceptance of the resignation of a person shall take effect only from the date of communication of such acceptance to the member. The letter of the District Judge dated 05-07-2018 makes it clear that the letter of acceptance dated 12-09-2014 was not communicated to the writ petitioner.

16. The second proviso to Rule 30 (a) entitles a member of a service to withdraw his resignation, before it takes effect. Since the resignation can take effect only from the date of communication, the request for withdrawal made by the petitioner was perfectly valid as per the second proviso to Rule 30 (a).

17. Even in cases where a resignation is accepted, but a request for withdrawal is made before the acceptance is communicated, the dice is cast in favour of the employee. Such cases are covered by the first part of Rule 30 (b). The first part of Rule 30 (b) creates a deeming fiction that a person, who seeks to withdraw his resignation after its acceptance but before it takes effect, shall be deemed to be continuing in service. Therefore, this rule is squarely applicable to the case of the writ petitioner.

18. In any case, the appointing authority is entitled, as seen from the second part of Rule 30 (b), to reappoint a person even after the resignation has taken effect, provided the conditions stipulated in sub-rules (c) and (d) are satisfied.

19. The petitioner belongs to the last grade service in the Judicial department. According to her, her husband is a coolie and she has two children and that she submitted resignation due to various family problems. Therefore, the burden of proof is strictly on the respondents to show that the acceptance of resignation was communicated to the petitioner. Since they have failed to prove the same, the writ petition deserves to be allowed.

20. Accordingly, the writ petition is allowed, the order dated 11-03-2015 is set aside and the 1st respondent is directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, the petitioner will not be entitled to back wages for the period from 04-09-2014 till the date of rejoining duty, in view of the fact that as on the date of resignation, she had just put in less than two months of service. However, she will be entitled to the other benefits except the back wages.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 10-10-2018

Ksn

