

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.15384 of 2019
and
W.M.P.No.15346 of 2019

T.Neelavathi

... Petitioner

Vs.

1.The Director General of Police
Kamarajar Salai
Mylapore 600 004.

2.The Commandant
Tamilnadu Special Police IV Battalion
Kovai Pudur
Coimbatore-42.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in C.No.A3/7795/05 in BO 516/05, dated 27.07.2005 passed by the 2nd respondent and quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service by considering the petitioner's representations dated 15.04.2007 and 18.12.2014.

For Petitioner : Mr.N.Manoharan

For Respondents : Mrs.A.Sri Jayanthi

Additional Government Pleader

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in C.No.A3/7795/05 in BO 516/05, dated 27.07.2005 passed by the 2nd respondent and quash the same and consequently, direct the respondents to reinstate the petitioner with continuity of service by considering the petitioner's representations dated 15.04.2007 and 18.12.2014.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner was appointed as Grade II Police Constable on 18.02.2003 as per the appointment order issued by the 2nd respondent. After completion of the training period, the petitioner was inducted to F Company of the Tamil Nadu Special Police (TSP), Battalion IV and completed her probation period and got regularized. While she was serving in the TSP, IV Battalion, due to family problem, she inadvertently submitted her resignation dated 03.06.2005 to the 2nd respondent. The 2nd respondent had also issued a memo in C.No.A3/7795/05, dated 08.06.2005 by directing the petitioner to give an undertaking that she will not claim any past departmental rights and consequential benefits in future. Accordingly, she gave an undertaking. Thereafter, on 27.07.2005, the 2nd respondent has passed an order in which the petitioner's resignation was accepted and was relieved on 06.08.2005. Thereafter, the petitioner has realized her mistake after relieving from the family problems and has submitted a representation to the 1st respondent on 15.04.2007 for withdrawing her earlier resignation. She also submitted a petition to the Chief Minister Grievance Cell on 22.11.2007 and also sent a reminder on 23.09.2008. The said petition was forwarded to the 2nd respondent for consideration on 13.11.2008. Eventhough the petitioner had resigned her job on 03.06.2005 and the same was accepted on 27.07.2005 within 53 days from the date of receipt of the resignation letter and she was relieved on 06.08.2005, she immediately gave a letter withdrawing her resignation on 15.04.2007. The period of three months notice shall be reckoning from the date of receipt of such notice by the appointing authority. However, the 2nd respondent passed an impugned order rejecting the claim made by the petitioner on 03.06.2005, against which this writ petition is filed.

4. Mr.Manoharan, the learned counsel for the petitioner submitted that though the petitioner made a resignation letter on 03.06.2005 and the same was accepted by the 2nd respondent on 27.07.2005, she was relieved from the post on 06.08.2005. The learned counsel further submitted that as per the Section 50 of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016, the period has to be fixed for 90 days for cooling period for taking decision in the resignation letter. In the present case, within 53 days from the date of resignation letter, the order was passed, which is contrary to Section 50 of the said Act. The very same issue was considered by the Division Bench of this Court in unreported decision in W.A (MD) No.1956 of

2018 dated 27.03.2019 wherein, it has been held that if the petitioner made a withdrawal of resignation letter within 90 days , the order passed by the authority is barred. Though the petitioner made a withdrawal letter after two years, the 2nd respondent has to wait for 90 days and thereafter, they have to pass orders. Hence, the impugned order passed by the 2nd respondent has to be quashed.

5. The learned Additional Government Pleader submits that the authority will accept the resignation well within a period of 90 days. In the present case, the petitioner made a withdrawal of resignation after 2 years which cannot be considered and the withdrawal of resignation is contrary to Section 50 of the Tamil Nadu Government Servants (Conditions and Service) Act.

6. Considering the facts and circumstances of the case, though the petitioner has entered the service as Police Constable in the year 2003, she made resignation on 03.06.2005, due to some family problem. The said resignation was accepted by the 2nd respondent on 27.7.2005 and the petitioner was relieved on 06.08.2005. The crucial issued involved in the present case is whether the petitioner is entitled to withdraw her resignation after 90 days or not? For better appreciation, Section 50 reads as follows:

"Section 50. Acceptance of resignation: (1) 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.

(2) The Government Servant may withdraw the notice of his resignation before its acceptance and withdrawal of resignation shall be permitted after its acceptance by the appointing authority.

(3) 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 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".

7. On perusal of the above section makes it clear that the Government Servant may withdraw the notice of his resignation. As per the Section 50, sub clause (2), the Government Servant may withdraw the notice of his resignation before his acceptance

and the withdrawal of resignation shall be permitted after its acceptance by the appointing authority. The appointing authority shall issue orders on the notice of resignation before date of expiry of the notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same. As per Section 50 of the Tamilnadu Government Servants (Conditions and Service) Act, notice period is three months. In the present case, the resignation was accepted within a period of three months in compliance of Section 50 of the Act. However, the petitioner made a withdrawal of resignation after two years which cannot be considered well within the period as defined Section 50 of the Act. In the decision of the Division Bench of this Court in W.A (MD) NO.1956 of 2018, paragraph 6 reads as follows.

"6. A contention has been made before the learned Single Judge that if a person resigns from the service he/she should be given counselling before accepting the resignation. The said contention is also appealing. Now-a-days, it is very difficult to get a job and if a person is constrained to resign the job, it would be beyond the control of the person and in that event, the superior authority to whom the resignation letter has been given is expected to call upon the individual and know the details or the background under which circumstances the official was compelled to tender his/her resignation. If under the state of confusion, the official or the Government servant tenders his/her resignation, it is the bounden duty of the superior authority to give counselling by his own or by a professional counsellor. Now-a-days, the police force is facing a lot of profession and is under tremendous pressure and stress and that is the reason why, the police force is seeing a lot of deserters and suicides and they are unable to withstand the pressure and also they are separated from family for a long time. These are all the things which have to be taken into consideration by the higher authorities and they are expected to give counselling by suitable or appropriate trained counsellors. In spite of given counselling, if an officer or Government Servant is very firm in resigning his/her job, after expiry of 90 days, the authority is at liberty to accept the same.

8. In view of the above, the said decision is not applicable to the case on hand and hence, this writ petition cannot be considered by this Court. Therefore, I am not inclined to interfere with the orders passed by the 2nd respondent.

9. Accordingly, the Writ Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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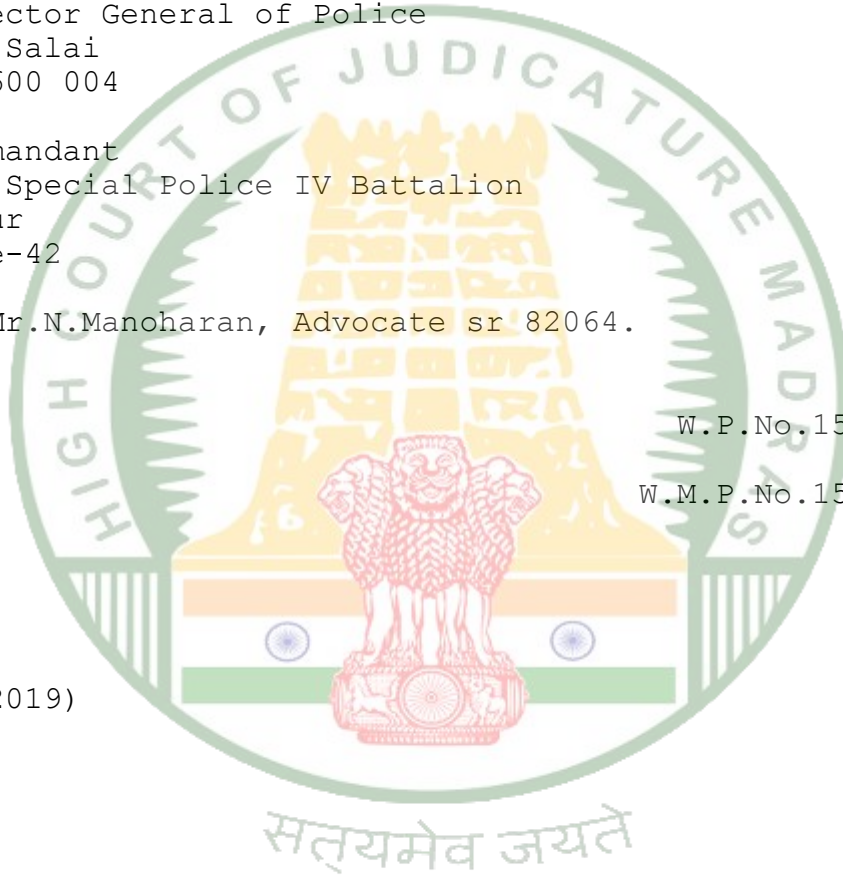
1.The Director General of Police
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2.The Commandant
Tamilnadu Special Police IV Battalion
Kovai Pudur
Coimbatore-42

+1 CC to Mr.N.Manoharan, Advocate sr 82064.

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LN(CO)
SP(04/11/2019)



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