

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 24175 OF 2013

AND

M.P. NOS. 1 & 2 OF 2013

U.Reetha Jayakumari

... Petitioner

- Vs -

1. The Chairman
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai, Chennai 600 005.
2. The Managing Director
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai, Chennai 600 005.
3. The Superintending Engineer
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai, Chennai 600 005. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na. Ka. No.J3/18689/2011 dated 12.7.13 pending on the file of the 3rd respondent and quash the same and issue an order of direction directing the respondents to pay all the consequential benefits including the arrears of pay.

For Petitioner : Mr. T.Arunkumar

For Respondents: Mr. M.Rajasekar, Spl. GP

ORDER

It is the case of the petitioner that she joined the services of the respondent as Draughtsman Grade-III on 12.10.10. While in the midst of her employment, due to certain unforeseen reasons, which caused turmoil in her family, she submitted her letter of resignation to the 2nd respondent on 16.12.11. The 2nd respondent called for remarks from the 3rd respondent on the resignation letter of the petitioner vide communication dated

11.1.12. However, as the problem faced by the petitioner in her family got subsided during the interregnum, she submitted a letter on 12.1.12 withdrawing the earlier resignation letter submitted by her. The 3rd respondent, by communication dated 27.1.12, addressed to the 2nd respondent had recommended accepting the petitioner's request for resigning from duty. However, no orders were passed by the respondents. However, curiously, on 30.9.12, the petitioner was visited with a charge memo by the 2nd respondent calling upon her to explain as to why action should not be taken against her for unauthorised absence from 30.11.11, to which the petitioner submitted her explanation that she had unauthorisedly absented herself from 1.12.11 due to problems faced by her in the family and since the problems got settled, she had submitted letter withdrawing her resignation and requesting permission of the respondents to join duty by letter dated 16.12.11 and had been waiting the orders of the respondents. Though no orders were passed on her explanation, however, all of a sudden, vide order dated 12.7.13, the impugned proceeding had been issued accepting the resignation of the petitioner and relieving her from duty. In the above backdrop, the petitioner has filed the present petition praying for the above relief.

2. Learned counsel appearing for the petitioner submits that though initially resignation letter was given by the petitioner, no order was passed on the said request and the petitioner, thereafter, submitted her letter withdrawing the said resignation. It is the submission of the learned counsel for the petitioner that it is well settled by a catena of decisions of this Court as well as the Hon'ble Supreme Court that the petitioner is well within her rights to submit letter withdrawing the resignation, if no orders have been passed on her resignation. However, almost after a year, out of the blue, the charge memo was issued to the petitioner on 30.9.12, to which the petitioner submitted her explanation. The respondents kept silent even to the said explanation and all of a sudden had issued the impugned proceedings accepting her resignation vide proceedings dated 12.7.13. It is the submission of the learned counsel for the petitioner that the whole sequence of events reveal the lethargic and lackadaisical attitude of the respondents in their functioning as there have been delay all along in acting on the letters of the petitioner, be it her resignation, her withdrawal or the explanation to the charge memo. Non-consideration of the letter of withdrawal of the petitioner renders the impugned proceedings unsustainable, as there is no whisper about the withdrawal letter submitted by the petitioner. In such circumstances, it is prayed to allow the present petition and direct reinstatement.

3. Per contra, learned Special Government Pleader appearing for the respondents, without going into the merits of the contentions advanced by the learned counsel for the petitioner, fairly concedes that there is delay in all phases in considering the entire issue and, therefore, prays that this Court may direct reinstatement by reviving the charge memo and allow the respondents to proceed from the said stage in accordance with law.

4. This Court heard the learned counsel appearing on either side and perused the materials available on record.

5. The facts in issue are not in dispute. The submission of letter by the petitioner and its subsequent withdrawal before passing of any order relieving the petitioner from her services is also not in dispute. In such a backdrop, as contended by the learned counsel for the petitioner, the petitioner is well within her rights to withdraw her resignation before acceptance of the same by the respondents. In the case on hand, the petitioner, after submitting her resignation, had withdrawn her resignation by submitting another letter and had requested the respondents to permit her to join duty. The 2nd respondent has not acted diligently and actively in considering the said letters even after receipt of recommendation from the 3rd respondent opining that the petitioner can be relieved from service. In such a backdrop, passing the impugned order dated 12.7.13. accepting the resignation of the petitioner with effect from 16.12.11, is wholly unsustainable. Almost after two years, the impugned proceeding has been issued accepting the resignation of the petitioner, more so when the 2nd respondent has thought it fit to issue a charge memo on 30.9.12 calling upon the petitioner to explain as to why action should not be initiated against her for unauthorised absence from service since 30.11.11. It is even more quirk that pending consideration of the explanation to the charge memo, without any detriment, the petitioner has been discharged from service by accepting her letter of resignation, which was given almost two years prior. Therefore, from a careful perusal of the overall scenario, it is clear that the act of the respondents in issuing the impugned proceedings relieving the petitioner from service is wholly unsustainable and, therefore, the same deserves to be set aside.

6. However, the petitioner, of her own volition has accepted that she has not been active in service as she was expecting the orders of the respondents to rejoin duty and

continue her service. In essence, it only means that the petitioner has not been rendering her work and in the concept of 'no work, no pay', the petitioner cannot claim backwages, but the petitioner would be entitled to continuity of service.

7. For the aforesaid reasons, this writ petition is allowed by quashing the impugned order dated 12.7.13 and the respondents are directed to reinstate the petitioner in service without backwages but with continuity of service, within a period of four weeks from the date of receipt of a copy of this order. It is further made clear that the respondents are at liberty to proceed against the petitioner, in a manner known to law, for unauthorised absence, if so advised.

8. This writ petition is allowed with the aforesaid observation and directions. Consequently, connected miscellaneous petitions are closed. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Chairman,
Tamil Nadu Slum Clearance Board,
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srg 03/08/2020