

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2020
Pronounced On	31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3179 of 2019
and
C.M.P.No.20092 of 2019

(Through Video Conferencing)

1. State of Tamil Nadu,
Represented by its Secretary,
Home (Police III) Department,
Secretariate, Chennai - 600 009.
 2. The Director General of Police,
Tamil Nadu,
Mylapor, Chennai - 600 004.
 3. The Principal,
Police Training School,
Commandant,
TSP II Battalion,
Avadi, Chennai - 600 054.
- ... Appellants
- Vs.
- S.Madhan Kumar
- ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 03.12.2018 passed in W.P.No.14253 of 2018 and allow this Writ Appeal.

WP No.14258 of 2018-Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for records and quash the impugned order dated 02/11/2017 issued by the 3rd respondent vide Na.Ka.No.A5/10157/2017, School order No./2017 canceling forthwith petitioner's appointment bearing TNUSRB No.0304763 and

consequently direct the 2nd respondent to send the petitioner for training and post him as Grade-II Constable in TSP on par with his batchmates of the year 2017, recruits or in the alternative, to appoint him along with his Junior batch of the year 2018 within the time frame to be fixed by this court.

For Appellants : Mrs.Srijayanthi
Spl. Govt. Pleader

For Respondent : Mr.Ravi Ananda Padmanabhan

J U D G M E N T

C.SARAVANAN, J.

This Writ Appeal has been filed against the impugned order dated 03.12.2018 passed by the learned Single Judge in W.P.No.14253 of 2018. By the impugned order, the learned Single Judge has directed the appellants to re-instate/re-appoint and to permit him to join training in the batch for whom the training commenced on 02.12.2018.

2. The learned Single Judge has followed an earlier order dated 24.08.2017 of this Court in W.P.Nos.4764 and 4765 of 2014 which as affirmed in W.A.Nos.632 and 633 of 2018, where under the validity of resignation was considered.

3. In W.P.Nos.4764 and 4765 of 2014, a learned Single Judge of this Court had earlier held that acceptance of resignation without appreciating the circumstances under which the resignation was tendered and without giving any waiting time as contemplated under Rule 36A of the Tamil Nadu Special Police Subordinates Service Rules, 1978 was not valid.

4. A further appeal before the Division Bench of this Court in W.A.Nos.632 and 633 of 2018 against the above mentioned order dated 24.08.2017 passed by the learned Single Judge in W.P.Nos.4764 and 4765 of 2014 was dismissed.

5. The impugned order of the learned Single Judge in W.P.No.14253 of 2018 is sought to be assailed primarily by relying on the decision of the Hon'ble Supreme Court in Director-General of Police and Another Vs. M Jeyanthi, reported in 2019 SCC OnLine SC 1645.

6. It is submitted that the Hon'ble Supreme Court by its order dated 13.12.2019 in M.Jeyanthi's case (supra), considered the scope of Rule 35A of the Special Rules of Tamil Nadu Police

Subordinates Service, 1953 and held that from a reading of Rule 35A(c) the aforesaid Rule, it is evident that the appointing authority, while accepting the resignation, is empowered to indicate the date from which it will take effect which will not be later than the date of expiry of the notice.

7. The learned counsel for the respondent submits that decision of the Hon'ble Supreme Court in M.Jeyanthi's case (supra), is distinguishable on facts in as much as the service candidate there had worked for almost seven years and thereafter tendered her resignation. It is submitted that the appellant new the consequence of such decision for she was in the department for more than seven years.

8. It is submitted that the respondent in the present case was naive a person and took an impulsive decision and regretted and immediately withdrew the decision at the earliest. It is submitted that the appellants should have given time to the respondent to contemplate instead of instantly accepting the decision of the respondent to resign.

9. The learned counsel for the respondent relied on the few passages from the following cases:-

- i. The decision of the Hon'ble Supreme Court in Balram Gupta Vs. UOI, reported in 1987 (Supp) SCC 228.
- ii. The another decision of the Hon'ble Supreme Court in Sri Kantha S.M. Vs. Bharath Earth Movers Limited, reported in (2005) 8 SCC 314.
- iii. The decision of the Patna High Court in Kavitha Kumar Vs. The State of Bihar, passed in L.P.A.No.895 of 2018 in Civil Writ Jurisdiction Case No.5731 of 2015.

10. Under these circumstances, the learned counsel for the respondent prayed for dismissal of the present writ petition.

11. We have considered the arguments advanced by the learned counsel for the appellants and the respondent. We have also considered the relevant Rules. Rule 36 A of the Tamil Nadu Special Police Subordinates Rules 1978 and Rule 35A of the Special Rules of Tamil Nadu Police Subordinates Service are pari-materia.

12. In the present case, the respondent reported for training on 02.11.2017, when he was allegedly informed by the admin staff of the appellants that for about 8 months, the respondent would not be allowed to meet his children or family during the training period.

13. It is the case of the respondent that the respondent impulsively submitted a letter of resignation which was immediately accepted with alacrity on the very same day without giving the him a chance to re-consider his impulsive decision.

14. It is submitted that the impugned order of the appellant in accepting the resignation on the same day within two hours of tendering of letter of resignation was contrary to Rule 36A of the Tamil Nadu Special Police Subordinates Service Rules, 1978.

15. It is further submitted that within 22 days of the aforesaid decision and resignation, the respondent submitted representation with the office of the appellants and the Chief Minister said for being reinstated.

16. Though the Hon'ble Supreme Court in Srikantha S.M Vs. Bharath Earth Movers Ltd., reported in (2005) 8 SCC 314, has noted that it is a common knowledge that a person proposing to resign often wavers in his decision and even in the case where he has taken a firm decision to resign, he may not be ready to go out immediately and in most cases he would need a period of adjustment and hence may differ.

17. In the said case, the Court considered the facts and the Rule 16(1) of the Company Rules. Rule 16(1) of the said Rules reads as under:-

"A permanent employee may resign his employment by giving one month's notice in writing or by paying one month's basic pay in lieu of notice to the Company. The resignation will become valid and effective only after the Company communicates in writing to the employee accepting his resignation. If an employee gives notice of his intention to resign, the management may accept the resignation and release him at once or at any time before the date of expiry of the notice period, in which case he will be paid only for the period he actually works."

18. There employee had not paid one month's salary in lieu of notice and therefore, resignation was not in accordance with aforesaid rules. Therefore, the ratio of the Hon'ble Supreme Court cannot be applied to the facts of the present case.

19. The Hon'ble Supreme Court in Balram Gupta Vs. Union of India, reported in 1987 Supp SCC 228:1988 SCC (L&S) 126, reiterated the principle in Union of India and Others Vs. Gopal

Chandra Misra and Others, (1978) 2 SCC 301 and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants.

20. In Balram Gupta's case (supra), the Hon'ble Supreme Court held that the employee withdrew his notice of voluntary retirement on account of persistent and personal requests from the staff members. But the prayer for withdrawal was not allowed by the employer on the ground that it had already been accepted by the Government.

21. There it was observed that Rule 48-A(4) of the Central Civil Services (Pension) Rules, 1972 precluded a government servant from withdrawing his notice except with specific approval of the appointing authority. The Court in paragraph No.13 held as follows:-

".....In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees."

22. We are however unable to come to the rescue of the respondent in the light of the decision of the Hon'ble Supreme Court cited by the learned counsel for the appellants in the case of M.Jeyanthi's case (supra).

23. The Court held that authority can legitimately accept the resignation from the date anterior to the expiry of the notice. Upon the acceptance of the resignation, the cessation of service takes place and it is not open to the employee to withdraw the resignation.

24. In the aforesaid case the candidate had tendered resignation letter on 01.06.2017 and the resignation was accepted by the appointing authority on 12.06.2017. The candidate thereafter on 13.07.2017 sent a letter withdrawing the

resignation.

25. The Court held that the High Court was not justified in coming to a conclusion that within the period of 90 days which the period of notice required under the rules, it was open to the employee to withdraw the resignation even after the acceptance. The Hon'ble Supreme Court held that this construction would be clearly contrary to the provisions of Rule 35A of the Special Rules of Tamil Nadu Police Subordinates Service, 1953.

26. It is further noticed that Rules under consideration and the rules considered in M.Jeyanthi's case (supra) read identically. In paragraph No.10. the Court held as under:-

10. In the present case, as the facts which have been narrated indicate, the resignation dated 1 June 2017 was accepted on 12 June 2017. It was only a month thereafter on 13 July 2017 that the respondent purported to withdraw the resignation. The resignation having taken effect upon its acceptance, the withdrawal was of no consequence. We do not find merit in the submission that the acceptance of the resignation was invalid. The order which was passed clearly indicates the acceptance of the resignation. The order, however, provides that if the Vigilance and Anti Corruption Department indicated that any adverse remarks or if any adverse noting was made by the Special Branch CID, the resignation would be cancelled. The fact of the matter, however, is that the acceptance of the resignation was complete on 12 June 2017. Once this was the position, the withdrawal was of no consequence in law.

27. The ratio of the Hon'ble Supreme Court in the said case is loud and clear. Once the appointing authority has accepted the resignation, it cannot be diluted at a later point of time merely because an employee or the member of the service has a second thought about his resignation.

28. We are thus bound by the decision of the Hon'ble Supreme Court in M.Jeyanthi's case (supra). Under these circumstances, we are of the view that the present Writ Appeal deserves to be allowed in the light of the decision of the Hon'ble Supreme Court in M.Jeyanthi's case (supra)

29. Under these circumstances, we are constrained to allow this Writ Appeal filed by the appellants. Accordingly, this Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To.

1. The Secretary,
Home (Police III) Department,
State of Tamil Nadu,
Secretariate, Chennai - 600 009.
2. The Director General of Police,
Tamil Nadu,
Mylapor, Chennai - 600 004.
3. The Principal,
Police Training School,
Commandant,
TSP II Battalion,
Avadi, Chennai - 600 054.

+1cc to M/s.K.Ravi Anantha Padmanaban, Advocate Sr.No.25784
+1cc to the Government Pleader Sr.No.25878

Pre-Delivery Judgment
in

W.A.No.3179 of 2019 and
C.M.P.No.20092 of 2019

vsn-ii (co)
rr ii (14/09/2020)

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