

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.01.2020	Delivered on 13.01.2020
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.28582 of 2019
and
WMP No.28324 of 2019

C.Kuppusamy Petitioner

.Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division,
Metupalayam Road,
Coimbatore 641 043.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Region,
Chennimalai Road,
Erode-638 001.

3.The Branch Manager,
Karur Branch Depot,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Karur.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned Order in Pa.No.1052/B2/PB1/TNSTC/Coim/ER/19 dated 06.09.2019 passed by the 2nd respondent and quash the same and direct the respondents to allow the petitioner to join duty.

For Petitioner : Mr.K.Balasubramaniam

For R 1 & R 2 : Mr.A.Sundaravadanam

O R D E R

The impugned order passed by the 2nd respondent is the subject matter of challenge in the present writ petition and the petitioner has also sought for the consequential relief of directing the respondents to permit the petitioner to join duty.

2.The case of the petitioner is that he was appointed as a driver in the year 2007, by the Transport Corporation. He tendered his resignation to the 3rd respondent on 14.06.2019 and there was no response from the respondents. The Deputy General Manager of Erode Region initiated disciplinary proceedings against the petitioner on 26.08.2018, for unauthorised absence from 14.06.2019. The petitioner also gave his reply for the charge memo.

3.In the meantime, the petitioner submitted a letter to the 2nd respondent on 03.09.2019, withdrawing his resignation and expressed his willingness to continue with the job. On 06.09.2019, the 1st respondent intimated the petitioner that his resignation has been accepted and this was received by the petitioner on 07.09.2019. This proceedings dated 06.09.2019, has become the subject matter of challenge in the present writ petition.

4.The learned counsel for the petitioner submitted that the petitioner had submitted the resignation letter on 14.06.2019, since he was undergoing emotional distress and he was not in a position to take right decision. The learned counsel further submitted that this resignation letter was not accepted by the respondents and the same is clear from the fact that the pay slip of the petitioner was processed for the months of July, August and September 2019 and the Deputy General Manager of Erode Region, had also initiated proceedings against the petitioner for unauthorised absence from 14.06.2019. The learned counsel submitted that the petitioner had also given his letter on 05.09.2019, withdrawing the resignation. However, the 1st respondent has passed the impugned order by accepting the resignation after the petitioner had withdrawn the resignation.

5.Per contra, the learned counsel appearing on behalf of the respondent Corporation submitted that Rule 19 of the Model Standing Orders available for the Tamil Nadu State Transport Corporation, specifically provides that the workmen can give the resignation letter by giving 15 days notice if he is a regular workmen. The learned counsel submitted that once the 15 days gets over, there is no provision for withdrawing the resignation. The learned counsel further submitted that the 1st respondent took a conscious decision to accept the

resignation of the petitioner rather than causing him any hardship by proceeding with the departmental enquiry. The learned counsel submitted that till the resignation was accepted, the respondent Corporation was liable to process the salary of the petitioner and that cannot be put against the Corporation. The learned counsel in order to substantiate his submissions relied upon the following orders of this Court.

1.P.A.Janarthanan .Vs. The Presiding Officer and another made in W.P.No.29069 of 2013.

1.M.Mohamed Akbar Basha .Vs. The Registrar General, High Court, reported in MANU/TN/0665/2016.

3.R.Amutha .Vs. Principal District Judge, Namakkal and Ors., reported in MANU/TN/6678/2018.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.There is no major controversy in the facts of the present case. Therefore, this Court can straightaway go into the issue that is involved in this case. The petitioner had admittedly given his resignation on 14.06.2019, clearly expressing his mind to resign from his job. There is no complaint of coercion or undue influence and the petitioner only claims that he was in a disturbed mind. The learned Standing Counsel appearing on behalf of the respondent Corporation categorically stated that Clause 19 of the Model Standing Orders that are followed by the State Transport Corporation clearly provides that 15 days notice must be given by a regular workmen, who wants to resign from service. The clause does not provide for any withdrawal of resignation at a later point of time.

8.The resignation has to be accepted and appropriate orders must be passed only by the 2nd respondent on getting the concurrence of the 1st respondent. It is true that proceedings were initiated and charge memo was issued against the petitioner for unauthorised absence by the Deputy General Manager of the State Transport Corporation, Erode Division and the petitioner was also paid salary for three months from July to September 2019. The respondents thought it fit not to proceed further with the departmental proceedings and therefore, dropped it and accepted the resignation given by the petitioner.

9.The learned counsel for the petitioner has brought to the notice of this Court the service rules of the Transport Corporation and he specifically relied upon rule 32 and the same is extracted hereunder:

"32.Provision relating to resignation
and re-employment: (a) (i) Without prejudice to

any specific provision made if this regard in any other Rule, an Employee shall not quit the service of the Corporation unless gives notice, as specified in clauses (ii), (iii)are below, in writing of this intention to quit the service reimburses to the Corporation the salary (pay and allowances) in lieu of the notice period, and unless he is permitted by the Competent Authority to quit the service. Any sum due from the employee on this account i.e., salary in lieu of notice is liable to be recovered the money due to him from the Corporation.

(ii) A "Workman" to whom the provisions of the Certified Standing Orders of the Corporation apply, be governed by the relevant provision in the Certified Standing Orders.

(iii) An employee holding a post in a Supervisory Group shall give a notice of two months or shall reimburse to the Corporation an amount equal to the salary for two months in lieu of such notice;

(iv) An employee holding a post in the Managerial cadre shall give a notice of three months or shall reimburse to the Corporation an amount equal to the salary for three months in lieu of such notice.

Provided that an employee who is under the terms of a contract or bound to serve the Corporation for a specified minimum period under any agreement, shall not so leave the Corporation until after the expiry of such period.

Note-1: Resignation given by an employee cannot be accepted, if it is withdrawn by him before orders are actually accepting the resignation.

Note-2: Orders accepting the resignation shall be issued as expeditiously as possible.

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10.The learned counsel for the petitioner submitted that in view of the above rule, resignation given by an employee cannot be accepted, if it is withdrawn by him before the same is accepted. The learned counsel submitted that the petitioner gave the resignation on 14.06.2019 and withdrew the same on 03.09.2019. He again sent a letter on 05.09.2019, withdrawing his resignation. According to the learned counsel for the petitioner, the order accepting the resignation was passed only

on 06.09.2019 and therefore, this order goes against the service rules and such acceptance of the resignation by 2nd respondent is bad in law.

11. In order to appreciate the submission made by the learned counsel for the petitioner, it must be seen if the petitioner had in fact withdrawn his resignation as claimed by him and whether there is any proof to substantiate the same. The petitioner claims to have withdrawn the resignation on 03.09.2019. There is no proof to show that this letter was actually given to the 2nd respondent. The petitioner has again given a letter dated 05.09.2019, withdrawing the resignation. If really the petitioner had given the earlier letter dated 03.09.2019, withdrawing his resignation, the petitioner would have mentioned so in his subsequent letter. However, there is no such mention in the said letter. This letter dated 05.09.2019, was sent by post and the online tracking has been filed before this Court which shows that the letter was delivered to the 2nd respondent Corporation on 06.09.2019 at 11.21 A.M. It is seen from the impugned order dated 06.09.2019 that the resignation of the petitioner was accepted on 05.09.2019 itself and it was only intimated to the petitioner on 06.09.2019. Probably, the petitioner coming to know of the same had hurriedly sent a letter on 05.09.2019, withdrawing his resignation.

12. In view of the above discussion, it is seen that the resignation given by the petitioner was accepted even before he withdrew it by his letter dated 05.09.2019, which was received by the respondent only on 06.09.2019. Therefore, this Court finds that the impugned order passed by the 2nd respondent accepting the resignation given by the petitioner is in accordance with the service rules.

13. It will be relevant to take note of the judgments relied by the learned counsel appearing on behalf of the Transport Corporation. This Court in P. Janarthanan, referred supra considered the relevant clause in the Model Standing Orders and held as follows:

"5. It is seen that the Petitioner's resignation letter dated 11.07.2003 was received by the 2nd Respondent/Transport Corporation on 14.07.2003 and the same was accepted by them on 28.07.2003 within the statutory period of 15 days. Though, according to the Petitioner, his letter of withdrawal of resignation dated 25.07.2003 was not taken into account by the employer, according to the 2nd Respondent/Transport Corporation, the said letter reached them only in the month of August

2003. To substantiate their case, the 2nd Respondent/Transport Corporation has relied on the Model Standing Orders available to the Tamil Nadu State Transport Corporation and relevant portion of clause 19 reads as under:

19. Resignation:

(a) A Workman desirous of leaving the service of the Corporation shall give notice in writing to the Corporation as below, or an amount equivalent to the number of days wages/pay corresponding to the number of days of notice he is required to give under these orders, before he leaves the services of the Company.

(i) Probationers and temporary workmen : 7 days

(ii) Regular Workmen : 15 days

Provided that a workman, who is under the terms of a contract or bound to serve the Corporation for a specified period shall not so leave the Corporation until after the expiry of such period.

(b) A workman, who resigns from the services of the Corporation or voluntarily abandons the employment shall not be entitled to any retrenchment compensation.

(c) If any workman, other than a casual workman leaves the Corporation without notice, he shall be liable to pay to the Corporation, an amount equivalent to the number of days notice he is required to give under these orders without prejudice to any other action which the Corporation may take with reference to the terms of the contract or bond executed by him.

6. On a reading of the aforesaid clause, it is clear that the Petitioner, being a permanent workman, will have to give 15 day's notice to the Management, before submitting his resignation. In the case on hand, the the Petitioner has submitted his resignation on 11.07.2003 and the employer has received the same on 26.07.2003. From the records, it is seen that Ex.W5 is the Acknowledgment Card for Ex.W4, dated 25.07.2003 - Withdrawal of the Resignation Letter sent by the Petitioner to the 2nd Respondent/Transport Corporation. Though, according to the Petitioner, Ex.W4 - letter of withdrawal of his resignation, dated 25.07.2003 was dispatched within 15 days from the date of the resignation letter dated 11.07.2003, Ex.W5 -

Acknowledgment Card clearly shows that Ex.W4 was received by the 2nd Respondent/Transport Corporation only on 06.08.2003.

7. Even though the letter of withdrawal of resignation by the Petitioner is dated 25.07.2003, as the said letter has not reached the 2nd Respondent/Management within the statutory period of 15 days, the Petitioner's letter of resignation dated 11.07.2003 is deemed to have come into effect. As his resignation has been accepted and having been relieved from service, the Petitioner is not entitled to withdraw the same".

14. The next judgment that can be relied upon is in the case of M. Mohammed Akbar Basha, referred supra, the relevant portions of the order is extracted hereunder:

"8. It is to be noted that the term 'Resignation' means the act of giving up or relinquishing the office. To constitute a 'Resignation', it must be an unconditional one and with an intent to operate as such. In reality, a 'Resignation' of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment. Suffice it for this Court to point out that 'Resignation' means a spontaneous relinquishment of one's own right and in relation to an office. In general, juristic sense, in order to constitute a complete and operative resignation, there must be an intention to give up or relinquish the office and the concomitant act of its relinquishment as per decision *Mothiram Vs. Param Dev* reported in AIR 1993 SC at page 1662.

9. The relinquishment of one's own right meaning 'Resignation' is conveyed by the Latin maxim 'Resignation est juris propii spontanea refutatio'. In relation to the office, resignation connotes 'to lose hold of the office' or 'to leave the job'. Indisputably, the resignation of an employee from a particular office when it was accepted by the authorities, then terminates the status of 'Master and Servant'. In Law, an employee had no *Locus Paenitentiae* to withdraw his offer of resignation after it was accepted".

15.The last judgment that can be relied upon is in the case of R.Amutha, referred supra, the relevant portions of the order is extracted hereunder:

"10.In this connection, it is not out of place for this Court to make a relevant mention that the Hon'ble Supreme Court in the decision of Dr.Prabha Atri V. State of Uttar Pradesh reported in Air 2003 SC at page 534 had observed that 'to constitute resignation the letter of resignation must be unconditional and with an intention to operate as such. Where a person submits a resignation, then in such contingency, the question of holding an enquiry never arises and the authorities are left with no alternative but to terminate his services as per decision R.N.Mahindra V. State of Himachal Pradesh reported in AIR 1953 HP at page 125. After all, 'Resignation' is a 'Bilateral Concept'. The service of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the authorities as per decision Raj Narain V. Srimathi Indira Gandhi reported in AIR 1973 SC at page 1302. Moreover, acceptance of resignation does not amount to 'dismissal'.

11.Be that as it may, in the present case on hand, the Petitioner in his letter dated 31.01.2014 addressed to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore had in a clear cut fashion mentioned that because of his family problems, he is willing to give resignation and prayed for acceptance of his letter. In fact, his resignation was accepted by the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore as per proceedings dated 05.02.2014 with effect from 01.02.2014 forenoon. Resultantly, his appointment was terminated with immediate effect. In the present Writ Petition, the Petitioner has come out with a plea that the order of accepting his resignation by the Second Respondent/Learned Chief Judicial Magistrate, Coimbatore must be reviewed. In this regard, he assigns a reason that only out of depression and frustration, he had submitted his resignation letter dated 31.01.2014 to the Third Respondent/Learned Judicial Magistrate-VI, Coimbatore".

16.It is clear from the above judgments that once an employee consciously tenders his resignation from a public Office with an intent to relinquish the Office, the same can be acted upon by the employer. This is more so in a case where the intent of the employee is clear from the letter and he infact acted upon the letter by not going to the Office which ultimately ended in a charge memo for unauthorised absence.

17.The 2nd respondent in consultation with the 1st respondent had taken a conscious decision to accept the resignation letter given by the petitioner and they decided to drop the departmental proceedings against the petitioner. The respondents felt that rather than prolonging the agony of the petitioner by making him face disciplinary proceedings, they thought it fit to accept the resignation given by the petitioner. The later change of mind of the petitioner to withdraw the resignation, does not in any way take away the right of the respondents to accept the resignation and relieve the petitioner from his services.

18.In the result, this Court does not find any ground to interfere with the Order passed by the 2nd respondent and accordingly, this Writ Petition is dismissed. The 1st and 2nd respondents are directed to settle all the dues payable to the petitioner within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division,
Metupalayam Road,
Coimbatore 641 043.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Region,
Chennimalai Road,
Erode-638 001.

3.The Branch Manager,
Karur Branch Depot,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Karur.

+1cc to Mr.K.Balasubramaniam, Advocate Sr.3447

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