IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.10.2021
Pronounced On	04.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19966 of 2021

(Through Video Conferencing)

K.Ravichandran ...Petitioner

Vs.

1. The Principal Secretary,
   Commercial Taxes of Chennai,
   Triplicane, Chennai - 5.

2. The Joint Commissioner,
   State Tax Vellore Division,
   Vellore - 632 001.

3. The Deputy Commissioner,
   State Tax Vellore Division,
   Vellore - 632 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in respect of the order passed by the third respondent herein (Deputy Commissioner, State Tax Vellore) dated 07.05.2021 in Rc.No.A2/1656/2020 and quash the same and consequently declare the resignation letter as withdrawn and appoint the petitioner in service as Junior Assistant.

For Petitioner : Mr.D.Raja Gopal

For Respondents : Mr.L.S.M.Hasan Fizal, Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the entire records in respect of the order dated 07.05.2021 passed by the third respondent in Rc.No.A2/1656/2020 and quash the same and consequently declare the resignation letter as withdrawn and appoint the petitioner in service as Junior Assistant.

2. The petitioner was appointed as a Junior Assistant in the Commercial Tax Office at Paramkudi. Thereafter, the petitioner was transfered from Madurai Division to Vellore Division as a Junior Assistant in the office of the Deputy Commissioner (ST), Vellore.

3. It appears that the petitioner suffered from flu and therefore sent a resignation letter on 05.10.2020. The aforesaid letter was received by the office of the respondent on 07.10.2020. After expiry of five months, the petitioner had sent a letter dated 02.03.2021 and withdrew the resignation letter.

4. However, the third respondent passed an order dated 07.05.2021 stating that the resignation is deemed to have been accepted and come into force at the expiry of the period of notice specified under Section 50(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

5. The petitioner has sent a representation dated 10.08.2021 with a request to the respondent to re-consider the said decision. This case was heard on an earlier occasion. The respondents were directed to consider the representation of the petitioner.

6. The respondent has now filed a copy of letter dated 21.10.2021 bearing reference No.Rc.A2/1656/2020 addressed to the office of the Special Government Pleader, wherein, they have stated that the petitioner was un-authorisedly absent without submission of any application for leave from 19.08.2020 till the date of memorandum dated 31.08.2020 and therefore violated to the procedure for taking leave.

7. It is further submitted that the petitioner was in the habit of taking Extraordinary Leave while working in Ramanathapuram as detailed below:

Sl. No	Nature of Leave	Period of Leave		No. of days
		From	To	
1.	Extraordinary Leave without pay	07.05.2019	21.05.2019	15
2.		01.09.2019	08.10.2019	38
3.		17.10.2019	13.01.2020	89
4.		15.01.2020	03.06.2020	141
5.		18.08.2020	24.09.2020	38
Total				321

8. Under these circumstances, it is therefore submitted that question of reinstating the petitioner after the order dated 07.05.2021 came to be passed in the light of Section 50 (3) of the Tamil Nadu Government (Conditions of Service) Act,

2016 cannot be countenanced. He therefore submits that the Writ Petition is liable to be dismissed.

9. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused Section 50 of the Tamil Nadu Government (Conditions of Service) Act, 2016 which reads as under:-

> 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 not 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 not 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.
>
> (4) Notice of resignation given by the Government servant shall be accepted by the appointing authority, subject to the conditions—
>
> > (i) that no disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;
> >
> > (ii) that a report from the Director of Vigilance and Anti-Corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;
> >
> > (iii) that no dues are pending to be

recovered by the Government from the Government servant concerned; and

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period in which the Government servant concerned seeks to resign.

(5) Notwithstanding anything contained in clauses (i) and (ii) of sub-section (4), where a Government servant, under suspension or against whom disciplinary or criminal action or vigilance enquiry is pending, seeks to resign, the appointing authority shall examine the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of the notice of resignation.

10. Section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is categorical. The Government Servant can resign by giving a notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The three months is to be reckoned from the date of receipt of such notice by the appointing authority.

11. In Dr.Prabha Atri Vs. State of U.P., (2003) 1 SCC 701, the Hon'ble Supreme Court noted that the Service Rules provided three months for notice of resignation and the letter of resignation was issued with immediate effect and therefore the Court held that same could not be used by an employer to get rid of the employee.

12. In this case, the petitioner sent a notice on 05.10.2020 which was received by the office of the respondents on 07.10.2020. Sub Clause 2 to Section 50 of the Act makes it clear that the Government Servant may withdraw the notice before its acceptance and withdrawal of resignation shall not be permitted after its acceptance by the appointing authority.

13. Sub Clause 3 to Section 50 of the Act indicates that the appointing authority may either accept or reject the notice of resignation before the expiry of three months and issue appropriate orders and communicate the same to the Government Servant with reasons. Sub Clause also states that if no such order is passed, the resignation shall be deemed to have been accepted at the expiry of the notice period of three months.

14. Thus, a Government Servant has three months time to speculate and withdraw the notice of his resignation. If it is not withdrawn, it will be deemed as the request of the such

Government Servant for resignation has been accepted at the expiry of three months period. Thus, by operation of law, the petitioner's resignation is deemed to have been accepted at the expiry of three months from the date of receipt of resignation letter by the appointing authority and immediate superior of the petitioner.

15. I do not find any merits in this Writ Petition. Therefore, this Writ Petition is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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   Triplicane, Chennai - 5.

2. The Joint Commissioner,
   State Tax Vellore Division,
   Vellore - 632 001.

3. The Deputy Commissioner,
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   Vellore - 632 001.

+1cc to Special Government Pleader (Taxes) SR. No.7809

W.P.No.19966 of 2021

GPL (CO)
PR (17/02/2022)