



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 16915 of 2017

S.Ganesan

... Petitioner

-vs-

1. The State of Tamil Nadu
represented by the Secretary to Government,
Department of Rural Development,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Cuddalore.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Second Respondent relating to the impugned orders (i) bearing ref: Moo. Mu. 2785/10/(P.A2) dated 18.10.2010; (ii) bearing ref: Na. Ka. No. P.A2/4145/2015 dated 11.01.2016; and (iii) bearing ref: Na. Ka. No. P.A2/452/2017 dated 13.03.2017 and quash the same and consequently direct the Respondent to reinstate the Petitioner into service as Road Inspector with all backwages, seniority, service, promotion and other benefits.

For Petitioner : Mr. R.Saravanan
for Mr. T.Sai Krishnan

For Respondents: Mr. Vadivelu Deenadayalan,
Additional Government Pleader

O R D E R

Heard Mr. R.Saravanan, Learned Counsel appearing for the Petitioner and Mr. Vadivelu Deenadayalan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Road Inspector in the Transport Department, had submitted his resignation from the



said post by letter dated 13.09.2010 addressed to the Second Respondent. According to the Petitioner, he had withdrawn the said resignation by another letter dated 20.09.2010, but without taking it into consideration, the Second Respondent by Order No. Moo. Mu. 2785/ 10/(PaA2) dated 18.10.2010 communicated that the resignation of the Petitioner has been accepted by the competent authority. The Petitioner claims to have made a representation dated 23.12.2010 for reinstatement in service, but no proof of having despatched the same has been produced in that regard. It is borne out from the record that the Second Respondent in the Order in Na. Ka. No. PaA2/4145/2015 dated 11.01.2016 referring to an undated representation made by the Petitioner for reinstatement in service has rejected it by stating that such request has been made after the lapse of a period of 5 years from the acceptance of the resignation by Order No. Moo. Mu. 2785/ 10/(PaA2) dated 18.10.2010 passed by the Second Respondent. The Petitioner had made another representation dated 06.01.2017 and the Second Respondent by Order in Na. Ka. No. PaA2/452/2017 dated 13.03.2017 reiterated that the withdrawal of the resignation could not be made after it had been accepted and the Petitioner had been relieved from service. In such circumstances, the Petitioner has filed this Writ Petition challenging the Order No. Moo. Mu. 2785/ 10/(PaA2) dated 18.10.2010, Order in Na. Ka. No. PaA2/4145/2015 dated 11.01.2016 and Order in Na. Ka. No. PaA2/452/2017 dated 13.03.2017 passed by the Second Respondent and to consequently reinstate him with backwages, seniority, service, promotion and other benefits.

3. It is highlighted by Learned Counsel for the Petitioner from the Order No. Moo. Mu. 2785/ 10/(PaA2) dated 18.10.2010 passed by the Second Respondent that it specifically contains in its reference that after the submission of the resignation of the Petitioner by letter dated 13.09.2010, there has been another letter dated 20.09.2010, which according to him is withdrawal of that resignation, but without any discussion in that regard, his resignation has been accepted and he has been relieved from service. He further states that the Petitioner had been making successive representations for his reinstatement into service in view of the said withdrawal of the resignation by letter dated 20.09.2010 before its acceptance on 18.10.2010, but that contention has not been properly examined in the legal perspective.

4. Learned Additional Government Pleader appearing for the Respondents seeks to explain that no such letter of withdrawal of resignation dated 20.09.2010 has been made by the Petitioner and the reference to that letter was a communication in Na. Ka. No. A1/53/09 dated 20.09.2010 from the Block Development Officer, Keerapalayam Panchayat Union to the Second Respondent forwarding the resignation of the Petitioner and has produced



its copy. However, in the absence of any specific pleading to that effect in the Counter-Affidavit filed by the Second Respondent on 06.11.2017, it is not possible to accept the same.

5. At this juncture, it must be recapitulated here that the legal position is established by the Constitution Bench of the Hon'ble Supreme Court of India in Union of India -vs- Gopal Chandra Misra [(1978) 2 SCC 301] that in the absence of any express prohibition to the contrary, an employee is entitled, as of right, to withdraw his resignation before acceptance. Moreover, clause (b) of Rule 41-A of the Tamil Nadu Subordinate Service Rules also provides as follows:-

"41-A. Acceptance of resignation:-

(b) The Government servant may withdraw the notice of his resignation before its acceptance. Withdrawal of resignation will not be permitted after its acceptance by the appointing authority."

Having regard to the aforesaid legal position coupled with the facts of the instant case, where the valuable rights of the Petitioner is involved, it is incumbent upon the Respondents to explain as to what was the actual contents of the letter dated 20.09.2010 said to have been received from the Petitioner in reference of the Order No. Moo. Mu. 2785/ 10/(PaA2) dated 18.10.2010 passed by the Second Respondent.

6. In that view of the matter, the Respondents shall take note of Rule 41-A(b) of the Tamil Nadu Subordinate Service Rules and verify the records and conduct enquiry affording an opportunity of personal hearing to the Petitioner to substantiate his contention that he had withdrawn his resignation by letter dated 20.09.2010 and pass reasoned orders on merits and in accordance with law, uninhibited and uninfluenced by the impugned orders rejecting the claim made by the Petitioner, in that regard. Such exercise shall be completed by 31.07.2022 and report of compliance shall be filed before the Registrar (Judicial) of this Court.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar



To

1. The Secretary to Government of Tamil Nadu,
Department of Rural Development,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Cuddalore.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1 CC to The Government Pleader sr 19179
+1 CC to Mr.T. Sai Krishnan, Advocate sr 19001.

W.P. No. 16915 of 2017

SR II (CO)
SP (19/04/2022)