



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.6724 of 2016

and

W.M.P. (MD)No.5804 of 2016

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N.Mariappan

... Petitioner

vs.

1.The Director,

Directorate of Handloom and Textiles,
Kuralagam, Chennai.

2.The Assistant Director,

Directorate of Handloom and Textiles,
Collectorate Campus,
Virudhunagr District.

3.The Special Officer,

SPSPL, 29, Punalveli Weavers Cooperative Society,
Punalveli, Rajapalayam Taluk,
Virudhunagar District.

4.The President,

SPSPL 29, Punalveli Weavers Cooperative Society,
Punalveli, Rajapalayam Taluk,
Virudhunagar District.

... Respondents

***(R3 and R4 cause title amended, vide Court
order, dated 29.03.2022, in W.M.P. (MD)No.
11996 of 2016 in W.P. (MD)No.6724 of 2016)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order of 1st respondent in Na.Ka.No.33081/2014/L-1-1, dated 28.01.2015, passed by the 1st respondent whereby confirmed the orders passed by 2nd respondent in Na.Ka.No.9660/2013/E(1), dated 06.01.2014, by confirming the order passed by the 3rd respondent, dated 04.10.2013 and to quash the same as illegal, arbitrary and consequently, to direct the respondents to reinstate the petitioner forthwith as Manager in 4th respondent society with continuity of service with all monetary benefits.

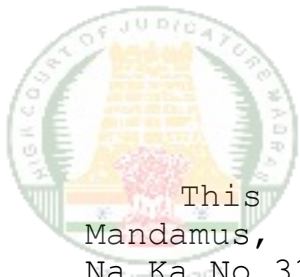
For Petitioner

: Mr.M.T.Thirunavukkarasu

For Respondents

: Mr.P.Thambidurai

Government Advocate (Civil side)



O R D E R

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order passed in Na.Ka.No.33081/2014/L-1-1, dated 28.01.2015 and confirmed in Na.Ka.No.9660/2013/E(1), dated 06.01.2014 and confirming the order dated 04.10.2013 and consequently, to direct the respondents to reinstate the petitioner forthwith as Manager in 4th respondent society with continuity of service with all monetary benefits.

2.The brief facts of the case are that the petitioner was appointed as an Appraiser on 08.06.2001, in the fourth respondent Society and the appointment is made through employment exchange. Thereafter, he was posted as Manager in charge with effect from 01.04.2008 to 01.07.2010 and from 01.10.2010, she was given independent charge of Manager. Since the fourth respondent Society was functioning with under-staffing against the sanctioned strength, the petitioner was forced to look after additional work, which was no way connected to the work allotted to Manager. Therefore, the petitioner requested repeatedly to lessen the work burden. Since the respondents have not considered the claim of petitioner, he submitted a resignation letter on 01.08.2013 to relieve from the work. In the meanwhile, the third respondent has decided to realign the work load of all the employees in the society and from 14.09.2013 the work load have been realigned and the work has been shrunk and his additional charges have been taken away. On knowing this the petitioner submitted a letter whereby he revoked the resignation letter on 25.09.2013. In the meanwhile, one of the petitioner's relative namely Marimuthu was elected as one of the Director of Board, but one Gopalan had objected on 23.09.2013 as against byelaws since close relative of an employee cannot hold office in Board of Directors. Even though, the petitioner submitted the revocation letter dated 25.09.2013, in order to take revenge the respondents have placed the resignation to Board of Directors on 30.09.2014 and passed a resolution on 04.10.2013 thereby accepted the resignation and relieved the petitioner. Aggrieved over the same, the petitioner preferred an appeal before the second respondent on 06.01.2014. The petitioner's request to reinstate was rejected confirming the order passed by the fourth respondent, dated 04.10.2013. The petitioner preferred a Writ Petition in W.P. (MD) No. 106 of 2014, challenging the order of the fourth respondent, dated 04.10.2013. This Court, vide order, dated 06.01.2014, directed the second respondent to consider the petitioner's representation, dated 29.10.2013 and pass orders. The second respondent passed a cryptic order rejecting the petitioner's claim for reinstatement. In spite of several requests, the petitioner's reinstatement request was not considered at all. Aggrieved over the same, the present Writ Petition is filed.



3.The respondents have not filed any counter affidavit and relied on the impugned order and has stated that already the petitioner's resignation has been accepted and once the resignation is accepted, the petitioner cannot claim any reinstatement and pleaded to dismiss the writ petition.

4.Heard Mr.M.T.Thirunavukkarasu, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents.

5.The Co-operative Society has a special by law, where it has been stated that if there is any revocation letter, then, the employee should be granted an opportunity. In the present case, the resignation was on 01.08.2013, the revocation was on 25.09.2013, the resignation letter was placed on Board of Directors on 30.09.2014 and the resolution was passed on 04.10.2013.

6. The issue of resignation, revocation and acceptance is considered in the case of Rajkumar Vs Union of India reported in AIR 1969 SC 180, the Hon'ble Supreme Court held as under:

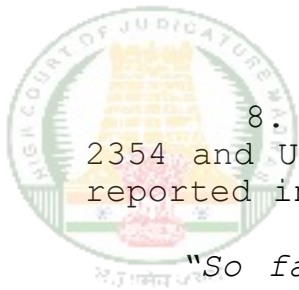
"Our attention was invited to a judgment of this Court in State of Punjab V. Amar Singh Harika reported in 1966 AIR (SC) 1313 in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But when a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. **Till the resignation, is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter.** Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by (1) A. T. R, 1966 S, C. R. 1313, the Government of India. Apparently the State of Rajasthan did not immediately implement the order and relieve, ~~the appellant~~ of his duties, but the appellant cannot profit by



the delay in intimating acceptance or in relieving him of his duties."

7. In the Union of India Vs. Sri Gopal Chandra Misra & others reported in 1978 (3) SCR 12, wherein the majority of the Constitution Bench analysed and declared the position of law to be as hereunder:

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal. [Emphasis supplied] This Court had again an occasion to consider the question as to the principle of law to be applied to a case of resignation made to become effective on the expiry of a particular period or from a future date as desired by the employee in Punjab National Bank Vs. P.K. Mittal (AIR 1989 SC 1083). It was held therein that resignation being a voluntary act of employee, he may choose to resign with immediate effect or with a notice of less than 3 months if the employer agrees to the same or he may also resign at a future date on the expiry or beyond the period of 3 months as envisaged under the governing regulation in that case, even though there is no such consent from the employer, and that, it was always open to the employee to withdraw the same before the date on which the resignation could have become effective.



8. In Balram Gupta Vs Union of India reported in AIR 1987 SC 2354 and Union of India and another Vs Wing Commander Parthasarathy reported in (2001) 1 SCC 158 has held as under:

"So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters, the appropriate Authority was said to have been made only on 20.2.86, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a future date namely 31.8.86. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31.8.86. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective."

9. Therefore, this Court is of the considered opinion that it is a general principle that the employee has right to revoke prior to acceptance of resignation. The consequence would be then the employer ought to consider the revocation letter and not the resignation letter. In the present case the revocation (25.09.2013) is prior to acceptance (04.10.2013) and therefore the respondents are bound to consider the revocation and not the resignation. There was clear 8 days, between revocation and acceptance. The respondents ought to have considered the revocation since it preceded acceptance. Since the respondents failed to do so, the petitioner is entitled to relief.

10. Since the petitioner is not working from the date of resignation, i.e., 04.10.2013 until today, i.e., 29.03.2022, the petitioner is not entitled to any continuity of service and back wages. The respondents are directed to reinstate the petitioner as fresh entrant and the said order shall be passed within a period of four weeks from the date of receipt of a copy of this order.

11. With the above observation, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

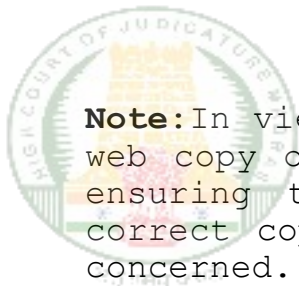
Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

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- 4.The President,
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Punalveli, Rajapalayam Taluk,
Virudhunagar District.

+1 CC to M/s.M.THIRUNAVUUKARASU, Advocate (SR-15229[F]
dated 30/03/2022)

+1 CC to M/s.SPL GP (SR-15342[F] dated 30/03/2022)

W.P.(MD)No.6724 of 2016
29.03.2022

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