



W.P.No.15554 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 12.04.2023

Order delivered on 28.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.15554 of 2015

S.Hmeeda Banu

... Petitioner

VS

1. The Commissioner of Collegiate Education,
College Road,
Madras.
2. The Joint Director of Collegiate Education,
Chennai Division, madras - 15.
3. The Correspondent,
Justice Basheer Ahmed Sayed College for Women,
Teynempet,
Chennai - 600 018.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records in Na.Ka.No.7566/B2/2014 dated 22.04.2015 on the file of the 2nd respondent and the consequential letter of the 3rd respondent dated 18.05.2015 in proceedings F.No.1316 of 2015 and quash the same as illegal, incompetent and unconstitutional.



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For Petitioner : Mrs.V.Srimathi
For Respondents : Mr.M.Rajendran
Additional Government Pleader
for R1 & R2
Mr.B.Senthilnathan for R3.

ORDER

This Writ Petition has been filed challenging the order dated 22.04.2015 passed by the 2nd respondent and the consequential letter dated 18.05.2015 passed by the 3rd respondent, accepting the resignation letter submitted by the petitioner.

2. The case of the petitioner is that she joined service in the 3rd respondent College as a Lecturer in the year 1997 and continued in service. In the year 2007, her husband was seriously ill at Qatar. Therefore, the petitioner sought for 2 years leave on 'loss of pay' by letter dated 19.07.2007. The College had granted leave. In June 2009, the petitioner wrote a letter to the College stating that she is continuing the leave till July, 2009, as her husband's health was deteriorating. On 17.07.2009, she had sent letter stating that she is resigning her post as Senior Scale Lecturer in the Department of Zoology with effect from 17.07.2009. However, she withdrew the letter of resignation before it was accepted. Till date, the letter



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for resignation was not acted upon. When she requested the college to permit her to rejoin duty, she was permitted to continue, subject to any disciplinary proceedings. But the only objection appears to be that the petitioner left to Qatar without the permission of the 1st respondent. The 3rd respondent passed an order on 18.05.2015, accepting the resignation of the petitioner as per the advice of the Regional Joint Director of Collegiate Education Chennai 600 015 vide letter dated 22.04.2015. Hence, the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st and 2nd respondents and the learned counsel appearing for the 3rd respondent College.

4.i) Learned counsel for the petitioner would submit that it is well settled law that once the resignation is withdrawn before acceptance, the concerned authority could not act upon the resignation. As per Rule 41A of the Tamil Nadu State Subordinate Service Rules, the Government Servant could resign from service by giving notice in writing, equally, the Government servant can withdraw the resignation letter before its acceptance. As the petitioner withdrew her resignation before acceptance, the question of accepting the resignation after its withdrawal does not arise.



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ii) Learned counsel would further submit that the order passed by the 2nd respondent is legally untenable. After concluding that in respect of minority institution, the Directorate of Collegiate Education has no role to play, the 2nd respondent ought not to have advised the college to pass an antedated order. Thus, the order of the 2nd respondent is unjustified.

iii) Learned counsel would further submit that when the College is satisfied that the absence of the petitioner is due to bonafide reasons, there is no jurisdiction for the 1st and 2nd respondents to extend their advisory jurisdiction and seek for removal of the petitioner. Further, the 3rd respondent is not the competent authority to receive the letter of resignation and hence, the letter seeking to resign from service is of no legal effect. The 3rd respondent has passed an order dated 18.05.2015 abiding the orders of the 2nd respondent. The resignation had been accepted as per the advice of the Regional Joint Director of Collegiate Education, Chennai 15 in letter dated 22.4.2015 and such procedure, apart from being bad, is totally illogical. The 3rd respondent had failed to act independently and acted upon the instruction of the 2nd respondent. Thus, the alleged acceptance of resignation dated 17.07.2009 after it had been withdrawn, is meaningless.

5 i) Per contra, the learned Additional Government Pleader would



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submit that the 2nd respondent vide letter dated 22.04.2015 had informed that the appointing authority/ College Secretary can take their own decision regarding the resignation of the petitioner and thus, the 3rd respondent accepted the resignation on 18.05.2015. The petitioner can avail leave upto one year only for going abroad and she has to get prior permission of the 1st respondent. But the petitioner has left the country without getting prior permission of the 1st respondent. However, the first respondent vide letter dated 20.08.2009, informed the second respondent to instruct the 3rd respondent to permit the petitioner to rejoin duty but instructed to take disciplinary action against the petitioner for leaving the country without prior permission. The contention of the petitioner that the 2nd respondent has given advice to the 3rd respondent is not correct. The power to accept or reject the resignation vests with the 3rd respondent. The 3rd respondent college is empowered to terminate any employee on disciplinary grounds without getting prior permission from the 2nd respondent. The 3rd respondent college, being a minority institution, the 1st and 2nd respondents cannot interfere in the minority rights.

6. i) Learned counsel appearing for the 3rd respondent College would submit that the petitioner being an aided teaching staff, has to obtain



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permission from the 1st and 2nd respondents before going abroad by availing leave on loss of pay. The petitioner, without permission of the 1st respondent, went on leave from 16.04.2007 to 08.06.2007. The Principal of the 3rd respondent College issued a memo on 29.08.2008 directing the petitioner to rejoin duty within a month and the petitioner, by letter dated 14.10.2008, replied that she was unable to join duty. The petitioner continued her absence from work till 17.07.2009. Thereafter, she voluntarily submitted her resignation letter dated 17.07.2009 stating that she is resigning with immediate effect. Thereafter, the petitioner went to the office of Directorate of Collegiate Education, suppressing the fact of resignation letter dated 17.07.2009 given to the 3rd respondent, got an official order dated 20.08.2009 issued by the 1st respondent, permitting her to rejoin the College. On the basis of the 1st respondent letter, the 3rd respondent allowed her to join duty and even though she signed the attendance register on 20.08.2009, she never took classes thereafter and she immediately left abroad on 21.08.2009, the next day itself and she is on unauthorized absence from 21.08.2009 till the filing of the writ petition i.e., on 1.6.2015, without any leave letter to explain her absence.

ii) Learned counsel would further submit that the petitioner sent



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letters on 9.12.2013 and 10.12.2013 seeking permission from the 3rd respondent to rejoin the college after 4 1/2 years. When she requested permission to withdraw her resignation, the 2nd respondent, in order to avoid recurrence of the same incident which had happened on 20.08.2009, advised the 3rd respondent college vide letter dated 22.04.2015 to take a decision on the petitioner's resignation letter from service.

iii) Learned counsel would further submit that the petitioner, during her 12 years of service from 1997 till 2009, was a habitual absentee and she was on leave for 972 days, totally 3 years out of 12 years of service. Hence, the 3rd respondent accepted the petitioner's resignation letter. Further, the 3rd respondent has appointed Mrs.Kalpana Chandravadhani as Lecturer in 2009 itself as Management teaching Staff to manage the work load caused due to the petitioner's absence from duty and paying salary to this Management staff out of its own funds from 2009 to till date. Hence, he would pray to dismiss the writ petition.

7. This Court considered the submissions made on either side and perused the materials available on records.

8. The petitioner joined service as a Lecturer in the 3rd respondent College on 15.07.1997 and her service was regularized in the year 1999. As



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her husband was ill at Qatar, she decided to go aboard. Before going abroad, the petitioner has to obtain permission from the 1st and 2nd respondents as the petitioner being an aided teaching staff but without permission, she went on leave from 16.04.2007 to 08.06.2007 and from 11.08.2008 to 09.07.2009. The Principal of the the 3rd respondent college issued memo directing her to rejoin duty within a month. The petitioner replied stating that she was unable to join duty vide letter dated 14.10.2008. The petitioner continued her absence from work till 17.07.2009 and suddenly, submitted her resignation letter on 17.07.2009 stating that she is resigning her job with immediate effect. Subsequently, the petitioner went to the Directorate of College Education office, suppressing the fact of resignation letter given by her dated 17.07.2009 to the 3rd respondent college, got an official order dated 20.08.2009 issued by the 1st respondent, permitting her to rejoin the college.

9. Even after getting permission to rejoin duty, she signed the attendance register on 20.08.2009 and she never took classes and immediately on the next day i.e., 21.08.2009 she left abroad. Hence, she committed unauthorized absence from 21.08.2009 till the filing of the writ petition without any leave letter. Thereafter, she sent letters on 09.12.2013



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and 10.12.2013 seeking permission of the 3rd respondent to rejoin college after 4 1/2 years. During her 12 years of service from 1997 to 2009, she was on leave for 972 days, i.e., nearly 3 years.

10. It is an undisputed fact that the petitioner went abroad on 21.08.2009 and without permission from the 2nd respondent nor gave any leave letter to the College till the date of filing of the writ petition i.e., on 01.06.2015. It is also brought to the notice of this Court that even now, the petitioner is in abroad i.e., in Canada.

11. Permitting the petitioner to rejoin the service of the college, who was a habitual absentee, will encourage similar acts of indiscipline among the fellow lecturers as well as students studying in the college. Further, one Mrs.Kalpana Chandravadhani was appointed as Lecturer in 2009 as Management Teaching Staff to manage the work load due to the absence of the petitioner and also to ensure that the students do not suffer due to non-availability of the lecturer.

12. Further, the petitioner has questioned the jurisdiction of the 2nd respondent in issuing the impugned order dated 22.04.2015 as violative of Articles 29 and 30 of the Constitution of India. The Government had only advised the 3rd respondent College to take its own decision on the



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petitioner's resignation letter. The petitioner went to the 1st respondent office, suppressed the fact of her resignation letter dated 17.07.2009 and misled the 1st respondent to issue an order, permitting her to rejoin service. On 20.08.2009, she rejoined duty and again, on 21.08.2008, she went abroad without permission from the Government. This act of the petitioner would only go to show that the petitioner is a habitual absentee and she has no interest in taking classes for the students but wants to get the government salary even without working. The 3rd respondent, being a minority college, is empowered to terminate any employee on disciplinary grounds without getting prior permission from the 1st and 2nd respondents. Thus, the 3rd respondent has rightly accepted the resignation of the petitioner on 18.05.2015.

13. For the foregoing reasons, this Court is of the opinion that no ground has been made out by the petitioner. Hence, the writ petition is dismissed. No costs.

28.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi



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J.NISHA BANU,J.

vsi

Pre-delivery order made in

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