



W.P.No.18100 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.06.2023
Pronounced on	12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18100 of 2023
and
W.M.P.No.17292 of 2023

A.Chandralekha

...Petitioner

Vs.

- 1.The Principal Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director General of Police,
Mylapore, Chennai-600 004.
- 3.The Commissioner of Police,
Avadi, Chennai-600 054.
- 4.The Inspector of Police (Crime),
T5, Thiruverkadu Police Station,
Thiruverkadu, Chennai-600 077.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the impugned order in Rc.No.17/AVD/COP/2022 in O.O.No.11/2022 dated 03.02.2022 and the consequential impugned order in Rc.No.Estt.II (10/AVD/COP/17/2022 dated 31.05.2022 passed



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by the third respondent and quash the same and consequently, direct the second and third respondent to consider the representation dated 05.04.2023 made by the petitioner herein to reinstate the petitioner back into services as Grade I Police Constable in the third respondent office.

For Petitioner : Mr.E.Lenin

For Respondent : Mr.S.Prabhakaran,
Nos.1 & 2 Government Advocate

ORDER

The petitioner herein was appointed as Grade II Police Constable at Trichy Battalion-I on 01.08.2001. Subsequently, she was promoted as Grade I Police Constable in the year 2010. On 28.01.2022, she had tendered her resignation from the post, stating that she intended to contest in the Local Body Election. The resignation was accepted by the third respondent herein through his proceedings dated 03.02.2022. In this background, on 20.04.2022, she had made a representation to the third respondent herein seeking for 'withdrawal' of her notice of resignation on the ground that she had on the ill-advice of her family members, coerced to contest in the Local Body Election as an independent candidate and owing to her mental agony, she had tendered her resignation. The third respondent herein through his



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proceedings dated 31.05.2022 had rejected her request by stating that her resignation was accepted on her request in accordance with Rule 49 and 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 [hereinafter referred to as 'Act']. Thereafter, the petitioner made an appeal to the first respondent herein on 05.04.2023 against the order of the third respondent dated 31.05.2022. The first respondent herein had forwarded the appeal to the second respondent on 26.04.2023. Since the appeal has not been considered within a reasonable time, the present Writ Petition has been filed.

2. Heard Mr.E.Lenin, learned counsel for the petitioner and Mr.S.Prabhakaran, learned Government Advocate appearing on behalf of the respondents.

3. The legal issue that arises for consideration is as to whether a Government Servant who tenders his resignation, which is accepted by the Head of the Department, can seek for 'withdrawal' of such resignation. Section 49 of the Act provides that when a member of service resigns his appointment, he would forfeit not only his service rendered by him in a particular post, but also all his services under the Government. The proviso to Rule 49 states that when the member of



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the Service resigns his appointment for the purpose of contesting an Election, he shall not be eligible for reappointment to any service.

4. The law governing the aforesaid provisions has been dealt with by the Hon'ble Supreme Court in the case of **J.N. Srivastava Vs. Union of India and another** reported in **1998 (9) SCC 559**, where a similar set of facts were involved before the Hon'ble Supreme Court, whereby the employee had tendered his resignation which was accepted by the Authorities and thereafter wrote a letter to withdraw his voluntary retirement proposal, within three months from the date on which he had submitted his voluntary retirement letter. The Hon'ble Supreme Court had placed reliance on one of their decision in **Balram Gupta Vs. Union of India** reported in **1987 (Supp) SCC 228** and held that even when the Authorities had accepted the offer for voluntary retirement, the employee would be entitled to withdraw his offer for voluntary retirement, provided the same is made within three months from the date of his voluntary retirement notice. The relevant portion of the order reads as follows:

"3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect



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from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of [Balram Gupta v. Union of India](#), 1987 Supp SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant



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had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him



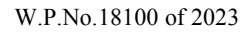
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to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest."

5. The aforesaid extract is self explanatory. The Hon'ble Supreme Court had not only held that an employee would be entitled to seek withdrawal of his offer for voluntary retirement, even after acceptance



6. In the decision in *J.N.Srivastava's case (supra)*, the employee had offered to voluntarily retire from service, whereas in the present case, it is one of resignation. The Hon'ble Supreme Court in the case of *Balram Gupta (supra)*, had held that a notice of voluntary retirement stands on par with a letter of resignation. Thus, the ratio laid down in *J.N. Srivastava's case (supra)* to an employee, who had sought for withdrawal of his notice of voluntary retirement, can be applied to the petitioner's case of resignation also.

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8. The petitioner had tendered her resignation on 28.01.2022, which was accepted by the third respondent within five days on 03.02.2022. On 20.04.2022, the petitioner had given her request for withdrawal of her letter of resignation to the third respondent herein, which was rejected on 31.05.2022. Her appeal to the first respondent herein on 05.04.2023 was forwarded to the second respondent on 26.04.2023 where it is now pending. As observed earlier, the Hon'ble Supreme Court in the case of *J.N.Srivastava (supra)* has held that, even in cases where the Authorities had accepted the resignation and the employee makes an application within three months, it is deemed to be a valid request for withdrawal and such Authorities shall accept such withdrawal notice. The petitioner also made a request for withdrawal of her letter of resignation through her representation dated 20.04.2022, which is within a period of three months from the date of her resignation. As such, she would be entitled to seek for such withdrawal.

9. This Court has taken into consideration the petitioner had joined the Uniform Service way back on 01.08.2001 and it continued till 28.01.2022, which is more than 21 years. She had stated that in her resignation. I have also taken into consideration the plea of the petitioner in her representation dated 20.04.2022. She had stated that



she was in severe mental agony and on the compulsion of her husband and relatives, she was forced to contest in the Local Body Election as an independent candidate and lost the same. She also stated that she was in severe financial crisis and that she has three girl children, whom she is finding difficult to provide education. She has also put in more than 21 years of service and was still in the post of a Constable Grade I only.

10. In this background, the second respondent herein may take a sympathetic approach, after verification of the facts relating to her financial and family status and take a lenient view in the light of the aforesaid findings. While considering her request, the second respondent herein shall also consider the following observations of the Hon'ble Supreme Court in the case of *Balram Gupta (supra)*:

"13. ... In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided



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by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

11. Thus, there shall be a direction to the second respondent herein to forthwith pass appropriate orders on the petitioner's appeal dated 05.04.2023, which has been forwarded from the first respondent herein through their letter dated 26.04.2023, in the light of the findings and observations made in this order, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands partly allowed. Consequently, connected Miscellaneous Petition is also closed. There shall be no order as to costs.

12.07.2023

Index:Yes
Neutral Citation:Yes
Order : Speaking

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M.S.RAMESH,J.

DP

To

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