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W.P. No. 5826 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 5826 of 2015

and

M.P. No. 1 of 2015

C. Shankar

...Petitioner

Versus

1.The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB),
Personnel and Administration Department,
Chintadripet, Chennai – 600 002.

2.The General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB),
Personnel and Administration Department,
Chintadripet, Chennai – 600 002.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorarified Mandams, to call for the
records relating to the impugned orders of the second respondent in Lr.
No.CMWSSB/P&A/STF/RA3/35978/2011 dated 19.01.2015 and



W.P. No. 5826 of 20...

Proc.No.CMWSSB/P&A/STF/RA3/35978/2011 office of the first

respondent dated 03.09.2013 and quash the said orders and direct the respondents to allow the petitioner to join duty and continue in service with all attendant benefits and thus, render justice.

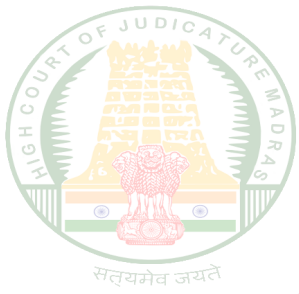
For Petitioner : Mr. P. Mohanraj,

For Respondents : Mr. Krishna Ravindran

ORDER

The Petitioner has challenged the Communication dated 19.01.2015 of the 2nd respondent bearing Reference Lr. No. CMWSSB / P&A / STF / RA3/35978/2011 and Communication dated 03.09.2013 of the 1st respondent bearing Reference Proc. No. CMWSSB / P&A / STF / RA3 / 35978/2011 and to quash the same.

2. The facts of the case are that the Petitioner was serving as an Assistant Engineer with the Respondent Department and due to alleged ill-health of the petitioner, his wife and son, the petitioner was unable to attend to work and therefore had applied for medical leave. However, the petitioner did not return to work even after the expiry of the medical leave due to the continuance of ill health of his wife and son.



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3. The Petitioner was also departmentally proceeded for the aforesaid reason by issuance of a Charge Memo dated 26.07.2011. In this background, the Petitioner vide letter dated 06.09.2011 sent his Resignation Letter to the 2nd Respondent to relieve him from service from the Respondent Board. However, vide letter dated 19.06.2013, the Petitioner withdrew the earlier Resignation Letter dated 06.09.2011 stating that the situation had stabilized and that both his wife and son did not require his attention and care and therefore, the petitioner was willing to rejoin the service at the Respondent Board.

4. In this background, the 2nd Respondent vide impugned Communication dated 19.01.2015 informed the Petitioner that the decision has been taken in the Board Resolution dated 14.08.2013 to accept the Petitioner's request for resignation vide letter dated 06.09.2011.

5. Prior to the impugned Communication dated 19.01.2015 of the 2nd respondent, the Petitioner was also issued with the impugned letter dated



03.09.2013 of the 1st respondent wherein, it was informed that the Respondent Board had no hesitation to accept the resignation of the Petitioner and accordingly, Memo dated 13.09.2013 was sent to the Petitioner accepting the resignation of the Petitioner and to relieve the Petitioner by remitting the dues to the Petitioner for a sum of Rs.83,715/-.

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6. Relevant portion of the aforesaid impugned letter dated 03.09.2013 of the 1st Respondent reads as under: -

“7. Thiru C.Shankar has sent a letter dated 19.06.2013 stating that due to the continuous treatment of his son & wife, their health was improved and that they did not require his presence for taking care of them and that he was requesting the “official and competent authority of the Board to withdraw my resignation and I am willing to join in my duty from today onwards.” This letter is untenable because, as already mentioned above, there was resignation, constructive acceptance and Thiru C.Shankar's letter expressing gratitude to the Board for the acceptance by the Board of his resignation vide his letter dated 28.09.2012. Having expressed his gratitudes to the Board for acceptance of the resignation letter, the representation for withdrawal of the resignation is void.”

7. Learned counsel for the Petitioner would submit that since the request of the Petitioner for resignation vide Letter dated 06.09.2011 was



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not accepted within the time period specified in Rule 41-A of the Tamil Nadu State and Subordinate Service Rules as made applicable to the Respondent Board, the Petitioner was entitled to continue in the service. Further, it is submitted by the learned counsel for the Petitioner that the Petitioner withdrew his request for resignation vide Letter dated 19.06.2013.

8. Learned counsel for the Respondents would submit that in terms of 41-A of the Tamil Nadu State and Subordinate Service Rules, if no order is passed on the notice of resignation, there shall be a deemed exercise of the notice of resignation, wherein the period of notice viz., three months shall be reckoned from the date of receipt of such notice by the appointing authority.

9. It is therefore, submitted by the learned counsel for the Respondents that the deemed request of the Petitioner for resignation vide Letter dated 06.09.2011 is deemed to have been accepted by the Board as the exercise of issuance of notice by the Petitioner for three months in terms of Rule 41-A of the Tamil Nadu State and Subordinate Service Rules.



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10. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned counsel for the Respondents.

11. A Division Bench of this Court under similar circumstances, while dealing with the case of a person like the Petitioner herein vide Order dated 12.06.2024 in W.A. No. 1469 of 2021 in ***C.Kuppusamy v. Tamil Nadu State Corporation Limited Coimbatore*** and 2 Others, held that it cannot be deemed acceptance of resignation if the resignation is withdrawn before Orders accepting the resignation are passed in terms of Regulation 41A of the Tamil Nadu State and Subordinate Service Rules.

12. Operative portion of the Order dated 12.06.2024 of the Division Bench in the aforesaid case is extracted hereunder: -

“4. Mr.M.Murali Vinodh, learned Standing Counsel appearing on behalf of the respondents/Transport Corporation would oppose by stating that the appellant ought to have submitted a letter of withdrawal within a period of 15 days. To substantiate the said limitation, the respondent has not produced any Service Rules. Thus, the said submission deserves no merit consideration. Per Contra, Rules have been relied on by the parties before the writ court. The writ court also extracted the Service Rules of Transport Corporation, more specifically, Rule 32, which reads as under:



WEB COPY



W.P. No. 5826 of 20..

"32. *Provision relating to resignation and re-employment: (a) (i) Without prejudice to any specific provision made if this regard in any other Rule, an Employee shall not quit the service of the Corporation unless gives notice, as specified in clauses (ii), (iii) are below, in writing of this intention to quit the service reimburses to the Corporation the salary (pay and allowances) in lieu of the notice period, and unless he is permitted by the Competent Authority to quit the service. Any sum due from the employee on this account i.e., salary in lieu of notice is liable to the recovered the money due to him from the Corporation.*

(ii) A "workman" to whom the provisions of the Certified Standing Orders of the Corporation apply, be governed by the relevant provision in the Certified Standing Orders.

(iii) An employee holding a post in a Supervisory Group shall give a notice of two months or shall reimburses to the Corporation an amount equal to the salary for two months in lieu of such notice;

(iv) An employee holding a post in the Managerial Cadre shall give a notice of three months or shall reimburse to the Corporation an amount equal to the salary for three months in lieu of such notice.

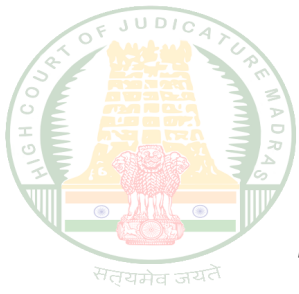
Provided that an employee who is under the terms of a contract or bound to serve the Corporation for a specified minimum period under any agreement, shall not so leave the Corporation until after the expiry of such period.

Note-1: Resignation given by an employee cannot be accepted, if it is withdrawn by him before orders are actually accepting the resignation.

Note-2: Orders accepting the resignation shall be issued as expeditiously as possible."

5. *The above Rule would unambiguously indicate that the resignation given by the employee cannot be accepted, if it is withdrawn by him before orders are actually accepting the resignation.*

6. *In the present case, the facts are not disputed. The*



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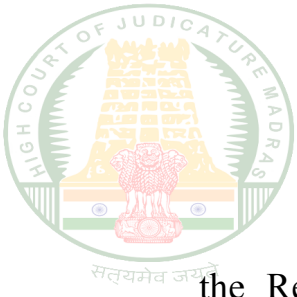


W.P. No. 5826 of 20...

appellant submitted his letter of resignation on 14.06.2019. He served the letter of withdrawal of resignation on 03.09.2019 through E-Mail. Thereafter, acceptance of resignation was passed by the respondent in proceedings dated 06.09.2019. Thus, it is amply clear that the withdrawal of resignation was served by the appellant to the respondent before accepting the letter of resignation. Thus, the order impugned passed by the respondents is in violation of the Service Rules."

13. In terms of Rule 41-A(c) of the Tamil Nadu State and Subordinate Service Rules, the impugned orders of the Respondents are unsustainable, as the Petitioner had sent his resignation vide letter dated 06.09.2011 but, however, requested for withdrawal of his resignation vide letter dated 19.06.2013 which is prior to the Board decision dated 14.08.2013 of the 2nd Respondent accepting the resignation letter dated 06.09.2011 of the Petitioner.

14. Further, Charge Memo has also been already issued to the Petitioner on 26.07.2011. That being the case, the Petitioner has to be considered to have been in employment, as there is no question of acceptance of resignation by the Petitioner where there is a Charge Memo issued against the Petitioner in terms of Rule 41-A(c) of the Tamil Nadu State and Subordinate Service Rules.



W.P. No. 5826 of 20..

WEB COPY

15. Therefore, this Writ Petition deserves to be allowed by directing the Respondents to proceed against the Petitioner in the departmental disciplinary proceeding initiated against the Petitioner vide Charge Sheet dated 26.07.2011.

16. The Petitioner has not been in an employment since the year 2011, therefore Respondents are directed to pass appropriate orders in the disciplinary proceedings initiated against the Petitioner within a period of three months from the date of receipt of a copy of this order. The Petitioner is directed to cooperate with the Respondents.

17. This Writ Petition is disposed of with the above observation. Consequently, connected miscellaneous petition is closed. No costs.

07.02.2025

Index : Yes/No
Neutral Citation : Yes/No
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WEB COPY



W.P. No. 5826 of 2015

C.SARAVANAN, J.

AT

To

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