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Court : Chennai

Decided On : Jul-19-2016

Judge : B. Rajendran

Appeal No. : WP. No. 6107 of 2016 WMP. Nos. 5436 to 5438 of 2016

Appellant : S. Rajesh

Respondent : The Deputy Inspector General of Police, Salem and Others

Judgement :

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in No.231/2, dated 6.4.2015 of the 3rd Respondent and to quash the same and to direct the Respondents 3 and 4 to relieve the Petitioner from the services of the post of Navik (QA) 12457-Q with all attendant benefits from the date of appointment.)

1. This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in No.231/2, dated 6.4.2015 of the 3rd Respondent and to quash the same and to direct the Respondents 3 and 4 to relieve the Petitioner from the services of the post of Navik (QA) 12457-Q with all attendant benefits from the date of appointment.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. The Petitioner herein, an Engineering Graduate, has originally joined as Sailor/Navik in the Indian Coast Guard on 12.08.2013. When he was working in the Coast Guard, he applied for direct recruitment to the post of Sub Inspector of Police, Tamil Nadu Police on 28.11.2015. He had obtained the necessary counter signature of the Deputy Inspector General/Commanding Officer, the 4th Respondent herein, under whom he is working, even for submission of his application. In other words, the petitioner applied for the post of Sub Inspector of Police through the department where he was working. But, since the 4th Respondent is not the Competent Authority, he has placed the application before the Competent Authority, the 3rd Respondent herein. The 3rd Respondent citing the circular dated 7.4.2006, has stated that the Petitioner could not be relieved from the Coast Guard to participate in the selection process and hence, rejected the application of the petitioner as early as on 6.4.2015. Thereafter, the Petitioner had participated in the written examination, physical tests, interview and got selected for the post of Sub Inspector of Police on 9.2.2016 by the 1st Respondent. Thereafter, by virtue of letter dated, 15.2.2016 he sought for permission to resign and since his resignation has not been accepted, he has filed this Writ Petition.

4. On the other hand, it is submitted by the learned Assistant Solicitor General for the Respondents 3 and 4, by filing a counter, that the very person participating in the selection process itself is wrong, as there was no permission granted to him even to participate. All Coast Guard Personnel are governed by the Coast Guard Act, 1978 and the Rules framed thereunder. As per Section 9 of the Coast Guard Act, 1978, resignation is not a matter of right. The Coast Guard is a specialized one, imparting intensive training to the officers in order to safeguard the coastal line and due to huge requirement in the Coast Guard, such a person should not be automatically relieved, especially when such a training in a skilled manner has been granted to him. Therefore, he would contend that the resignation cannot be claimed as mandatory by a member of the Coast Guard. In any event, so far no order has been passed on the resignation letter of the Petitioner and the authorities concerned would pass orders, on merits and in accordance with law.

5. Here is a person, who is a young boy of 25 years of age and it is clear that he wanted to serve the Nation and hence, he joined the Coast Guard, but he has applied to the post of Sub Inspector of Police in the Tamil Nadu Police Services, of course after getting permission of his immediate superior, namely, the 4th Respondent. Since the 4th Respondent is not the Competent Authority to pass any order, he forwarded it to the Competent Authority, the 3rd Respondent herein. Unfortunately, the 3rd Respondent has rejected his very application itself on 6.4.2015 much before even the examination is conducted. Thereafter, the authority would say that the Petitioner participated in the selection process without the approval. Therefore, the entire process is wrong according to them. Be that as it may. The fact remains that the Petitioner is a young engineering graduate, who had passed the written examination conducted by Tamil Nadu Public Service Commission and thereafter, participated in the physical test and finally, he has been selected and he was also issued with the appointment order. At that stage, the Petitioner submitted the resignation letter, which was refused by the respondents.

6. Here, the petitioner intends to go out of the services from one part of the Central Government to the other part of the State Government. Can that be denied is the question. In this case, the application seeking resignation from the post was rightly sent by the petitioner through his Head of the Department after getting permission from his immediate superior officer. But it was rejected by the competent authority. It is to be pointed out that in the Costal Guard, the petitioner joined only as a Constable and continued as Constable at the time of submission of the application seeking resignation. Whereas, by virtue of his ability, he has passed the examination conducted for direct recruitment to the post of Sub Inspector of Police. According to the petitioner, if he joins the post of Sub Inspector of Police, in the Police Force, the future avenue of promotion will be much better when compared to his prospects as a Constable in the Costal Guard. Such a legitimate expectation on the part of the petitioner to get better prospects in his career cannot be denied.

7. The learned Assistant Solicitor General appearing for the respondents 3 and 4 would contend that the claim made by the petitioner for resignation is not

automatic or a matter of routine. In this context, he relied on the Judgment dated 12.07.2010 passed by this Court in Writ Appeal No. 1630 of 2009 wherein in an identical case, it was held that contrary to the Rule, no person shall have a right to resign his appointment or withdraw himself from the duties of his appointment, subject to certain conditions for acceptance by the Government.

8. In the very same Judgment dated 12.07.2010 passed by the Division Bench of this Court in Writ Appeal No. 1630 of 2009, which was relied on by the learned Assistant Solicitor General, in para No.3, it was held as follows:-

"3. However, in the course of argument, learned counsel appearing for the appellant submitted that the letter of resignation submitted by the writ petitioner-respondent was followed by a subsequent letter of resignation tendered during the pendency of the writ petition, which was accepted by the appellant"

9. It is true that resignation from a post cannot be accepted as a matter of routine. However, resignation can be taken into consideration and entertained subject to certain condition. In the present case, the respondents 3 and 4 have taken into consideration the Circular dated 07.07.2006 to conclude that there is a shortage of man power. The Circular dated 07.07.2006 ought not to have taken into consideration in the year 2016. The respondents have also not taken into account the subsequent development relating to the existing manpower in the Department. The third respondent ought to have taken into consideration the future prospects of the petitioner if he joins the post of Sub Inspector of Police in the Tamil Nadu Police Force. It is needless to mention that presently the petitioner is working as a Constable in the Costal Guard and serving the nation. If the petitioner joins the Tamil Nadu Police Force as Sub-Inspector of Police, he has to discharge similar duty in the larger interest of the general public. The respondents 3 and 4 ought to have shown some leniency in the claim of the petitioner to take up an assignment with the Tamil Nadu Police Force especially when he has come out successfully in the examinations conducted for his selection and appointment to the post of Sub Inspector of Police. In such view of the matter, the impugned order of the third respondent is set aside. The third respondent shall re-consider the claim of the petitioner for accepting the resigning of the petitioner from the post of Constable in

the Costal Guard taking into consideration that he was selected for appointment to the post of Sub Inspector of Police after coming out successful in all the selection process.

10. Accordingly, the impugned order of the third respondent is set aside. The writ petition is allowed. The third respondent is directed to re-consider the claim of the petitioner for accepting the resignation of the petitioner from the post of Constable in the Costal Guard taking into consideration that he has successfully come out in the selection process for selection and appointment to the post of Sub Inspector of Police in Tamil Nadu Police Force and pass orders on merits and in accordance with law after affording him an opportunity of hearing within a period of one month from the date of receipt of a copy of this order. It is made clear that the interim order granted in this writ petition shall continue till the third respondent passes an order, as mentioned supra. No costs. Consequently, connected miscellaneous petitions are closed.

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