

Dr.P.Sureshkumar .. Vs. the State of Tamil Nadu, and anr.

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Court : Chennai

Decided On : Jun-08-2010

Judge : K.Chandru, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.726 of 2010 and M.P.NOS.1 and 2 of 2010

Appellant : Dr.P.Sureshkumar ..

Respondent : The State of Tamil Nadu, and anr.

Advocate for Def. : Mr.K.H.Ravikumar, Adv.

Advocate for Pet/Ap. : Mr.M.Hidayathullakhan, Adv.

Judgement :

1. The writ petition came to be filed by a medical officer seeking to challenge the orders of the Government, dated 02.02.2009 and 06.03.2009. By the two orders, the State Government informed the petitioner that his resignation cannot be accepted due to dearth of hands of medical officers in Government hospitals. When the matter came up on 18.1.2010, the petitioner was asked to produce his terms of appointment. Though he produced it along with an additional typed set, dated 29.1.2010, but the bond produced by him was executed by some other candidate. The bond was to be signed by candidates who were granted stipend to undergo the PG course. Under the terms of the bond, a candidate must agree to serve in rural areas in Tamil Nadu for a period of five years on completion of the

PG course, for which the candidate was selected.

2.The petitioner was appointed as an Assistant Surgeon (Dental) in May, 1994 and was posted to the Government Hospital, Aruppukkotai. He underwent PG in M.D.S during 1995-1998. After completion of his PG Course, he was posted as an Assistant Surgeon (Dental) in the Government Hospital, Periyakulam. Thereafter, he was promoted as an Assistant Professor in November, 1998 and posted at Tamil Nadu Government Dental College, Chennai. He was further promoted as an Associate Professor in October, 2009 and he is currently working at the Thanjavur Medical College and Hospital, Thanjavur.

3.The petitioner sent his resignation on 31.10.2008 under Rule 41(A) of the Tamil Nadu State and Subordinate Service Rules allegedly due to family circumstances. However, the first respondent State by an order, dated 2.2.2009 rejected the case of the petitioner due to dearth of hands of medical officers in the Government Hospitals. The petitioner sent a further appeal, dated 10.2.2009. But, by an order, dated 6.3.2009, his request was rejected. Therefore, the petitioner contended that the reason given by the department was illegal and discriminatory. He also stated that there are 22 Doctors available in the State in respect of Oral Surgery for which the petitioner got qualified. Therefore, there was no shortage of hand. According to him, resignation is unilateral.

4.The second respondent has filed a counter affidavit, dated 6.4.2010. In the counter affidavit, it was stated that as soon as the petitioner's resignation was received, the same was processed. The Director of Vigilance and Anti corruption and the Superintendent of Police, Security Branch (CID), Chennai were addressed to send clearance reports. But, the Government was of the view that there is dearth of hands of persons with MDS (Oral and Maxillofacial Surgery). Hence the petitioner's resignation was rejected. The Government had earlier issued G.O.Ms.No.408, Health and Family Welfare Department, dated 15.12.2009 declaring all the specialities in the Tamil Nadu Medical Service as scarce categories and resignation in this regard are not to be accepted by the State Government.

5.The petitioner gave his resignation letter, dated 31.10.2008 asking him to be relived on 31.1.2009. The State Government after getting the opinion of the Director of Medical Education rejected the case of the petitioner and the petitioner's further representation was also negatived.

6.Heard Mr.M.Hidayathullakhan, learned counsel appearing for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for respondents.

7.Mr.Hidayathullakhan, learned counsel for the petitioner strongly contended that the action of the Government was illegal. The petitioner is entitled to get relieved in the absence of the condition not being violated.

8.In substance, the contention of the learned counsel for the petitioner was that once resignation is given under Rule 41-A, the State Government has no right to reject the request for resignation unless the Government servant's case is brought within the reasons found in Rule 41-A(d). In view of the reliance placed upon the said rule framed under Article 309 of the Constitution of India, it is necessary to extract the said Rule.

9.Rule 41-A of the Tamil Nadu State and Subordinate Service Rules reads as follows:

"41-A. Acceptance of resignation. (a) A Government servant may resign his appointment by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The period of three months notice shall be reckoned from the date of receipt of such notice by the appointing authority.

(b)The Government servant may withdraw the notice of his resignation before its acceptance. Withdrawal of resignation will not be permitted after its acceptance by the appointing authority.

(c)The appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of notice or rejecting the same, giving the reasons therefore. If no such order is passed, the resignation shall be deemed to have

been accepted on the expiry of the period of notice.

(d) Notice of resignation given by the Government shall be accepted by the appointing authority subject to the condition:

(i) that no disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) or rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(ii) that a report from the Director of Vigilance and Anticorruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned.

(iii) that no dues are pending to be recovered by the Government from the Government servant concerned.

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period concerned seeks to resign.

(e) Notwithstanding anything contained in Clauses (i) and (ii) of subrule (d), where a Government servant under suspension or against whom the disciplinary or criminal action or vigilance enquiry is pending, seeks to resign, the appointing authority shall examine the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of notice of resignation." (Emphasis added)

10. He also stated that there are certain decisions of this court in which it was held that in the absence of the ingredients of Rule 41-A(d) being present, a Government servant as a matter of right can resign and quit the service. Inasmuch as the petitioner did not face any vigilance case or was subjected to any disciplinary action and when there are no dues to be paid to the Government and when there was no contractual obligation to serve, he cannot be prevented from resigning and the impugned order is contrary to the Rules.

11. This approach of the petitioner is to over-simplify the relevant rule relating to resignation. The contention of the learned counsel for the petitioner if accepted, then Rule 41-A(c) will be controlled by Rule 41-A(d). A close reading of Rule 41-

A(c) will clearly show that within the notice period, it is open to the State Government to reject the resignation by giving reasons. Nowhere it is stated that reasons that can be given by the Government are the only reasons which are found in Rule 41-A(d). If that was the intention of the State Government, then the Rules would have been framed differently. Reasons which are found in Rule 41-A(d) are the reasons which will disable the Government from accepting the resignation. In fact, Rule 41-A(e) had introduced a non absentee clause where even in respect of reasons which are found in Rules 41-A(d)(i) and (ii), the Government can accept the resignation in a given case. It is only in the nature of enabling provision.

12.The service in which the petitioner is now serving is an essential service. Therefore, the Government by a general order in G.O.Ms.No.408, Health and Family Welfare Department, dated 15.12.2009 has declared all the specialities under the Tamil Nadu Medical Services as a scarce category and continuance of a Government Doctor in the medical service was essential in public interest. When the Government had rejected the request of the petitioner to accept his resignation, the Government had really exercised its power under Rule 41-A(c). It is not as if the Government had rejected his resignation without reasons.

13.An attempt to link the reasons found under Rule 41-A(d) as if it was an exhaustive list is an attempt in desperation. The power under Rule 41-A(c) can be exercised by the Government and if the reasons are germane to the service in which a Government servant is holding his post, then no exception can be taken regarding the refusal to accept a resignation.

14.As regards to the argument that the order issued by the Government is non statutory and therefore, such a G.O. cannot stand in the way of the Government accepting the resignation, it must also be rejected. Rule 41-A is undoubtedly framed under Article 309 of the Constitution. In the absence of any further rule, executive instructions of the Government can fill up the gaps. In essence, an executive order of the Government cannot supplant the Rule, but it can supplement the Rule. Rule 41-A(c) obliges the Government to give reasons for rejection of a resignation letter. As the Government order had given a genuine

reason for rejecting the case of the petitioner, this court is not inclined to accept the contentions made by the petitioner.

15. In the light of the above, there is no case made out to interfere with the impugned order. Hence the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

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