
(2011) 03 MAD CK 0428

In the Madras High Court

Case No : Writ Petition No. 14686 of 2005 and W.P.M.P. No. 9413 of 2006

D. Chitra Dev

APPELLANT

Vs

The Pasteur Institute of India

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 MAD CK 0428

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R. Singaravelan, for V.S. Jagadeesan, for the Appellant; K. Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner has filed this writ petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus by calling for the entire records pertaining to the impugned order of the Respondent in its Ref. No. P.II/ADMN/2/2005 passed on 03.01.2005 and quash same, consequently direct the Respondent to conduct a fair domestic enquiry as stated in the legal notice dated 17.02.2005 and dispose the Petitioner's representation for reassuming her office in the Respondent/Institute in accordance with law within the time fixed by this Hon"ble Court.

2. The Petitioner was appointed as a Lab Assistant/Helper on 01.01.1985 and he was subsequently promoted to the post of Lab Attendant on 16.1.1990. Due to her matrimonial problem the Petitioner was constrained to submit her resignation in February 1996 to take effect from 20.2.1996. But after some time when she regained from her mental illness, she submitted another representation to the Respondent narrating the entire circumstances that led to the submission of her resignation letter in February 1996 with the request to the Respondent to permit her to resume duty again. Again by requesting the Respondent to treat the long absence as extraordinary leave which according to the Petitioner is permissible in

the Respondent office as per the rules and regulations for which she received a letter from the Respondent on 26.4.1999 informing that her resignation was already accepted with effect from 20.2.1996.

3. Mr. R. Singaravelan, learned Counsel appearing for the Petitioner submits that the Petitioner, before the acceptance of her earlier resignation letter dated 20.2.1996 by the Respondent, submitted her letter of withdrawal. Therefore, after her letter of withdrawal seeking to withdraw her resignation letter, if the Respondent relieved the Petitioner by accepting the letter of resignation, the order permitting the Petitioner to go on resignation will not hold any legal effect. The action of the Respondent in passing the order dated 26.4.1999 by accepting the resignation dated 20.2.1996 that was already withdrawn by withdrawal letter dated 04.9.1997 is non-est in the eye of law. In other words, the learned Counsel submitted that when the Petitioner submitted her withdrawal letter before acceptance of the resignation, the impugned order dated 26.4.1999 is nothing but arbitrary and passed with malafide intention in order to appoint another person in the post. The learned Counsel also advanced his submission that as per the department rules, the Director alone is empowered to pass any order in respect of employees of the Department. But the Director is not empowered to pass any orders in respect of the employees. Therefore, when the Petitioner sent a representation on 17.3.2003 followed by another representation dated 19.4.2003 to the Respondent for reconsideration, no response was forthcoming. Therefore, a legal notice was issued by the Petitioner's counsel to the Respondent. But despite the receipt of the same, there was no response from the Respondent. Therefore, the Petitioner was compelled to file W.P. No. 21794/2004 seeking to consider the Petitioner's representation on merits. Accepting the said limited prayer made by the Petitioner then, this Court while disposing of the said writ petition-W.P. No. 21794/2004 by its order dated 01.10.2004 directed the Respondent to consider the Petitioner's representation dated 19.4.2003 on merits and in accordance with law and pass orders. Only on 03.1.2005 the Respondent passed the impugned order against the direction issued by this Court in W.P. No. 21794/2004. Therefore, the learned Counsel further contended that the impugned order passed by the Respondent dated 03.1.2005 is liable to be set aside.

4. Mr. K. Rajasekaran, learned Counsel appearing for the Respondent submitted that the present writ petition is not maintainable as the Petitioner herself submitted her resignation letter on 20.2.1996 mentioning some matrimonial problem to continue in the office. The said resignation letter was accepted by the Director on 24.2.1996. Only thereafter, the Petitioner made a representation to the Director on 03.9.1996 for considering her case for reappointment. But the same was not considered as the resignation was already accepted with effect from 20.2.1996. Even after that on 02.11.98 she made another representation requesting a certificate of previous experience for the purpose of registering with the employment exchange. Accepting her request a certificate was also issued to her on 26.11.1998 and another certificate on 26.4.1999. On 19.4.2003, after

keeping quiet for about 7 years, from the date of acceptance of her resignation from 20.2.1996, she made one representation for considering her case sympathetically for allowing her to join duty. As there was no provision to allow her to join duty after her resignation was accepted, no action was taken in this regard. Therefore, the Petitioner filed W.P. No. 21974/2004. This Court by order dated 01.10.2004 directed the Respondent to consider the Petitioner's representation dated 19.4.2003 on merits and pass orders within 12 weeks from the date of receipt of a copy of that order. After the receipt of the order passed by this Court, in compliance of the said order the Petitioner's representation was also disposed of on 3.1.2005 rejecting her request. The Petitioner was issued with 13 memos for her irregular work in the office and in one such occasion when she was not coming back to the office for quite a long time, a notice was issued on 11.1.1996 as she had to report for duty on or before 01.2.1996. In such circumstances, the learned Counsel for the Respondent contended that there are no merits in the writ petition to quash the impugned order dated 03.1.2005.

5. Heard the learned Counsel appearing for the respective parties.

6. The Petitioner after serving in the office of the Respondent as Lab Assistant from 01.01.1985, was promoted to the post of Lab Attendant on 16.01.1990. It is also the case of the Petitioner that only in view of matrimonial problems faced by her she was frequently taking treatment from 1996 to 2001. In her affidavit filed in support of the writ petition she has also averred that she became medically fit for doing duty when she fully recovered from her illness. This statement goes to show that the Petitioner was having some compulsion to submit her resignation in February 1996 to the Respondent and as such, when she submitted her resignation letter dated 20.2.1996, the same was accepted by the competent authority by their letter dated 24.2.1996. Thereafter, on 03.9.1996 she made a representation for appointing her again in the institute and the same was not considered as her resignation letter was already accepted with effect from 20.2.1996. The main contention of the learned Counsel appearing for the Petitioner is that well before the Petitioner's letter of resignation dated 20.2.1996 was accepted, she gave her letter of withdrawal of her resignation letter on 04.9.1997. Therefore, the Respondent cannot pass the relieving order by accepting her resignation letter on 26.4.1999. In view of this, this Court directed the Respondent department to produce the file. On perusal of the file, the order passed by the Director on 08.11.1996 shows that consequent to the resignation letter dated 20.2.1996 and in continuation of the office letter No. PII/Admin/4621/96 dated 24.2.1996, Mrs. Chitra Dev is deemed to have been relieved from her duties of the Institute with effect from 20.2.1996. This letter goes to show that the Petitioner's letter of resignation was accepted by the Director on 08.11.1996 itself. Therefore, the question of entertaining the contention of the Petitioner that before the letter of resignation was accepted, she had submitted her letter of withdrawal seeking to withdraw her earlier letter of resignation is not legally sustainable. Further, the subsequent letter submitted by the Petitioner on 02.11.1998 also goes to show that the Petitioner had

accepted even the letter of resignation since she mentioned in the said letter that she decided to join again in some job suited to her qualification for which she sought for certain information regarding three official records from the Respondent, namely, (i)certificate for having accepted her resignation; (ii)certificate for her previous experience in the institute; and (iii)her conduct certificate. In the said letter she also submitted that she wanted to register her name as she was badly in need of some job. Again when the Petitioner submitted her letter of withdrawal seeking to withdraw her letter of resignation letter dated 20.2.1996, the Respondent by letter dated 07.11.1996 replied to her stating that her request in letter dated 03.9.1996 cannot be considered since the Respondent had already accepted the letter of resignation with effect from 20.2.1996. This fact can be further fortified by her own stand taken in the earlier W.P. No. 21794/2004 when she approached this Court seeking direction to dispose of the representation dated 19.4.2003. This Court by order dated 01.10.2004 in W.P. No. 21794/2004 directed the Respondent to dispose of the Petitioner's representation on merits and in pursuant to the said order, the Petitioner's representation was also considered and disposed of by rejecting her claim.

7. In view of the same, I do not find any substance in the writ petition. Accordingly, this writ petition stands dismissed. No costs. Consequently, W.P.M.P. No. 9413/2006 is also dismissed.