

THE DIRECTOR GENERAL OF POLICE & ANR.

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v.

M JEYANTHI

(Civil Appeal No. 9423 of 2019)

DECEMBER 13, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HRISHIKESH ROY, JJ.]**

Special Rules of Tamil Nadu Police Subordinate Services – r.35A– Respondent, Grade II Police Constable at the IXth Battalion, Manimuthar, Palayamkottai tendered resignation on 1 June 2017 – Accepted on 12 June 2017 – Later, sought withdrawal of the resignation – Respondent's representation rejected by the Director General of Police – Challenged – Writ petition dismissed – Writ appeal allowed by the Division Bench holding that in terms of s.50 of the 2016 Act, a period of ninety days' notice is necessary and the appellants faulted in accepting the resignation without waiting for the period of notice to expire – Held: Provisions of r.35A of the Rules are analogous to s.50 of the 2016 Act – Respondent, as a police constable, was governed by r.35A – Clause (a) of r.35A requires that before resigning, a member of the service must furnish not less than three months' notice in writing to the appointing authority – Under clause (b), the notice may be withdrawn before its acceptance – Withdrawal of the resignation is not permitted after acceptance – Under clause (c) of r.35A, the appointing authority, while accepting the resignation, is empowered to indicate a date from which it will take effect which will not be later than the date of expiry of the notice – Thus, the authority can legitimately accept the resignation from a date anterior to the expiry of the notice – In the present case, the resignation dtd. 1 June 2017 was accepted on 12 June 2017 – It was only a month thereafter on 13 July 2017 that the respondent purported to withdraw the resignation – Resignation having taken effect upon its acceptance, the withdrawal was of no consequence – High Court not justified in holding that within period of ninety days, the period of notice required under the Rules, it was open to the employee to withdraw the resignation even after

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- A *acceptance – This construction is contrary to the provisions of r.35A – Judgment of the High Court set aside – Dismissal of the writ petition by the Single Judge, affirmed – Tamil Nadu Government Servants (Conditions of Service) Act, 2016 – s.50.*

Respondent, appointed in 2010, was working as Grade II Police Constable at the IXth Batallion, Manimuthar, Palayamkottai. She tendered her resignation on 1 June 2017, which was accepted on 12 June 2017. On 13 July 2017, the respondent purported to address communication withdrawing the resignation. The High Court in the writ petition filed by the respondent, directed the Director General of Police to consider the representation and to pass appropriate orders in accordance with law. The DGP passed an order rejecting the representation, which was challenged by the respondent. The Single Judge dismissed the writ petition. Division Bench allowed the writ appeal granting reinstatement with continuity of service. Hence, the present appeal.

D **Allowing the appeal, the Court**

HELD: The provisions of Rule 35A of the Special Rules of Tamil Nadu Police Subordinate Services are analogous to Section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The respondent, as a police constable, was governed by Rule 35A. Clause (a) of Rule 35A requires that before resigning, a member of the service must furnish not less than three months' notice in writing to the appointing authority. Under clause (b), the notice may be withdrawn before its acceptance. Withdrawal of the resignation is not permitted after acceptance by the appointing authority. Under clause (c), the appointing authority is required to issue orders on the notice of resignation before the date of expiry of the notice. If the resignation is being accepted, the date of acceptance is not to be later than the date of the expiry of the notice. If no order has been passed, the resignation is deemed to have been accepted on the expiry of the period of notice. The provisions of clauses (b) and (c) of Rule 35A make it abundantly clear that: (i) A resignation can be withdrawn before its acceptance; and (ii) Upon acceptance, the employee loses the entitlement to withdraw the resignation.

Moreover, it is evident from clause (c) of Rule 35A that the appointing authority, while accepting the resignation, is empowered to indicate a date from which it will take effect which will not be later than the date of expiry of the notice. The authority can legitimately accept the resignation from a date anterior to the expiry of the notice. Upon the acceptance of the resignation, the cessation of service takes place and it is not open to the employee to withdraw the resignation. In the present case, the resignation dated 1 June 2017 was accepted on 12 June 2017. It was only a month thereafter on 13 July 2017 that the respondent purported to withdraw the resignation. The resignation having taken effect upon its acceptance, the withdrawal was of no consequence. The acceptance of the resignation was complete on 12 June 2017. Once this was the position, the withdrawal was of no consequence in law. The High Court was not justified in coming to the conclusion that within a period of ninety days, which is the period of notice required under the Rules, it was open to the employee to withdraw the resignation even after acceptance. This construction is clearly contrary to the provisions of Rule 35A. The impugned judgment and order of the High Court is set aside, affirming the dismissal of the writ petition by the Single Judge. It is, however, clarified that this order will not come in the way of the respondent applying for appointment afresh as and when any selection takes place and any such application may be considered in accordance with law. [Paras 7-12][211-E; 212-B-H; 213-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9423
of 2019.

From the Judgment and Order dated 27.03.2019 of the Madurai Bench of Madras High Court in W.A. (MD) No. 1596 of 2018.

M. Yogesh Kanna, Karthik Rajendran, Ms. Uma Prasuna Bachu,
Advs. for the Appellants.

Dr. P. Jyothimani, Sr. Adv., Sumit Kumar, Hemant Kumar,
Bhupendra Kumar, Gunjan Kumar, Advs. for the Respondent.

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- A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.
1. Leave granted.
2. This appeal arises from a judgment of a Division Bench of the
- B Madurai Bench of the Madras High Court dated 27 March 2019. Allowing a writ appeal, the Division Bench set aside an order of the learned Single Judge which had dismissed the writ petition filed by the respondent and directed the State to reinstate the respondent back into service with continuity.
- C 3. The facts, insofar as they are material to the controversy, are thus:
- The respondent was working as a Grade II Police Constable at the IXth Battalion, Manimuthar, Palayamkottai. She was appointed on 1 April 2010. While working at the All Women's Police Station, Thoothukudi,
- D the respondent tendered her resignation on 1 June 2017 and sought to be relieved from her job. The resignation was accepted on 12 June 2017. On 13 July 2017, the respondent purported to address a communication withdrawing the resignation. The respondent instituted a writ petition¹ before the High Court which was disposed of on 1 March 2018 with a direction to the Director General of Police to consider the representation
- E and to pass appropriate orders in accordance with law.
4. On 2 June 2018, the Director General of Police² passed an order rejecting the representation. In doing so, the DGP relied on the provisions of Rule 35A of the Special Rules of Tamil Nadu Police Subordinate Services³. The order of the DGP was challenged before a
- F learned Single Judge in a writ petition⁴ which was dismissed by an order dated 21 August 2018. The writ appeal⁵ filed by the respondent was, however, allowed. The Division Bench came to the conclusion that in terms of Section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016⁶, a period of ninety days' notice is necessary. In
- G the view of the High Court, this period of ninety days is intended for the

¹ Writ Petition No 3888 of 2018

² "DGP"

³ "Rules"

⁴ Writ Petition No 18211 of 2018

⁵ Writ Appeal No 1596 of 2018

⁶ "Act of 2016"

benefit not only of the authority, but for the person who tendered the resignation to rethink whether the resignation should be withdrawn. The High Court found fault with the appellants for having accepted the resignation without waiting for the period of notice to expire and accordingly set aside the decision. Consequently, reinstatement was granted with continuity of service.

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5. Learned counsel appearing on behalf of the appellants, at the outset, submits that the High Court has relied on the provisions of Section 50 of the Act of 2016 whereas the respondent was governed by Rule 35A of the Rules. Moreover, it was submitted that the provisions of Section 50(2), which have been extracted in the judgment of the High Court, contained an omission which would have a bearing on the interpretation of the provision. Learned counsel submitted that once the resignation was accepted, it was not open to the respondent to withdraw it.

6. Opposing this submission, it was urged on behalf of the respondent that the acceptance of the resignation on 12 June 2017 was not valid in law since it was subject to the grant of Vigilance and other clearances. Moreover, learned counsel supported the reasoning of the Division Bench that in view of the requirement of ninety days' notice, it was open to the employee to withdraw the resignation before the period of notice expired and the acceptance of the resignation in the meantime would not affect that entitlement.

7. The provisions of Rule 35A of the Rules are analogous to Section 50 of the Act of 2016. The respondent, as a police constable, was governed by Rule 35A, which is extracted below:

“35A Acceptance of Resignation

(a) The member of the service 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.

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(b) The member of the service 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

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- A the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons thereof. If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice.”
8. Clause (a) of Rule 35A requires that before resigning, a member
- B of the service must furnish not less than three months' notice in writing to the appointing authority. Under clause (b), the notice may be withdrawn before its acceptance. Withdrawal of the resignation is not permitted after acceptance by the appointing authority. Under clause (c), the appointing authority is required to issue orders on the notice of resignation
- C before the date of expiry of the notice. If the resignation is being accepted, the date of acceptance is not to be later than the date of the expiry of the notice. If no order has been passed, the resignation is deemed to have been accepted on the expiry of the period of notice. The provisions of clauses (b) and (c) of Rule 35A make it abundantly clear that:
- D (i) A resignation can be withdrawn before its acceptance; and
- (ii) Upon acceptance, the employee loses the entitlement to withdraw the resignation.
- Moreover, it is evident from clause (c) of Rule 35A that the appointing authority, while accepting the resignation, is empowered to indicate a date from which it will take effect which will not be later than the date of expiry of the notice. In other words, the authority can legitimately accept the resignation from a date anterior to the expiry of the notice. Upon the acceptance of the resignation, the cessation of service takes place and it is not open to the employee to withdraw the resignation.
- F 9. In the present case, as the facts which have been narrated indicate, the resignation dated 1 June 2017 was accepted on 12 June 2017. It was only a month thereafter on 13 July 2017 that the respondent purported to withdraw the resignation. The resignation having taken effect upon its acceptance, the withdrawal was of no consequence. We do not
- G find merit in the submission that the acceptance of the resignation was invalid. The order which was passed clearly indicates the acceptance of the resignation. The order, however, provides that if the Vigilance and Anti Corruption Department indicated that any adverse remarks or if any adverse noting was made by the Special Branch CID, the resignation would be cancelled. The fact of the matter, however, is that the acceptance
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of the resignation was complete on 12 June 2017. Once this was the A position, the withdrawal was of no consequence in law.

10. The High Court was not justified in coming to the conclusion that within a period of ninety days, which is the period of notice required under the Rules, it was open to the employee to withdraw the resignation even after acceptance. This construction is clearly contrary to the B provisions of Rule 35A.

11. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 27 March 2019, affirming the dismissal of the writ petition by the learned Single Judge. There shall be no order as to costs. C

12. We, however, clarify that this order will not come in the way of the respondent applying for appointment afresh as and when any selection takes place and any such application may be considered in accordance with law.

Divya Pandey

Appeal allowed.