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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of hearing and Order: 07.01.2015

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W.P.(C) 98/2015

NIRMALA TOMY

..... Petitioner

Through: Mr.H.K.Gangwani, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Ms.Zubeda Begum, Standing
Counsel, GNCTD for Lok Nayak
Hospital.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

KAILASH GAMBHIR, J (ORAL)

C.M.No.151/2015 (Exemption)

Exemption granted, subject to all just exceptions.

Application stands disposed of.

W.P. (C) 98/2015

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 02.07.2007 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi,

thereby dismissing the O.A. No.1617/2006 titled *Nirmala Tomy vs. Govt. of NCT of Delhi and Anr.* preferred by the petitioner primarily on the ground that the delay on the part of the petitioner in approaching the Tribunal for redressal of her grievance is totally inexplicable and unexplained.

2. Mr.Gangwani, counsel appearing for the petitioner submits that the learned CAT has not given any finding on the merits of the case and has dismissed the OA preferred by the petitioner merely on a technical ground of being barred by limitation. Counsel further submits that the impugned order passed by the learned CAT suffers from the vice of non-application of mind. Counsel also submits that the learned Tribunal has failed to appreciate the fact that the petitioner had never received any communication with regard to the acceptance of resignation and it was only on 10.01.2005. the petitioner was informed that her resignation was accepted vide communication made by the respondents vide order dated 11.11.1993. Counsel further submits the said communication dated 11.11.1993 accepting that the resignation of the petitioner was never sent to her and till date the petitioner has not been able to lay her hands on the said communication. Counsel also submits that even after having tendered resignation, the petitioner was discharging her duties for a few months in the year 1992. Counsel also submits that the petitioner made various representations so as to know her exact status and also impressing upon the respondents for release of her dues, but without any success.

3. On the other hand, Ms.Zubeda Begum, learned Standing Counsel appearing for the respondents strongly opposes the petition and contends that the service record of the petitioner got destroyed because of water logging in the record room of the hospital and that only pay bill register

dated 11.11.1993 is available according to which her resignation was accepted from 03.06.1992. The counsel further contends that no correspondence was made by the petitioner with the Hospital from 1993 to August, 2004 and that the petitioner's tone and tenor had changed when she came to know about the records being destroyed. The counsel also contends that the petitioner submitted her resignation on 03.06.1992 and claimed it to be wrong in the year 2004 i.e. after a gap of 12 years.

4. We have heard the learned counsel for the parties and considered the rival submissions.

5. The petitioner was appointed as Staff Nurse at Lok Nayak Hospital by letter of appointment dated 31.08.1984. The petitioner has been suffering from viral hepatitis and for most of the period after appointment, she was on medical leave. On 03.06.1992, the petitioner wrote to the Chief Nursing Officer of the hospital stating that she would not be able to join her duties in the near future and, therefore, she would like to resign from service and accordingly her request may be treated as a resignation letter. She also made a request for payment of her dues. On 16.06.1992, the hospital in response to the letter dated 07.05.1992 sent by the petitioner seeking extension of her leave period, directed her to join her duties failing which action for termination of service would be taken. On 20.07.1992 and 09.09.1992, the petitioner made further enquiries about her case and in both these letters, the petitioner reiterated her request of relieving her from service at the earliest. On 13.05.1993, the petitioner again wrote to the Medical Superintendent about her resignation with a request to expedite the matter at the earliest. This was perhaps the last correspondence which was made by the petitioner and thereafter the petitioner never took any steps so as to know the fate of

her resignation letter. It is after a gap of nearly 12 years, i.e. on 23.08.2004 the petitioner wrote to the Medical Superintendent of the hospital seeking permission to re-join her duties. As per the petitioner, she was informed by the hospital on 25.09.2004 that since she had resigned from the job on 03.06.1992, therefore, she could not have been permitted to join in the hospital. On 05.11.2004, the petitioner asked for a copy of the office order by which her resignation had been accepted followed by the reminders dated 07.12.20014 and 23.12.2014. Vide memorandum dated 10.01.2005, the petitioner was communicated for the first time that she was sent a communication vide office order No.14467 dated 11.11.1993 accepting her resignation w.e.f. 03.06.1992.

6. The learned CAT, after considering the material on record, took a view that there has been a total inexplicable and unexplained delay on the part of the petitioner in approaching the Tribunal for the redress of her grievance, as no plausible explanation has come forth from the side of the petitioner preventing her from approaching the Tribunal from 1993 onwards till 2004. Learned CAT also observed that the resignation letter dated 03.06.1992 was not a conditional letter, as it only states that she would not be able to join duties in near future and hence would like to resign. Learned CAT also observed that it was perhaps after the petitioner had come to know about the destruction of the hospital records in the year 2004 she sought to revive the said case. Indisputably, there was inordinate and unexplained delay on the part of the petitioner in seeking a legal remedy. If there was no communication made to the petitioner with regard to the acceptance of her resignation, then it was for the petitioner to take the necessary steps in this regard and having not done so for a period of more than 12 years, the

petitioner cannot say that there was no delay on her part in seeking legal remedy. In any case, the resignation letter sent by the petitioner was not a conditional resignation and, therefore, the same was to be effected from the time period indicated by the petitioner in her resignation letter or at the most within the time as was permissible under the relevant rules.

7. In the light of the aforesaid observations, we do not find any infirmity or illegality in the impugned order passed by the learned CAT.

8. We do not find any merit in the present petition and the same is hereby dismissed.

9. However, we direct the petitioner to file a separate representation to seek claim of her legally payable outstanding dues from the respondents and the said representation of the petitioner shall be decided by the respondents within a period of eight weeks from the date of submission of the same. We also direct that if any of the claims are legally payable to the petitioner, the same shall be immediately released in favour of the petitioner without troubling the petitioner to approach the court again.

KAILASH GAMBHIR
(JUDGE)

I.S.MEHTA
(JUDGE)

JANUARY 07, 2015
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