

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPST 86 of 2020

Dr. Debangshu Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Dibyendu Narayan Ray
Mr. Biswarup Nandy
... For the petitioner

Mr. Swapan Kumar Datta
Ms. Susmita Das De
... For the State

The short issue involved here is whether the State as the employer can sit over an employee's resignation letter and not issue a release letter despite no disciplinary proceedings having been instituted against such employee and despite such employee not being bound by any bond or the like for serving out a particular period of time.

The petitioner is a doctor serving at the Purulia Government Medical College and Hospital. Upon the petitioner perceiving a position opening for the petitioner at the All India Institute of Medical Sciences coming up in Kalyani, the petitioner tendered his resignation from the State Government service and sought a letter of release that must be produced before the AIIMS authorities for the petitioner's application to be pursued or considered. Upon the arbitrary withholding of the letter of release or failure to communicate the acceptance of the letter of resignation,

the petitioner approached the West Bengal Administrative Tribunal. By an order dated October 5, 2020, the Tribunal appears to have abdicated its authority to decide the matter by directing the Secretary in the Department of Health and Family Welfare of the State to dispose of the letter of resignation dated September 18, 2020.

As is elementary, since it is impossible to make an unwilling horse work, a suit or order in the nature of directing the performance of any work by an individual may not lie or be made. At the highest, the employer may obtain damages in lieu of what the employee was obliged to do. In any event, an employee always has the right to resign and walk out. The only notable exceptions being when there are departmental or disciplinary proceedings pending against the employee or there is a bond period that the employee has to serve or there is a claim that the employer has against the employee which has to be discharged only by performance. Even if an employer has a claim in money against the employee, the employee is not obliged to continue in service till the claim is discharged; since it is always open for the employer to enforce the claim in accordance with law.

It appears to be the fairly admitted position in this case that no departmental proceedings are pending against the petitioning doctor. The State cannot assert, far less demonstrate, that the petitioner executed any bond or the contract of employment between the parties requires the petitioner to serve out a certain tenure and the letter of

resignation has been issued prior to the expiry of the term. Indeed, the State cannot even indicate that it has a money claim against the petitioner. In such circumstances, there can be little or no justification in the State refusing to accept the letter of resignation and issue the letter of release for the petitioner to take up any other work that the petitioner may be interested in.

In the light of the admitted position, the respondent authorities are directed to issue the letter of release to the petitioner as expeditiously as possible and, preferably, by December 22, 2020. In any event, the petitioner will be entitled to rely on this order as the deemed letter of release for the petitioner to apply for or take up any other post that the petitioner intends to.

WPST 86 of 2020 is disposed of.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)