

Form No. J(1)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Jay Sengupta

W.P.A. 17400 of 2021

**Himangshu Manna @ Himangshu Sekhar Manna
-Vs-
The State of West Bengal & Ors.**

For the petitioner : Mr. Billwadal Bhattacharyya,
Mr. Rajdeep Majumder,
Mr. Mayukh Mukherjee,
Ms. A. Bajaj.

For the State : Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Mr. Rajat Datta.

For the Municipality : Arun Kumar Das.

Heard on: 03.11.2021.

Judgment on: 03.11.2021.

Jay Sengupta, J. :

This is an application seeking a direction upon the
Municipal Authorities for allowing the petitioner to join his service
with them.

Affidavit-of-service filed in behalf of the petitioner is taken on record.

Report filed by the Chairperson of the Board of Administrators as filed on behalf of the State is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a sanitary inspector at Contai Municipality. A criminal case was initiated against the petitioner on 1st July, 2021. Because of this, the petitioner was unable to attend work for sometime. Subsequently, this Court stayed the criminal proceeding as against the present petitioner by an order dated 4th October, 2021. In the meantime, the Municipal Authorities, by a show cause notice dated 4th September, 2021, asked the petitioner to explain the reason for his not joining service and directed him to appear on 5th October, 2021 with the explanation. The petitioner wrote a letter dated 23rd September, 2021 expressing his willingness to join service at the earliest. In spite of this, the Municipal Authorities did not allow the petitioner to join his work. This is despite the fact that there is no suspension order whatsoever passed in this regard. In fact, no disciplinary proceeding has yet been initiated against the petitioner.

Learned senior counsel appearing on behalf of the State submits as follows. It is true that no disciplinary proceeding has yet been started against the petitioner. However, the petitioner was asked to show cause about his unauthorized absence. The explanation given by him was not supported by any document and an opportunity has been given to him to explain the circumstances. Instead of availing of the same, the petitioner has moved this Court. Section 61 of the West Bengal Municipal Act and Rule 25 of the West Municipal (Employees' Service) Rules, 2010 govern the issue of unauthorized absence and its consequences.

Learned counsel appearing on behalf of the Municipal Authority adopts the submissions made on behalf of the State. Learned counsel further submits that the Board of Administrators of the Municipal Authority is in seisin of the issue of the petitioner's rejoining in the work.

I have heard the submissions of the learned counsels appearing on behalf of the parties and perused the writ application and the report filed on behalf of the State.

It is an admitted position that no disciplinary proceeding has been started against the present petitioner as yet. No order of suspension has been passed against the petitioner either.

In the present context, it is germane to quote the relevant portions of Rule 25 of the West Bengal Municipal (Employees' Service) Rules, 2010 :-

“

(3) Wilful absence from duty after expiry of the leave renders an employee liable to disciplinary action.

.....

Note 2. **Action for unauthorized absence from duty or/for overstay of leave.**

- (i) When an employee applies for leave beyond the prescribed limit of extra-ordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the ground as exceptional, the leave cannot be granted. In such a case the employee shall be asked to rejoin duty within a specified date, failing which he would render himself liable to disciplinary action. Disobedience of orders to rejoin duty within the specified period would afford good and sufficient reasons for initiating disciplinary action. If he rejoins duty by the stipulated date he may be taken back in service and the period of absence not covered by leave would be treated as overstay, and such overstay shall be regularized in accordance with the provisions of this rule.

If the employee does not join duty by the stipulated date, it would be open to the disciplinary authority to institute disciplinary action against him. If during the course of disciplinary proceeding he comes for rejoining duty he shall be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension), and disciplinary action shall be concluded as quickly as possible. The question of regularization of the period of overstay of leave shall be left over for consideration till the finalization of the disciplinary proceedings.

- (ii) If an employee absents himself abruptly, or applies

for leave which is refused in the exigencies of municipal service and shall happen to absent himself from duty, he shall be informed about the consequences viz. That the entire period of absence shall be treated as unauthorized absence entailing loss of pay for the period in question which shall be resulting to discharge from his service after completion of the period prescribed in sub-rule (1) of this rule. If however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he was not placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorized absence resulting in loss of pay and allowances and such service shall not be counted within the service qualifying for Pension, Gratuity etc.”

Therefore, it is evident that if an employee does not join duty by a stipulated date, the disciplinary authority shall be at liberty to institute an appropriate proceeding. However, if during the disciplinary proceedings he comes for rejoining duty, he shall be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension).

In fact, the Rule also entails that after initiation of disciplinary proceeding he may be taken back in duty because he was not placed under suspension.

In the present case, it is admitted by the parties that there is no order of suspension passed against the petitioner. No disciplinary proceeding has been started against him either.

Unless the petitioner is placed under suspension, there is no provision which warrants keeping him away from work.

It also appears from the records that the issue of the petitioner's rejoining work has remained pending for long.

In view of the above, the present application is disposed of with the direction upon the Municipal Authorities to allow the petitioner to rejoin his employment with the Municipality forthwith. However, it shall be open to the concerned Municipal Authorities to take appropriate action as regards the absence of the petitioner from work in accordance with law.

As the affidavits are not called for, the allegations made in the writ petition are not admitted by the parties.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Jay Sengupta, J.)