

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
(CONSTITUTIONAL WRIT JURISDICTION)

WPST 87 of 2020

Date of decision:- 11.02.2021

Dr. Anirban Dasgupta

...Petitioner

-versus-

The State of West Bengal and Ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE ANIRUDDHA ROY**

Present:- Mr. D.N. Ray and
Mr. Biswarup Nandy, Advocates

...for the petitioner

Mr. Jyotosh Majumder and
Mr. Tapan Kumar Mukherjee, Advocates

...for the State

ORDER

1. Present writ petition has been filed challenging the order dated October, 05, 2020 (for short, 'the impugned order') passed by the West Bengal Administrative Tribunal (for short 'the Tribunal') in O.A. 359 of 2020 (for short, 'the Original Application'), whereby the Secretary, Department of Health, State of West Bengal being respondent No.1 before the Tribunal, was directed to dispose of the representation of the writ petitioner dated September 28,, 2020 by passing a reasoned order and to communicate the same to the writ petitioner after considering the order passed by this Court in *WPST 58 of 2020 (Dr. Santanu Suba Vs. The State of West Bengal and Ors.)*.
2. It was submitted on behalf of the writ petitioner that there is extreme urgency in the matter. In case the petitioner is not allowed to join the All India Institute of Medical Sciences, Kalyani (for short 'AIIMS') by

February 11, 2021 (the period already extended), he will lose the opportunity and would suffer immense and irreparable injury and prejudice. Accordingly, the writ petitioner prayed for redressal of his grievance completely in this present writ petition on merit of his case. Considering such prayer and finding urgency in the matter, this Court proceeds to hear the petitioner on merit for final disposal of the writ petition, even though the case of the petitioner has not yet been considered by the first respondent. The parties had also agreed to the same.

3. The petitioner on August 25, 2015 had joined the West Bengal Medical Education Service, Department of Health and Family Welfare as a tutor by virtue of a notification dated August 18, 2015 in the Department of Gynaecology and Obstetrics, Bankura Sammilani Medical College, Bankura (for short, 'the Bankura Medical College'). To complete his higher studies in Gynae-Oncology, the writ petitioner had applied for leave for three years without any salary or in alternative, had requested his state employer to accept his resignation with effect from November 18, 2017. The writ petitioner served the necessary one month prior notice dated October 18, 2017. On November 18, 2017 the writ petitioner made further representation before the second respondent seeking discontinuation of services to pursue his training in the stream of Gynae-Oncology.
4. The writ petitioner on January 02, 2018 received one teaching experience certificate from his state employer, wherefrom, for the first time, the writ petitioner came to learn that his resignation with effect from November 18, 2017 as requested by him was not accepted. Such certificate was issued by the Principal of Bankura Medical College when the writ petitioner already started pursuing his higher studies at Norfolk and Norwich University Hospitals as Clinical Fellow in Gynaecological Oncology/Registrar in Obstetrics. The writ petitioner

was never communicated as to the fate of his request for resignation made before his employer.

5. The writ petitioner then joined Chittaranjan National Cancer Institute on temporary basis after being selected in the interview for the post of Senior Resident. The said Chittaranjan National Cancer Institute, is an institute funded by Government of India. Meanwhile, AIIMS invited applications for the post of Assistant Professor. The writ petitioner applied for the same and received a call for interview. For such purpose the writ petitioner had also received a no objection certificate from the said Chittaranjan National Cancer Institute, Calcutta. After being successful in the interview, AIIMS vide its communication dated September 15, 2020 issued appointment letter to the writ petitioner.
6. After receipt of the said appointment letter from AIIMS, the writ petitioner vide his letter dated September 20, 2020 made a representation before his state employer requesting for issuance of necessary order discharging or relieving him from service. In the alternative, the writ petitioner also requested for a lien to join the post of Assistant Professor at AIIMS. The said representation was also not considered.
7. Since the representation made by the writ petitioner was not considered by his state employer, on or about September 29, 2020, he filed the said Original Application before the Tribunal, inter-alia, praying for the following reliefs:-

“(a) An order do issue directing the respondent authorities to allow the applicant the benefit of “Lien” as enshrined in West Bengal Service Rules, Part-I for a period of two years from the post of Tutor (putting the present post of “Tutor” on suspended lien), enabling him to join the post of “Assistant Professor”, Department of Obstetrics & Gynaecology at AIIMS, Kalyani on or before 15.10.2020.

- (b) An order do issue thereby directing the respondent authorities to issue “relieving order” in favour of the applicant within a stipulated time period enabling him to join the post of “Assistant Professor”, Department of Obstetrics & Gynaecology at AIIMS, Kalyani on or before 15.10.2020.
- (c) An order do issue directing the concerned respondent authorities to transmit all the records pertaining to the instant application so that conscionable justice can be administered.
- (d) Any other appropriate order/orders direction/directions as this Hon’ble Tribunal may deem fit and proper to protect the interest of the applicant.”

The said Original Application was then disposed of by vide impugned order dated 05.10.2020.

8. In the present writ petition orders were passed by this Court from time to time directing the respondent to file their affidavit-in-opposition and the writ petitioner to file his reply thereto. The state respondents chose not to file its opposition within the time frame. However, during the course of the hearing on February 11, 2021 the state respondents prayed for extension of time to file its opposition and submitted that a copy had already been served upon the writ petitioner on February 10, 2021. Such service of affidavit-in-opposition was duly confirmed by the learned Counsel appearing for the writ petitioner and he submitted that, in view of the urgency in the matter, he does not wish to file any reply thereto and would proceed with the hearing of the writ petition on the basis of the existing records. Upon the extension being granted the state respondents had filed the said affidavit-in-opposition and the same was taken on record.
9. Mr. D.N. Ray and Mr. Biswarup Nandy, learned Advocates appearing for the writ petitioner restricted their submission only on the issue of illegal

and arbitrary action on part of the respondent state employer by not accepting the resignation tendered by the writ petitioner way back on October 18, 2017. He submitted that on his resignation being accepted by the state employer the writ petitioner could have joined AIIMS and there was no reason as to why the state employer had withheld it and should not grant the same to enable the writ petitioner to join AIIMS by February 11, 2021 (the extended period). He submitted that his selection before the AIIMS was in terms of the relevant rules of selection and the participation of the writ petitioner in the interview held by AIIMS was lawful as he had obtained the necessary no objection certificate from his immediate employer, that is, the Chittaranjan National Cancer Institute, where he had been working at that juncture. He then submitted that, in terms of the relevant rules of the West Bengal Rules, 1971 (for short, 'the 1971 Rules') the writ petitioner is entitled to resign from his parent service, that is, state employer and the state employer is obliged to accept his resignation

10. Per contra, Mr. Jyotosh Majumder, learned Government Pleader and Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader appearing for the state respondents submitted that, in terms of the Rule 34A of the said 1971 Rules, Part-I there is a lock in period of five years from the date of joining to be eligible for resignation. In the present case the petitioner joined service on August 18, 2015 and tendered resignation on October 18, 2017. Therefore, tendering of his resignation by the writ petitioner was not lawful and was invalid under the applicable provisions of law. Therefore, the writ petitioner in any event could not have been allowed to resign from the medical services of the state. It was then submitted that while serving the Chittaranjan National Cancer Institute which is funded by Central Government, the writ petitioner did not obtain any no objection from his state employer and continued with two parallel employment which is grossly illegal in

the eye of law. It was then submitted that, while applying to AIIMS, the mandatory requirement on the part of the petitioner was to obtain a no objection from his principal employer, that is, the state in this case and to submit such no objection before the AIIMS which was also not the case here. The writ petitioner thus acting all along in violation of all the applicable and relevant legal provisions and as such no equity can be shown to the writ petitioner, as he is not entitled to any relief in law or otherwise. Both Mr. Majumdar and Mukherjee, learned Government Counsels then relied upon a recent decision of this Court rendered in *WPST 107 of 2020 (Dr. Arindam Roy Vs. The State of West Bengal & Ors.)* decided on January 06, 2021 and submitted that in view of the law laid down therein the present petition is liable to be dismissed.

11. After hearing the learned Counsels for the parties and on perusal of the materials before this Court, it is evident that the facts are not in dispute. Rule 34A of the said 1971 Rules, Part-I provides for a lock in period of five years from the date of joining within which the writ petitioner could not resign from his service. The writ petitioner joined service on August 18, 2015 and tendered his resignation on October 18, 2017. The writ petitioner further made a representation on September 18, 2020 seeking lien and in the alternative final release order, inter alia, contending that he had completed five years lock in period. Without receiving any consideration on the representations made by the writ petitioner, on or about September 29, 2020 he filed the Original Application before the Tribunal where the primary prayer of the writ petitioner was for granting 'lien' and the consequential 'relieving order' be issued in his favour by his state employer. Insofar as the issue of lien is concerned the same is covered by the said recent judgment of this Court *in the matter of: Dr. Arindam Roy's case (supra)*. In the facts of the instant case, it was never argued on behalf of the writ petitioner that he became permanent, which is necessary to acquire a lien on the

substantive post. To avail of the right of lien, a government employee must have a substantive appointment to any permanent post. In this regard the relevant portions of the said judgment *in the matter of: Dr. Arindam Roy's case (supra)* are reproduced herein below:-

20. *The petitioner was appointed in the West Bengal Medical Education Service and joined on September 9, 2017. He applied for permission to appear in interview for a post in AIIMS before the second respondent on March 3, 2019 and the permission was granted to the petitioner on March 14, 2019, subject to certain conditions. Necessary 'No Objection Certificate' was also issued on the same day. It is, therefore, evident that the request for no objection made by the petitioner and the consequential permission and the No Objection Certificate issued thereupon, were all before completion of the period of two years from the date of joining of the petitioner, when admittedly the petitioner was in probation. So the question of receiving such permission or No Objection Certificate from the respondent No.2 by the petitioner before completion of period of probation did not and could not arise. In as much as, on a true and proper construction of Rule 3(a) and 3(b) of the 1979 Rules, it is evident, that appointment on permanent post means substantive appointment with confirmation and for probation such an appointment is on trial before confirmation. From a plain reading and proper construction of Rule 5 of the 1979 Rules, it is clear that a government employee, being the petitioner herein, shall be deemed to be on probation on till such time a specific order is passed by the competent authority for making him permanent. Such a formal declaration must contain recording of satisfaction of the appointing authority as to the performance of the petitioner to make him permanent. It is the undisputed position on record that no such formal declaration was issued by the appointing authority in favour of the petitioner to make him permanent.*
21. *The relevant rules of the 1979 rules governing the petitioner require a specific act on the part of the employer by issuing a formal declaration for the purpose of confirmation and even if the maximum period of probation of two years, as contended by the petitioner had expired, no such formal declaration being made for confirmation by the appointing authority of the petitioner, he cannot be deemed to have been confirmed merely because the period of probation, according to him or otherwise, had expired.*
22. *Rule 17 to 21 of the 1971 Rules- Part I deal with lien. A plain reading of Rule 17 of the said Rules and on proper construction thereof it is evident that a government employee on substantive appointment to any permanent post acquires a lien on the post, therefore, to avail of the right of lien a government employee must have a substantive appointment to any permanent post. In the facts and circumstances of this case the petitioner is not holding any permanent post, hence, is not entitled to claim right of lien as provided under the relevant Rules under Chapter 3 of the 1971 Rules, Part-I.*

12. The Learned Government Pleader, in addition to his legal submissions had further submitted that, during this pandemic situation arising due to COVID-19, the human lives in the world have been suffering and this State is also not an exception thereto. In as much as, there is scarcity

of doctors in the State Medical Service to treat the society at large considering the persons affected during this pandemic situation. The doctors who are employed with the State Medical Services, considering the exigency and scarcity of doctors might have to be posted and shifted to the places wherever their services are required on an emergency basis. Considering this, it is also not just and reasonable to allow a doctor in the State Medical Services to proceed elsewhere more so when he is not entitled to the same as per the Rules.

13. In so far as, the submission of the State respondents that if the petitioner joins AIIMS, Kalyani, the State Medical Service may suffer during this COVID-19 situation and considering the counter argument made on behalf of the petitioner in this regard, as noticed above, we are of the considered view that the AIIMS, Kalyani, is no doubt a premier and esteem medical institute of high repute and though the petitioner would remain at Kalyani within the State of West Bengal but considering the prevailing pandemic situation if any emergency arises where immediately the scarcity of doctors is to be met in any part of the State, it can immediately deploy the petitioner, wherever his service is required. Such cannot be a scenario in the event the petitioner joins AIIMS, Kalyani. Thus, considering the gravity for the present prevailing pandemic situation in the State, this Court cannot lose its sight of that.
14. From the facts of the case as discussed above it appears that the writ petitioner went abroad to pursue his higher studies for a period of about three years at Norfolk and Norwich University Hospitals as clinical fellow in Gynecological Oncology/Registrar in Obstetrics, when neither the writ petitioner was on lien nor any permission was granted by his state employer. Then the writ petitioner joined the said Chittaranjan National Cancer Institute without informing and obtaining prior permission from his state employer. Similarly, the writ petitioner did not obtain any prior permission or approval from his state employer

before appearing in the interview of AIIMS. The cumulative effect of all these facts is that the writ petitioner proceeded on his own will and wisdom without following the procedure established by law. As such no equity can be shown in favour of the writ petition.

15. In view of our foregoing discussions and for the reasons hereinabove, this Court finds no merits in the present writ petition and the same he hereby dismissed.

16. There shall be, however, be no order as to costs.

(Aniruddha Roy, J.)

I agree.

(Rajesh Bindal, J.)

Kolkata

11.02.2021

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P.A. (SG)