

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

Reserved on: 12/01/2021

Pronounced on: 03/02/2021

W.P.S.T. 96 OF 2020

Subhrajit Guha

...Petitioner

Through:-
Mr. K.M. Hossain,
...Advocate, Present in Court

-Vs-

The State of West Bengal & Ors.

...Respondents

Through:-
Mr. Swapan Kumar Dutta,
...Sr. Advocate, present through VC
Ms. Soumi Guha Thakurata
...Advocate, present in Court

Coram: **THE HON'BLE JUSTICE RAJESH BINDAL**
 And
 THE HON'BLE JUSTICE ANIRUDDHA ROY

JUDGMENT

Rajesh Bindal, J.

1. Challenge in the present petition is to the order dated May 24, 2019, passed by the West Bengal Administrative Tribunal, Kolkata (for short 'the Tribunal') in O.A. No.296 of 2018.
2. The petitioner herein had approached the Tribunal seeking a direction to the respondents to allow him to resume duty as Amin in the Sub-Divisional Office of Land and Land Reforms Officer, Lalbagh in the district of Murshidabad, treating the period of unintentional absence as 'on duty'. The petitioner claimed that he was working as Amin in the aforesaid office.

However, due to change of party in power and compelling circumstances the petitioner had to leave the place on 11.5.2011 to save him and his family and he could not attend his duty therefrom. After the circumstances normalised he moved application to the District Land and Land Reforms Officer, Murshidabad on 10.12.2012 for allowing him to resume his duty. No response was received. A request letter was also written on 20.12.2012 followed by letter dated 1.8.2013. On 27.9.2013 the petitioner received copy of the communication from Sub-Divisional Office of Land and Land Reforms Officer, Lalbagh to ADM, Land and Land Reforms Officer, Berhampore, seeking instructions from his superior to take appropriate steps in the matter. Another representation was made by the petitioner on 16.2.2015. However, to that also no response was received. It was under these circumstances, Original Application was filed in the year 2018.

3. He further submitted that for more than last nine years neither the petitioner has been placed under suspension nor any enquiry has been initiated against him. Hence, he cannot be removed from service unceremoniously. He should be permitted to join duty subject to whatever disciplinary action can be taken. He further submitted that the Tribunal has failed to appreciate the contentions raised by the petitioner while rejecting the O.A. filed by him. It was continuing cause of action, hence, there was no delay in approaching the Tribunal.
4. After hearing learned Counsel for the petitioner we do not find any reason to differ with the view taken by the Tribunal while rejecting the O.A. filed by the petitioner. It is a case in which admittedly the petitioner is absenting from his duty from 11.5.2011 onwards. Though it is claimed that he had to shift his place of residence on account of compelling circumstances because of change of political power, to save him and his family. However, there is nothing on record to substantiate this contention. It is the admitted case of the petitioner that the circumstances normalised after about a year

as he had moved a representation on 10.12.2012 for permitting him to join duty. It was not acceded to. Thereafter, the claim is that repeated representations were made which also did not yield any result. Original Application was filed before the Tribunal more than seven years after the petitioner had absented from duty. What has been discussed in the impugned order passed by the Tribunal is that there is some medical certificate dated 2.4.2015 produced on record by the petitioner advising him rest for thirty days on account of medical problem otherwise there is no good reason for the petitioner to have slept over the matter for so long, as he did not avail of his appropriate remedy, in case his grievance was not redressed by the competent authority.

5. Section 21 of the Administrative Tribunals Act, 1985 (for short, 'the Act') provides that in case the representation filed by an employee is not responded to by the authority concerned the limitation to raise the issue before the Tribunal is one year and six months from the date such a representation had been made. In the case in hand, admittedly the representation was made on 10.12.2012 and the Original Application was filed about six years thereafter.
6. Hence, there is no error in the order passed by the Tribunal.
7. Before parting with the order we are constrained to comment on the working of the Government as well. Here is an employee who is absenting from service for more than eight-nine years but no action was taken against him. Some authority in the department has to be accountable for this. This may not be a case in isolation where no action was taken in the case of employees who are continuously absenting from duty without sanction from the competent authority. Data pertaining to all such cases need to be collected and appropriate action should be taken in terms of applicable rules.

8. Let a copy of the order be sent to the Chief Secretary of the State of West Bengal for taking appropriate action in the matter.

(RAJESH BINDAL)
JUDGE

(ANIRUDDHA ROY)
JUDGE

Kolkata

03 /02/2021

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PA(SM)