

02 10.06.22

WP.ST. 49 of 2022

Ct. No. 04

Akd

Subharati Banerjee Chakraborty
Vs.
The State of West Bengal & Ors.

Mr. Soumya Majumdar,
Mr. Debashis Banerjee,
Mr. Supreem Naskar.
... for the petitioner.
Mr. Chandi Charan De,
Mr. Anirban Sarkar.
... for the State.

The instant writ petition is taken out challenging the order no. 4 dated 6th April, 2022 passed by the West Bengal Administrative Tribunal in OA 758 of 2021 directing the Principal Secretary, Department of Labour to hold hearing afresh regarding acceptance of resignation of the applicant within a specified time and pass a reasoned order, which shall be communicated to the writ petitioner.

The facts emanates from the record would reveal that the petitioner was appointed as Assistant Superintendant (Non-medical) in the year 2015 and continued to render her services till 18th March, 2020. She went on leave on 19th March, 2020 and submitted the application in this regard to the Superintendant, Kamarhati Employees' State Insurance hospital. The leave as sought for was renewed from time to time and ultimately she tendered resignation on 4th May, 2020 with immediate effect.

It does not borne from the record that anything happened thereafter. The Superintendent of the said hospital immediately caused a letter on an even date and communicated to the petitioner that the letter of resignation is required to be tendered as per service regulations and, therefore, adherence thereof is

warranted in the event she decides to resign from services.

The record does not reveal any further action having taken in this regard except that a date for hearing was fixed by the Deputy Secretary, Labour Department, Government of West Bengal requesting the writ petitioner to appear before him. The petitioner took a specific stand at the time of hearing that she does not want to continue with the prayer made in the said resignation letter and intended to withdraw the same. It was further indicated to the hearing officer that she would submit a detailed report regarding her leave status on or before 5th October, 2020 and invited the attention of the authority to consider the matter sympathetically.

Curiously enough without accepting the aforesaid prayer nor proceeding any further the letter is received by the writ petitioner issued on 9th September, 2021 that she may be considered for fresh appointment in terms of the provisions contained in Note (ii) of Rule 34A of West Bengal Service Rules – Part 1.

It is thus discerned from the sequel of events narrated hereinabove that the letter of resignation was neither accepted nor rejected by the said authority as yet and in the meantime more particularly on the date fixed for hearing with regard to the said letter of resignation the petitioner withdrew the said letter.

None of the Counsels has been able to apprise us the specific procedural provisions relating to the resignation by the Government employee. It is uniformly submitted that Rule 34A of the West Bengal Service Rules – Part 1 is the only provision, which applies in case of resignation. It is profitable and apposite to quote the aforesaid provisions, which

runs thus:

“34A. (1) No Government employee shall, unless the Government otherwise directs, be permitted to resign if he fails to serve on his appointing authority due notice at least for –

(a) in the case of a Government employee holding no lien or suspended lien on a permanent post under the Government,.....one month; or

(b) in the case of a Government employee holding lien or suspended lien on a permanent post under the Government, three months.

Explanation.—In this rule and in rule 34B “Government employee” means a person appointed to a service or post in connection with the affairs of the State and remunerated otherwise than on a daily, weekly or fortnightly basis.

(2) A Government employee who tenders resignation and quits without giving the notice as provided in sub-rule (1) shall, at the discretion of the appointing authority, be liable to forfeiture of his salary for the period by which the notice falls short of the requirements of clause (a) or clause (b), as the case may be, of that sub-rule in addition to such disciplinary action as may be taken against him for contravention of these rules.

Note:

***Regarding the question of taking back in service a Government employee who resigned and subsequently withdrew such resignation letter the following principles shall be followed:*

(i) A person continues in service if he

withdraws his resignation letter before the date from which the resignation is to take effect. The resignation becomes irrevocable and operative after the aforesaid date of resignation. So the question of withdrawal of the resignation letter by the Government employee and taking back such employee in service does not arise. After the resignation has become irrevocable and effective, it cannot be cancelled.

- (ii) Resignation does not disqualify a person for fresh appointment and if he is given any appointment after his service in connection with the previous appointments has come to an end on account of resignation, the appointment given subsequently shall always be treated as a fresh appointment without any consideration whatsoever with his previous appointment.*
- (iii) Such fresh appointment shall not be possible if the age exceeds the limit prescribed in the rules. The Government or Head of the department, however, reserves to itself the right to relax the age limit in cases of eminently suitable persons.*
- (iv) In case of such fresh appointment the relevant rules relating to recruitment cannot be relaxed in favour of the persons concerned unless the rules confer such power on the appointing authority.”*

Upon a meaningful reading of the harmonious construction of the aforesaid provision one can

decipher that no Government employee shall be permitted to resign without serving a notice to his appointing authority at least for a period of one month in the event such Government employee has no lien or suspended lien on the permanent post under the Government or three months in case such Government employee has lien or suspended lien on such permanent post under the Government.

What has been provided therein is the period of notice for resignation and, therefore, no other interpretation can be assigned in this regard, as the language employed therein is clear, explicit and conveys the manifest intention of the framer of the said Rule.

However, sub-rule (2) of Rule 34A contemplates that the Government employee who tendered resignation and quit without serving notice provided under sub-rule (1) shall be liable to a forfeiture of his salary for the period by which the notice falls short of the requirements of clause (a) or clause (b) of sub-rule (1) at the discretion of the appointing authority.

It is thus gathered from the provisions contained in sub-rule (2) of Rule 34A that if the resignation is not tendered strictly in terms of the provisions contained in sub-rule (1), the discretion is vested upon the appointing authority to forfeit the salary for the period by which the notice falls short and in addition to that disciplinary action may be taken against such Government employee. It does not convey any legislative intent that the moment resignation is tendered, the Government employee is relieved of his responsibility or duties and seized to be the Government employee because of the discretion having vested upon the appointing authority to initiate a disciplinary action against such employee.

However, a notification was issued and published

on 29th September, 1964 appended to sub-rule (2) of Rule 34A of the said Rules providing the exhaustive provisions pertaining to withdrawal of resignation letter. Para (i) of the said Note depicts that the person, if he withdraw his resignation letter before the date from which it would take effect, would be deemed to be in service. However, it is indicated therein that the resignation becomes irrevocable after the date of resignation and, therefore, the question of withdrawal of the resignation letter by the Government employee does not arise. Para (ii) of the said Note postulates that the resignation shall not act as deterrent or disqualify such person from fresh appointment and if such appointment is given, it would be treated as fresh appointment without taking into consideration the previous service rendered by him.

The impugned letter dated 9th September, 2021 apparently contemplates such provisions in directing fresh appointment to be given to the writ petitioner.

There appears to be a fallacy in the action of the authority firstly if the said Note contemplates that the resignation would take effect from the date indicated in the letter of resignation and becomes irrevocable, there is hardly any necessity to fix a date of hearing for the Government employee to appear before him; secondly if the authority have decided to fix a date for hearing obviously to take a decision whether to accept the letter of resignation or not, then in such event the date given in the letter of resignation has been extended impliedly until the final decision is taken.

It appears to us that the second course has been adopted by the authority while issuing a notice of hearing fixed on 28th September, 2021. If such being the position, the record reveals that on the said date the writ petitioner communicated through a letter that she does not want to pursue with the letter of

resignation and intends to withdraw the same. None of the provisions disclosed before us put any fetter in withdrawal of the resignation letter before it takes effect. Had it been a position that the withdrawal has been made beyond the period disclosed in the letter of resignation, the position would have been different and since the same has not been urged before us, we do not want to make any comment thereupon.

The undisputed facts remain that though the letter of resignation is to take effect immediately, yet the authority fixed the date for hearing extending the time of its effect and, therefore, there is no impediment on the part of the writ petitioner to withdraw the letter of resignation before the time indicated in the letter of resignation takes effect.

In fact, the Tribunal found that the authorities have neither accepted nor rejected the letter of resignation and have not taken any decision thereupon. The aforesaid contention would further be strengthened by the fact that the Superintendent of the hospital issued a letter on the same date of resignation stating that the resignation has not been taken out in prescribed manner and advised the writ petitioner to take steps as per the service regulations.

It can be safely said that the said letter of resignation was not tendered to the competent authority under the aforesaid provisions, i.e. Rule 34A of the West Bengal Service Rules – Part 1, which led to a decision by the Tribunal that the said resignation has not been taken effect nor been accepted by the authorities. There is no specific provision provided in the said Rules creating any embargo in withdrawing the letter of resignation nor we find any other provision which permits or confers such right in this regard.

In service jurisprudence, if the employee who

tendered resignation to take effect from a particular date can withdraw the same before the said date and the authorities cannot insist that once the bullet is triggered from the Gun it cannot be taken back. The letter of resignation issued by the Government employee, who has secured job, is to be construed on the surrounding circumstances, as the decision to resign has an impact on future service. Though it is the individual wisdom of a person to take a decision in his service life, yet such decision may sometime be swayed by some extraneous circumstances and factors.

If such employee subsequently realized that the resignation would be detrimental to his service and in absence of express embargo having created in the Rule if he or she withdraw the same, the authority should not proceed with such letter of resignation. However, the question of unauthorized absence is the matter between the employer and employee and action to be taken in terms of the Rules applicable in this regard.

In view of the findings made hereinabove the reliance upon para (ii) of the notification dated 29th September, 1964 is misplaced, as the relationship of the employer and employee has not seized as yet. The Tribunal in our view have not addressed such issue and took the circuitous route in securing the disposal in stead of imparting true and real justice to the litigant.

Accordingly, the order of the Tribunal impugned in the instant writ petition is hereby set aside. As a consequence thereof the Memorandum dated 9th September, 2021 is quashed and set aside.

The concerned respondent is directed to permit the writ petitioner to join the post, which she held as on the date of tendering the resignation within two

weeks from the date of the communication of this order.

So far as the unauthorized absence and application for leave is concerned, it is open to the authority to take a decision thereupon and it goes without saying that any other action contemplated under the Rules, appears to the State respondent to be inevitable, the same would be taken strictly in accordance therewith.

Since the petitioner has been prevented from joining the duty, we feel that the authority have unreasonably prevented her causing pecuniary loss.

We do not find from the materials on record that prior to taking up the application being MA 10 of 2022 any prayer was made for joining the service before the authorities and, therefore, whatever the pecuniary benefits after the said application has accrued, we do not want to make any comment thereupon.

However, liberty is granted to the writ petitioner to make a representation before the concerned authority for redressal of the pecuniary loss occasioned for refusal to let her join the service and if such representation is made, the authority shall take a decision in accordance with law.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

