

**04.02.
2022**

Ct. No. 04

Ab

FMA 1288 of 2021

With

CAN 1 of 2021

CAN 2 of 2022

Mousumi Sarkar (Sau).

Vs.

The State of West Bengal and others.

**Mr. Shamim ul Bari,
Mr. Nitya Gopal Mukherjee.
... for the appellant.**

**Mr. Bhaskar Prosad Vaisya,
Mr. Suman Dey.
... for the State.**

**Ms. Koyeli Bhattacharya.
... for the WBBSE.**

Re: CAN 2 of 2022.

This is an application for addition of party at the behest of the appellant. By this application the appellant seeks to implead the West Bengal Board of Secondary Education as party respondent in the instant appeal although the same was not a party in the writ-petition.

The dispute pertains to refusal to join the service after more than a decade. Unless the Board permits and/or grants sanction in this regard, the School Authority cannot permit the appellant to join and, therefore, the Board is a necessary and proper party in relation to the subject dispute.

The application is thus allowed.

The West Bengal Board of Secondary Education is added as party respondent in the instant appeal. The full description of the added party is shown in the instant application as added respondent and, therefore, the office is directed to make necessary amendments in the memorandum of appeal in this regard.

The writ-petition filed by the writ-petitioner/appellant seeking a Mandamus upon the School Authorities as well as the respondent authorities to permit her to join the School in discharge of duties as a teacher, was rejected by the single Bench solely on the ground that such claim has been made after a gap of 14 years. There is no other reason assigned except the duration of absence and, therefore, we invited the respective Counsel to address us on such issue.

Our attention is drawn to the provisions contained in the Management of Recognized Non-government Institutions (Aided and Unaided) Rules, 1969 wherein the amendment has been brought by inserting an appendix pertaining to the Leave Rules. Rule 11 of the Leave Rules postulates that permanent teaching and non-teaching employee shall be granted leave of any kind for a continuous period not exceeding five years and if the teaching or non-teaching staff remain absent, it will be deemed that he/she has resigned from service and shall cease to remain in employment of the School. The aforesaid Rule is quoted under:-

“11. (i) No permanent teaching or non-teaching employee shall be granted leave of any kind for a continuous period exceeding 5 years. Where such an employee does not resume his or her duty after remaining on leave for a continuous period of 5 years or where such an employee after the expiry of his or her leave remains absent from duty, otherwise on ground of suspension for any period, which together with the period granted to him or her and in view of exceptional circumstances of the case, otherwise determines, be deemed to have resigned and shall accordingly cease to be in employment of the School.

(ii) When an employee who is not in permanent employment fails to resume his or her duties on the expiry of maximum period of extraordinary leave granted to him or her under rule 7 or where such an employee who is granted shorter period of extraordinary leave than the maximum period admissible, remains absent from duty for any period which together with extraordinary leave granted

exceeds the limit upto which he or she would have been granted such leave under Rule 7, he or she shall, unless the Board on reference from the School Authorities and in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned and shall accordingly cease to be in the employment of the School.”

It is evident from the aforesaid Rule that the period of five years is not inflexible. Though it postulates the concept of deemed resignation and cessation in employment exceeding five years but the power is given to the Board in exceptional circumstances to take a decision otherwise. It is the Board who has to take a decision whether it is a case of deemed resignation or the cessation in employment upon taking into consideration all the materials, which are produced before the concerned officer.

We thus, find that the order impugned warrants interference having passed solely on the basis of long absence i.e. 14 years when the power is also conferred upon the Board to relax and/or condone the same in exceptional cases. We, thus, set aside the impugned order.

The appellant is directed to make a comprehensive representation within two weeks from date to the Headmaster of the concerned School where she claimed to have worked and the said Headmaster shall transmit the said application to the Board within a week therefrom.

The President of the West Bengal Board of Secondary Education shall decide the said application in view of the power conferred under Rule 11 of the Leave Rules within six weeks from the date of receipt of the application from the School Authority after affording opportunity of hearing to the appellant and the School Authority.

It goes without saying that such power, which is

conferred under the said Rule, can only be exercised in exceptional cases and we feel that the President will bear the same in mind while taking a final decision.

With these observations, the instant appeal is disposed of.

The connected application being CAN 1 of 2021 is also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)