

Dr. Rivu Basu
Vs.
The State of West Bengal & Ors.

Mr. S. Ghosh,
Mr. M. N. Roy,
Mr. Biswarup Nandy,
Mr. Rajesh Kumar Shah.
 ... for the petitioner.
Mr. Partha Ghosh,
Mr. Ayanabha Raha.
 ... for the respondent no. 4.

Despite service there is no representation on behalf of the State. However, the respondent no. 4 is represented. Let the affidavit of service filed in Court today be kept with the record.

The petitioner herein was appointed as Demonstrator/RMO Clinical Tutor under the Department of Health & Family Welfare, Government of West Bengal on the basis of the Notification dated 13th December, 2012. Though the initial appointment was provisional in nature but later on his appointment was confirmed into the post and promoted to the post of Assistant Professor and presently posted at Bankura Sammilani Medical College, District – Bankura. The petitioner tendered resignation on 20th December, 2022 as he has been offered a post of Assistant Professor (Public Health) in Teaching Sub-cadre of Central Health Services at All India Institute of Hygiene & Public Health, Kolkata.

Despite the letter of resignation having been processed through proper channel no decision has been taken either in acceptance of the resignation or issuance of the release order in favour of the

petitioner.

The approach was made to the Tribunal complaining of the inaction or stubbornness on the part of the appropriate authority and by the impugned order the tribunal application was disposed of directing the authority to take a decision within a specified time on the letter of resignation.

The only issue involved in the instant writ petition is whether the employer can sit over the resignation letter tendered by the employee when he does not claim any benefit or lien for his past service.

Our attention is drawn to the judgement and order passed by this Bench on 4th November, 2022 in WPST 88 of 2022, wherein the Bench took note of various Rules applicable in this regard and the Co-ordinate Bench decision rendered in case of Dr. Debangshu Ghosh vs. The State of West Bengal & Ors. (WPST 86 of 2020 decided on 18th December, 2020), wherein the Co-ordinate Bench held that the employee has a right to resign and walk out from the service and the only fetter which can be seen in this regard is whether any departmental or disciplinary proceeding is initiated against the said employee. The order of the Co-ordinate Bench was challenged before the Supreme Court in Special Leave to Appeal (Civil) 5327-5328 of 2016 which was dismissed on 23rd February, 2016, as the State undertook to release the said employee within 48 hours.

The Co-ordinate Bench was conscious of the situation that the State may be reluctant in issuance of the release order even after the Court passes an

order to frustrate the opportunity obtained by the employee in another institution and directed that pending formal order of release to be issued by the Government the order may be treated as deemed order of release and the parties to act thereupon in the following:

"In the light of the admitted position, the respondent authorities are directed to issue the letter of release to the petitioner as expeditiously as possible and, preferably, by December 22, 2020. In any event, the petitioner will be entitled to rely on this order as the deemed letter of release for the petitioner to apply for or take up any other post that the petitioner intends to."

Admittedly in the instant case the petitioner is not claiming any lien or benefit for his past service rendered for the State Government nor there is anything forthcoming before us in absence of the State that any departmental or disciplinary proceeding is initiated against the petitioner. Even apart, the learned Advocate for the petitioner submits, on instruction, that till date no departmental or disciplinary proceeding has been initiated.

In view of the above and considering the situation that the State, despite service, has not appeared and the law enunciated in Dr. Debangshu Ghosh (supra), we do not feel that keeping the writ petition pending would yield any fruitful result.

We, therefore, modify the order of the Tribunal to the extent that the Secretary, Department of Health & Family Welfare, Government of West Bengal shall

issue the release order in course of this day. In the event the said order is not issued in course of this day, the petitioner will be entitled to rely on this order and all concern shall treat the same as deemed order of release in favour of the petitioner to take up any other post that the petitioner intends to.

The petitioner is directed to communicate this order to the Office of the Government Pleader immediately, who in turn will communicate the same to the said authority for immediate compliance thereof.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)