

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

WPST 74 of 2023

Dr. Shiv Sekhar Chatterjee
Vs.
The State of West Bengal & Ors.

Appearance:

For the Petitioner	:	Mr. D. N. Ray, Adv.
		Mr. Sankha Ghosh, Adv.
		Mr. M. N. Roy, Adv.
		Mr. Biswarup Nandy, Adv.
		Mr. R. K. Shah, Adv.
For the Respondent	:	Mr. Tapan Mukherji, Sr. Adv.
		Ms. Tuli Sinha, Adv.
Judgment On	:	16.05.2023

Prasenjit Biswas, J. :

Despite service there is no representation on behalf of the State. Let the affidavit of service filed in court today be kept with the record.

The only issue involved here is whether the State as the employer can sit over an employee's resignation letter and not issue release order despite no disciplinary proceedings having been instituted against such employee or when he does not claim any benefit for his past service.

This petitioner joined the services of the West Bengal Medical Education Services (WBMES) as Assistant Professor in the Department of Microbiology at N.R.S. Medical College, Kolkata. This applicant applied for the post of Additional Professor in the Department of Microbiology at the All India Institute of Medical Sciences (AIIMS), Kalyani after obtaining 'No Objection' Certificate dated 09.09.2022 issued by the Special Secretary to the Government of West Bengal, Health and Family Welfare Department permitting this petitioner to sit for the interview. The petitioner was selected for the post of Additional Professor in the Department of Microbiology and an appointment letter was offered to him with instruction to join the post after completion of formalities within a month from the date of receipt of the offer of appointment.

Pursuant to the offer of appointment this petitioner tendered his resignation letter on 21.11.2022 and made subsequent representation along with 15 point declaration through proper channel before the appropriate authorities. The authority concerned sat tight over the issue and had not issued the relieving order in favour of the petitioner enabling him to join in his new assignment. The time for joining has been extended by the authorities at AIIMS, Kalyani from 21.01.2023 to 21.02.2023 and lastly up to 21.05.2023 with a rider that all necessary joining formalities has to be complied on or before the said date failing which offer of appointment will be cancelled. As the authorities have not issued release order, he knocked the door of the West Bengal Administrative Tribunal by preferring an application being O.A. No. 77 of 2023 which was disposed of holding *inter alia* that-

“Therefore, the reasoned order is quashed and set aside with a direction to the Director of Medical Education, Department of Health and Family Welfare, the respondent no.3 to reconsider the applicant’s resignation letter and pass a reasoned order in the light of above observation within three weeks from the date of communication of this order. The reasoned order when passed be communicated to the applicant within one week thereof.”

The learned Counsel appearing for the petitioner vociferously argued that although approach was made to the Tribunal complaining the inaction on the part of the appropriate authority but the impugned order was passed by the Tribunal directing the authority to reconsider the applicant’s resignation letter within in a specified time.

Learned counsel draws attention of this Bench that the grounds for non-acceptance of the resignation letter in similarly circumstanced case of **Dr. Debarati Chattopadhyay Vs. The State of West Bengal & Ors., in WPST 22 of 2016** has already been decided by this court holding *inter alia* that-

“It is evident from a bare perusal of the rule that a person who tenders his/her resignation without giving notice can at best be liable for forfeiture of his/her salary of the period by which the notice falls short. The State can in no manner refused to accept the letter of resignation. The submission of the learned counsel for the State that it is because of the lack of Doctors and Specialists in the State that the resignation has not been accepted is unsustainable. The state cannot prevent a person from improving his/her prospects and carrier in some other organization. There is no provision in the Rules by which a person is duty-bound to continue in employment of the State Government endlessly and in perpetuity. Fortunately, we are not living in a

regime where the State can decide the career for its citizens; nor can it bind a person to continue forever in service without there being any law for that purpose”

The order of this Co-ordinate Bench was challenged before the Apex Court in Special Leave to Appeal (Civil) 5327-5328 of 2016 which resulted in dismissal on 23rd February, 2016, as the State undertook to release the said employee within 48 hours.

When the petitioner has not claimed any lien nor claimed any benefit for his services so rendered then it is not within the powers vested upon the appointing authority to reject the letter of resignation and compel such employee to continue in service. It is the right of an employee to resign and he cannot be forced to serve in case he is not willing until and unless there is some stipulation in the rules or in the terms of appointment or disciplinary proceedings is pending or contemplated which is sought to be avoided by resigning from the services.

Our attention is drawn that the respondent authorities have again tried to unsettle the issue of resignation which has already been settled by this Court by passing orders in connection with different cases. In the present case the authority concerned rejected the prayer for resignation on the ground of dearth of doctors but the said ground for rejection has already been decided by this court in case of ***Dr. Debarati Chattopadhyay vs. The State of West Bengal & Ors., in WPST 22 of 2016***. There can be no justification in the part of the authority concerned in refusing to accept the letter of resignation and issue the letter of release for the petitioner to join in his new post.

We are of the view that the Tribunal had to give direction upon the respondent authorities to issue release order in favour of the petitioner after accepting resignation letter enabling him to join the post of Additional Professor (Microbiology) in AIIMS, Kalyani but not doing so the Tribunal directed the respondent authority to reconsider the issue relating to issue of release order which is an attempt taken to linger the issue unnecessarily.

In view of above circumstances, we do not feel that keeping the writ petition pending would yield any fruitful result.

We, therefore modify the order passed by the Tribunal to the extent that the Secretary, Department of Health & Family Welfare, Government of West Bengal shall issue the release order within two days from the date of this order. In the event the said order is not issued by the authority, 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 writ petition is thus disposed of.

No order as to costs.

Let a plain copy of the judgment duly signed by the PA be given to the parties on an undertaking that they would obtain the certified copy.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)