

06 17.05.23

Ct. No. 04

akd

WP.ST. 82 of 2023

Dr. Nilanjan Datta

Vs.

The State of West Bengal & Ors.

Mr. Surojit Samanta,

Mr. Biswajit Samanta.

... for the petitioner.

Mr. Tapan Kumar Mukherjee,

... for the State.

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.

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, who is present in Court, is requested to appear in the instant case. The Legal Remembrancer is directed to regularize the appointment of Mr. Mukherjee in this case. A copy of the writ petition has been served upon Mr. Mukherjee in Court today.

After perusing the averments made in the instant writ petition, Mr. Mukherjee proceeds to argue on the proposition of law involved in the instant case.

The dispute relates to rejection of an application tendering resignation by the petitioner, who joined as Medical Officer (Specialist) in the discipline of Otolaryngology under the West Bengal Health Service on and from 29th August, 2016. Since the father of the petitioner was not keeping well and being the only son, he decided to tender resignation, which was later on rejected by the competent authority.

It is no doubt true that by virtue of the amendment having brought in Rule 34A of the West Bengal Service Rules, Part-I by inserting proviso thereto, an embargo is created upon the officers of the Health Department that the resignation letter shall

not be accepted nor entertained before completion of five years from the date of joining. Obviously the moment the application tendering resignation was filed before the expiration of five years from the date of joining, it deserves rejection on the mischief of the said proviso inserted to Rule 34A of the West Bengal Service Rules, Part-I.

However, when the tribunal application was moved before the Tribunal and came to be disposed of by the impugned order, an embargo of five years was no longer in place and for such reason the order passed by this Bench on 1st March, 2023 in WP.ST.124 of 2022 was relied upon. Astonishingly, after noticing the said order, which has direct bearing on the issues, the Tribunal proceeded to pass the impugned order taking contrary view to what was taken therein.

It appears to us that the Tribunal, who is manned by an Administrative Member, has inclination to uphold the administrative decisions rather to accept the judicial interpretation of the provision. The said Administrative Member being a part of the Tribunal has been bestowed power to discharge judicial functions and, therefore, a radical change in the mindset is expected while discharging such duties. The moment High Court in exercise of power conferred under Article 226 of the Constitution of India has interpreted a particular provision, the judicial discipline demands that all the authorities subordinate to it are bound to follow such decision. The comity of judicial discipline achieved the purpose of uniform decision and bringing certainty thereto and it is not expected from the Tribunal to take a contrary view or conservative view, which is opposed to the view taken by the Division Bench of the High Court.

The Division Bench in WP.ST. 124 of 2022 was quite alive of the fact that the said proviso inserted to Rule 34A of the West Bengal Service Rules, Part-I creates an embargo, which is manifest therefrom, but the moment the judicial matter came before the authority and it is seen that the embargo is no longer operative in the case for the reason that more than five years has elapsed, the Division Bench of the High Court held that there is no embargo on the authority to reconsider the said application on its merit and not to achieve the dismissal of such application on applying the embargo created in the proviso to Rule 34A of the West Bengal Service Rules, Part-I.

Admittedly the instant case squarely comes within the peripheral of the said judgement and, therefore, the decision of the Tribunal is contrary to the decision delivered by the Division Bench of this Court.

The order impugned is thus set aside.

The respondent no. 2 is directed to take fresh decision on the letter of resignation treating the same to have been filed by the petitioner as on this day and shall pass a reasoned order within two weeks from the date of the communication of this order in the light of the observations made hereinabove.

With the above observations the writ petition is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

