

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15387 of 2017

Rinku Maji

Versus

Kolkata Municipal Corporation and ors.

For the Petitioners : Mr. R. N. Chakraborty, Adv.
Mr. M. Ahmed, Adv.

For the KMC : Mr. Alok Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.

Heard On : 21.08.2023

Judgment On : 21.08.2023

Saugata Bhattacharyya, J.:

The writ petition is instituted, inter alia, challenging the communication of Assessor Collector (North), Kolkata Municipal Corporation to the petitioner whereby it was intimated to the petitioner that the Municipal Commissioner vide order dated 30th March, 2009 has approved the resignation of the petitioner and the service of the petitioner in KMC is terminated with effect from 30th March, 2009.

It has been submitted by Mr. Chakraborty, learned advocate representing the petitioner that the petitioner was appointed as Junior Assistant on 1st April, 1985 in the assessment department of Kolkata Municipal Corporation. Inviting notice of this court to page 18 of the writ petition, it has been submitted that the Joint Municipal Commissioner (G) & Disciplinary Authority vide order dated 11th June, 2008 exonerated the petitioner from the charge levelled against her based on which disciplinary proceeding was initiated against the petitioner. Subsequently, due to mental agony and humiliation which she felt on initiation of disciplinary proceeding against her as it has been submitted that the petitioner tendered resignation vide letter dated 30th July, 2008 addressed to the Deputy Municipal Commissioner (P). On perusal of such letter dated 30th July, 2008 it appears that the petitioner intended to tender resignation from her service since she felt that she was victimised. Subsequently, vide letter dated 19th February, 2009 petitioner withdrew the letter of resignation and prayed before the concerned authority of KMC to allow her to resume her duty. Thereafter, vide impugned communication dated 30th May, 2009 as aforesaid the Assessor Collector (North) communicated the decision of the Municipal Commissioner dated 30th March, 2009 which relates to acceptance of resignation of the petitioner.

It has been contended on behalf of the petitioner that keeping in abeyance the letter dated 19th February, 2009 of the petitioner by which she prayed for resumption of duty upon withdrawal of resignation letter the concerned

authority of KMC ought not to have accepted the resignation of the petitioner based on petitioner's letter dated 30th July, 2008. It has also been submitted that it is a settled principle of law as enunciated by the Apex Court that tendering resignation becomes final so far as an employee is concerned when it is accepted by the employer and not before that. Since in the present case before acceptance of resignation vide letter dated 30th May, 2009 petitioner was able to communicate her changed decision and expressed her desire to resume duty upon withdrawal of resignation it was not left open to the concerned authority of KMC to accept the resignation based on letter dated 30th July, 2008.

In support of such contention, reliance has been placed on the judgment reported in **(2002) 3 SCC 437 (Shambhu Murari Sinha Vs. Project & Development India Limited and another)** paragraphs 14 and 19 and **(2003) 1 SCC 701 (Dr. Prabha Atri Vs. the State of UP and others)** paragraph 10.

Since the writ petition was filed in the year 2017 challenging the steps taken by the concerned authority of Kolkata Municipal Corporation in accepting the resignation of the petitioner which was communicated vide letter dated 30th May, 2009 reliance has also been placed on the judgment of the Apex Court reported in **(2008) 8 SCC 648 (Union of India and Others Vs Tarsem Singh)** paragraphs 6, 7 and 8. It has been submitted that it is true that there is delay on the part of the petitioner in approaching this court with a

prayer for granting relief by directing the concerned respondent authority to release arrear salaries as well as pensionary benefits in view of the superannuation of the petitioner in the year 2022, but such delay is not fatal since there is no accrual of third party interest as it has been decided in the case of **Tarsem Singh** (supra).

Mr. Alok Kr. Ghosh, learned advocate representing the Kolkata Municipal Corporation has opposed the prayer of the petitioner on the score that the petitioner made delay in presenting this writ petition since acceptance of resignation was communicated vide letter dated 30th May, 2009 whereas the writ petition was filed in the year 2017. Therefore, there is laches and based on failure on the part of the petitioner to contemporaneously take legal steps this writ petition should not be entertained.

In addition thereto it has been submitted that the letter which has been relied upon by the petitioner dated 19th February, 2009 is not on record of the KMC. Therefore, the decision could not be taken based on the said letter dated 19th February, 2009 by the KMC as the petitioner expressed her intention to resign from the service vide letter dated 30th July, 2008 and the same was duly accepted vide decision of the Municipal Commissioner dated 30th March, 2009 which was subsequently communicated by writing dated 30th May, 2009.

Reliance has been placed on the letter of the petitioner dated 9th September, 2009 which is at page 22 of the affidavit-in-opposition used on behalf of the KMC whereby the petitioner prayed for granting benefit under voluntary retirement scheme and release of all retiral benefits. It is contended on behalf of the KMC upon placing reliance on the letter dated 9th September, 2009 of the petitioner that after issuance of letter dated 30th May, 2009 whereby it was intimated to the petitioner that the petitioner's resignation was accepted and since subsequently, petitioner appealed to the concerned authority of KMC to extend the benefit of voluntary retirement scheme, same leads to a situation which reveals acceptance by the petitioner the decision of the KMC dated 30th March, 2009 on resignation of the petitioner. Therefore, subsequently, petitioner cannot claim the benefit of her letter dated 19th February, 2009 by which she made a prayer for resumption of duty upon withdrawal of her resignation letter.

Having considered the submissions made on behalf of the learned advocates representing the petitioner as well as the KMC and taking note of the contents of the relevant materials available on record it goes to show that the petitioner on being exonerated from the charge based on which disciplinary proceeding was initiated against her out of mental agony and humiliation in utter desperation submitted a letter dated 30th July, 2008 whereby she expressed her intention to resign from service.

In view of the words used in the letter dated 30th July, 2008 according to appreciation of this court it appears that the resignation of the petitioner ought not to be construed from the letter dated 30th July, 2008, but the resignation depends upon acceptance by the concerned authority of KMC, since petitioner expressed her intention to resign. However, after submission of said letter dated 30th July, 2008 vide subsequent, letter dated 19th February, 2009 petitioner decided to withdraw her decision to resign from the service and appealed to the concerned authority of KMC to allow her to resume her duty.

Indisputably the decision to accept resignation taken by the Municipal Commissioner vide order dated 30th March, 2009 was subsequent to the letter dated 19th February, 2009.

In view of these facts ignoring the letter of the petitioner dated 19th February, 2009 it was not open to the Municipal Commissioner to straightway accept the resignation letter of the petitioner dated 30th July, 2008.

In this regard, this court finds it apt to rely upon paragraph 19 of **Shambhu Murari Sinha** (supra) which runs infra:

“19. We, therefore, hold that the respondent could not have refused to accept the withdrawal letter of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently,

the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuating, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service.”

Another issue which needs to be addressed by this court in view of the specific submission made on behalf of the KMC that letter dated 19th February, 2009 since is not found on the record of the KMC, there is no impediment so far as the KMC authority is concerned to accept the resignation letter dated 30th July, 2008 on 30th March, 2009. This letter dated 19th February, 2009 is annexed to this writ petition at page 20 and while dealing with this letter in the affidavit-in-opposition statements have been made in paragraph 6 on behalf of the KMC.

Mere perusal of the statements made in paragraph 6 it appears that apart from formal denial nothing has been stated with regard to non-existence of the letter dated 19th February, 2009 on the record of the KMC or it does not appear that the veracity of submission of said letter dated 19th February, 2009 by the

petitioner has been disputed in the said affidavit specially in paragraph 6. Therefore, there is no hurdle so far as this court is concerned to proceed on the premise that this letter dated 19th February, 2009 was submitted by the petitioner before the concerned authority of KMC expressing her willingness to withdraw the resignation letter and to resume her duty.

On the point of delay as raised on behalf of the KMC in approaching this court with the present writ petition, it appears that rightly reliance has been placed on behalf of the petitioner on **Tarsem Singh** (supra) wherein the law decided by the Apex Court in **Shiv Dass Vs. Union of India**, reported in **(2007) 9 SCC 274** as has been discussed in paragraphs 7 and 8 in **Tarsem Singh** (supra); it has been observed that the delay would not be fatal if there is no accrual of third party interest.

In the present case, court does not find anything which goes to show that there is accrual of third party interest which could create hindrance in granting relief to the petitioner as sought for by presenting this writ petition.

However, Mr. Chakraborty, learned advocate representing on behalf of the petitioner has prayed for release of salaries for a period of three years on borrowing inspiration from paragraph 8 of **Tarsem Singh** (supra), but in the present case it is found that the petitioner did not discharge her duty after submitting letter dated 19th February, 2009 till her date of superannuation in

the year 2022. It may have been argued by the petitioner since the letter of the petitioner dated 19th February, 2009 has not been acted upon which prevented the petitioner from discharging duty, but the fact remains that the petitioner could not resume duty post 19th February, 2009 and writ petition was filed in 2017. Therefore, the prayer of the petitioner for release of arrear salaries stands negated.

However, taking into consideration the fact, the petitioner was on regular service with effect from 1st April, 1985 and it has also been found by this court that acceptance of resignation of the petitioner vide letter dated 30th May, 2009 is erroneous based on the settled principles of law as enunciated by the Apex Court the concerned authority of KMC is directed to release pensionary benefits, gratuity along with all other admissible benefits to the petitioner upon treating the service of the petitioner with effect from 1st April, 1985 till the date of superannuation within a period of eight weeks from the date of communication of this order on compliance of necessary formalities.

With the aforesaid directions the writ petition (WPA 15387 of 2017) stands disposed of.

There will be no order as to costs.

Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya,J.)

Sl. 12
Court.No. 15
Amalranjan