

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 977 of 2022

With

CAN 1 of 2022

Subimal Patra

-Vs-

State of West Bengal & Ors.

For the Appellant : Mr. Samiran Giri

For the Respondents : Mr. Asish Kumar Guha
Mr. Naren Ghosh Dostida

Heard On : 06.12.2022

Judgement Delivered On : 05.04.2023

THE COURT :- This appeal has been preferred against the Judgment and Order passed by the Hon'ble Single Bench on the 8th day of June, 2022 in writ petition bearing the no. WP no. 10169(W) of 2019.

By the impugned Judgment and Order the Hon'ble Single Bench was pleased to dismiss the said writ petition praying for an order directing the authorities to release the amount of retiral benefits as admissible in law as a consequence of which the writ petitioner has preferred this instant appeal.

The fact of the present case is that the appellant/writ petitioner namely, Subimal Patra, had been initially absent from school from 04-12-1998 to 03-02-1999 without intimating the school authorities, in consequence of which the Managing Committee of the said school started departmental proceeding against the appellant/writ petitioner. Thereafter, the petitioner was allegedly not allowed to join his duty by the Head Master of the school, who in turn preferred an appeal before the Appellate Committee of the West Bengal Board of Secondary Education (for short the Board), which was placed before the Committee on 27-04-2004. The Appellate Committee decided that the appellant shall report to the Head Master of the school within a fortnight from the date of receipt of the order and the Head Master shall allow him to resume his duties. It was further decided that the intervening period of his absence shall be regularized by granting leave according to the existing rules and the leave salary whatsoever admissible shall be paid within a period of three months from joining of duties by the writ petitioner.

Ultimately the petitioner joined his duty on 15-06-2004 after his long absence from 04-12-1998 to 14-06-2004.

The petitioner alleged that he is not getting his arrear salaries for the period of absence for which representations were made by him before the D.I. of Schools (S.E.) D.S.E., West Bengal and thereafter he preferred a writ petition.

On 17-12-2016, a Hon'ble Single Bench of this Court directed the Secretary of the West Bengal Board of Secondary Education to consider the representation of the writ petitioner and pass a reasoned order within a period of three months from the date of receipt of the order. It was found that there is huge discrepancy between the leave of absence claimed by the writ petitioner and the claim by the school authority. As a result a report from the DI of Schools Secondary Education (SE) was called for with specific views.

An inquiry report was submitted by the DI of Schools (SE), Purba Medinipur which reached the office of the West Bengal Board of Secondary Education on 04-09-2017. From the inquiry report it revealed that the appellant writ petitioner was absent from 04-12-1998 to 14-06-2004 and again from 10-01-2007 onwards. In this regard the appellant writ petitioner had applied for leave on several occasions without mentioning the nature and kind of leave, as a result thereof the Managing Committee could not come to a final decision as regards to the nature of leave.

Ultimately the Managing Committee on 18-03-2012 adopted an unanimous resolution declaring the post of the writ petitioner as vacant as per leave Rule 11 (1).

Thereafter, the President of the Board convened a meeting on the 21st day of November 2017 to consider the inquiry report of the DI of Schools (SE), Purba Medinipur and ultimately by an order dated 21-11-2017 the President of the Board has ordered that the writ petitioner is deemed to have resigned from the concerned post as per Rule 11(1) of the existing leave rules of the Board.

The Learned Counsel appearing on behalf of the appellant/ writ petitioner has submitted that a direction be passed by the Hon'ble High Court upon the West Bengal Board of Secondary Education directing the Board to dispose of the representation. On 21-11-2017 a final order was passed stating that the petitioner is deemed to have resigned from the concerned post as per Rule 11(1) of the existing leave rules of the Board. The Learned Counsel has further submitted that the appellant/writ petitioner has been compelled to be out of service and has prayed for granting the retiral benefits.

The Learned Counsel appearing on behalf of the respondents has reiterated the fact that the appellant/ writ petitioner is not entitled to any retiral benefits on the ground that he has resigned from service. He has further submitted that the appellant/writ petitioner remained absent from school initially from 04-12-1998 to 14-06-2004 and again from 10-01-2007 till 21-11-2017, on which date ultimately the then President of the West Board of Secondary Education has ordered that the writ petitioner is deemed to have resigned from the concerned post as per Rule 11(1) of the existing leave rules of the Board. He has further submitted that resignation tendered by an employee

or his dismissal or removal entails forfeiture of past service and as such the appellant/ writ petitioner is not entitled to any retiral benefits.

On going through the impugned order it reveals that the Hon'ble Single Bench has dealt with the matter stating that by an order dated 21st day of November 2017 the President of the West Bengal Board of Secondary Education has ordered that the unauthorized absence of the writ petitioner continued for a long period from 1998 to 2004 and again from 10th January 2007 till November 2017 which cannot be regularized and the writ petitioner is deemed to have resigned from service. The said order has remained *unchallenged*. It has been further mentioned that the payment of pensionary benefits or retiral dues to the writ petitioner therefore does not and cannot arise. It has also been stated that it is a well settled proposition of law that resignation from service leads to forfeiture of the entire service unless rules contrary thereto are available. Forfeiture of service leads to forfeiture of pension as there is no qualifying service. In this regard the case of *Reserve Bank of India and Another Vs. Cecil Dennis Solomon and another* reported in (2004) 9 SCC 461 be referred to wherein the Hon'ble Supreme Court has stated as follows:

“10. *In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be*

tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal [1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143 : (1990) 12 ATC 683 : AIR 1989 SC 1083] on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra [(1978) 2 SCC 301 : 1978 SCC (L&S) 303] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.”

Through the order of the then President of the West Bengal Board of Secondary Education wherein an elaborate discussion has been made, it reveals that the petitioner’s main allegation was that he has been victimized and prevented time and again from joining the school by the Managing Committee and as such he has been compelled to remain absent and when the appellant/writ petitioner was asked whether any complaint has been lodged

before the Police authority in this regard, the appellant/writ petitioner remained silent and failed to produce any documentary evidence to substantiate his allegations. It has also been stated in the enquiry report submitted by the DI of Schools (SE), Purba Medinipur that the petitioner remained absent from 04-12-1998 to 14-06-2004 and again from 10-01-2007 till the date of the order, i.e. 21-11-2017, without any intimation or prior permission. It has also been stated that the writ petitioner has applied for leave on several occasions but did not mention the nature and kind of leave. It has also been stated that responding to a petition dated 06-09-2017 of the writ petitioner (wherein he has alleged that some persons of the school authority are preventing him to join his school), a Sub-inspector of Contai Police Station was sent to enquire into the matter who found the whole allegation to be false and baseless. Thus, the Managing Committee resolved to declare the post of the petitioner vacant as per Leave Rule 11 Sub-Rule (1).

On the basis of the facts and circumstances mentioned (*supra*), the then President of the West Bengal Board of the Secondary Education has ordered that the petitioner is “deemed to have resigned from the concerned post as per Rule 11 (1) of the existing Leave Rules of the Board” and from the Memorandum issued by the Government of West Bengal, Finance Department, bearing the number 136-Edn.(B) dated 15-05-1985 it reveals that *“Resignation tendered by an employee or his dismissal or removal entail forfeiture of past service – Provided that Resignation of an employee for taking another*

appointment under any educational institution with proper permission shall not entail forfeiture of past service.”

In this instant case there has not been any resignation of the employee for taking another appointment under any educational institution with proper permission, so there is only deemed resignation which forfeits the incumbent from obtaining the benefit of past service.

Through the impugned judgement it has also been stated that the DI of Schools (SE) had addressed several communication to the petitioner asking him to submit documents for pension. However, the same are of no consequence being contrary to law.

So, it reveals that the appellant/ writ petitioner had been absent from the school initially from 04-12-1998 to 14-06-2004 without prior intimation and thereafter from 10-01-2007 till 21-11-2017, i.e. the date on which the then President of the Board, that is the West Bengal Board of Secondary Education, passed the order of ‘deemed resignation’ of the writ petitioner.

Thus, from the above discussion it is evident that the appellant/writ petitioner was absent from the school at the first instance from 04-12-1998 to 14-06-2004 and thereafter from 10-01-2007 till 21-11-2017, on which date the appellant was deemed to have resigned. It is also clear that in case of deemed resignation past services are not taken into consideration as resignation tendered by an employee or his dismissal or removal entails forfeiture of past service.

In the light of the above discussion, the appellant/writ petitioner is not entitled to any retiral benefits.

There is therefore no reason to interfere with the impugned Judgement and Order dated 8th June, 2022.

FMA 977 of 2022 with **CAN 1 of 2022** stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)