

30.01.2023
(D/L-09)
Ct.-18
(Susanta)

W.P.A. 18016 of 2022

Mousumi Sarkar (Sau)

-Vs-

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Nitya Gopal Mukherjee,
Ms. Anindita Banerjee,

.... For the Petitioner.

Ms. Koyeli Bhattacharyya,

.... For the W.B.B.S.E.

Mr. Supriyo Chattopadhyay,
Ms. Sayantani Bhattacharya,

.... For the State.

The petitioner on November 08, 2002 joined Matigara Balika Vidyalaya, District Darjeeling as an Assistant Teacher of Bengali. She absented herself from her duty on and from July 9, 2007.

The petitioner long time thereafter on February 17, 2020 made a prayer before the School Authority to allow her to resume her duty, which was turned down.

The petitioner, aggrieved by such refusal filed a writ petition being W.P.A 6459 of 2021 and it was summarily dismissed but the appeal against the said order (F.M.A. 1288 of 2021) was allowed by the Hon'ble Division Bench vide order dated February 04, 2022 directing the petitioner to make a comprehensive representation before the Headmaster within two weeks from date of the said order and the Headmaster was directed to transmit the said representation to the West Bengal Board of Secondary Education within a week thereafter.

The Board by the said order, was directed to dispose of the said representation in terms of Rule 11 of the Rules for grant of leave to the teaching and non-teaching staff of recognized Non-Government Secondary Schools within six weeks from the date of transmission of such representation.

Pursuant to such direction of the Hon'ble Division Bench, the petitioner filed her representation. The President of the Ad-hoc Committee of the Board, by the impugned order dated May 18, 2022 has disposed of the said representation declaring deemed resignation of the petitioner in terms of Rule 11(1) of the aforesaid Leave Rules.

Mr. Kamallesh Bhattacharya, learned counsel for the petitioner submits that no doubt his client did not attend her duty for a long time but such absence was caused due to her prolonged illness and she, in each of her letters addressed to the School authority explained her helpless condition but the Board without considering such exceptional circumstances has exercised its power under Rule 11(1) of the said Leave Rules to declare the deemed resignation of the petitioner.

Ms. Koyeli Bhattacharya, learned counsel for the Board on the other hand, submits that the petitioner in all of her representations to the school authority prayed grant of leave without pay, she never expressed her willingness to resume her duty.

On the contrary, the attempt of the school authority to serve letters requesting her to resume duty failed as those letters returned unserved with the postal endorsement addressee 'left without address'. She further submits that it is clear from the record that the petitioner never intended to resume duty, the Board, therefore has rightly declared deemed resignation of the petitioner.

Having heard the learned counsel for the parties and on perusal of the records, it appears that she discharged her duty only for five years after her appointment and in all of her representations to the school authority, she projected her infertility and other family problems as the grounds of her absence in duty.

The petitioner after exploiting all of her admissible leave, remained absent in her duty for about fourteen years. She thereafter only on February 14, 2020 sent a letter to the school authority expressing her intention to join the school.

The Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 was amended by notification of the Government of West Bengal Education Department Secondary Branch bearing No. ^{1541-Edn.(S)}_____ dated

21-2/77

December 15, 1977 to incorporate an appendix after Rule 33 of the said Rules.

Paragraph 11(i) under the said appendix prescribes that no permanent teaching or non-teaching employee shall be granted leave of any kind for a continuous period exceeding 5 years. Where such an employee does not resume his or her duty after remaining on leave for a continuous period of 5 years or where such an employee after the expiry of his or her leave remains absent from duty, otherwise on ground of suspension for any period, which together with the period granted to him or her exceeds 5 years, he or she shall, unless the Board on reference from the school authorities and in view of exceptional circumstances of the case otherwise determines, be deemed to have resigned and shall accordingly cease to be in the employment of the school.

The petitioner has failed to make out 'exceptional circumstances' contemplated under the aforementioned paragraph of the said appendix, the Board, therefore, has not committed any error in declaring the deemed resignation of the petitioner as envisaged under the said paragraph.

The writ petition, therefore, fails.

W.P.A. 18016 of 2022 is therefore dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)