

**01.03.2023**

**WPST 124 of 2022**

Court : 04  
Item : 03  
Matter : WPST  
Status : OP  
Bench id : 266048  
Transcriber: NANDY

Dr. Debasis Mukherjee  
Vs.  
The State of West Bengal & Ors.

**Mr. D.N. Ray, Advocate**  
**Mr. S. Ghosh, Advocate**  
**Mr. M.N. Ray, Advocate**  
**Mr. G. Halder, Advocate**  
**Mr. S. Halder, Advocate**

.....for the Petitioner

**Mr. Tapan Kumar Mukherjee, Ld. A.G.P.**  
**Mr. Biswabrata Basu Mallick, Advocate**

.....for the State

Admittedly the petitioner joined the services in the Department of Health and Family Welfare, M.A. (MES) Branch, on March 28, 2017. Subsequently the petitioner decided to tender resignation, as he did not intend to continue with the said service and the letter of resignation dated November 30, 2021 was caused upon the competent authority for acceptance.

The said letter of resignation was rejected by the authority taking shelter under Finance (Audit) Notification No. 4499-F (P) dated August 26, 2016 which postulates that the resignation cannot be accepted unless the person has rendered five years of continuous service from the date of joining the service.

The petitioner challenged the said order before the Tribunal in OA 329 of 2022 solely on the ground that his case stands on the same pedestal as that of Dr. Mukut Mani Adhikari who also challenged the identical order before the Tribunal in OA 25 of 2021 and a direction was passed upon the authority to issue release order therein. It is further indicated that the

order passed in Dr. Mukut Mani Adhikari's case was tested before the Division Bench of this Court and the said decision was upheld.

Despite the aforesaid facts having been disclosed, the Tribunal set aside the order of the authority and directed to consider the resignation letter dated November 30, 2021 in the light of the order dated February 1, 2021 passed in the case of Dr. Mukut Mani Adhikari Vs. The State of West Bengal & Ors. (OA 28 of 2021) within a period of four weeks from the presentation of the order.

According to the learned Additional Government Pleader, the said Notification dated August 26, 2016 creates an embargo in entertaining an application tendering resignation before completing five years of continuous service after joining the service and the judgment and order passed in Dr. Mukut Mani Adhikari's case by the Division Bench of this Court has been challenged before the Supreme Court where notices have been issued and the matter is sub-judice. It is thus contended that the order passed in Dr. Mukut Mani Adhikari's case has not attained finality and, therefore, the binding efficacy of the said order has been postponed and no shelter nor any advantage can be taken by the petitioner on the basis thereof.

It is no doubt true that the decision taken in Dr. Mukut Mani Adhikari's case has not attained finality as yet because of the pendency of the Special Leave Petition before the Supreme Court of India.

We do not find from the order passed in the Special Leave Petition that the operation of the said order was stayed nor there is any reflection that the said direction shall not enure to the benefit of similarly circumstanced persons. Mere issuance of notices does not efface the binding efficacy of the issued notification set aside by the higher forum.

Be that as it may, we find that apart from the same, the matter can be viewed from another angle. By virtue of a notification dated August 26, 2016 the proviso inserted to Sub-rule (1) of Rule 34A of the West Bengal Service Rules, Part-I, creating an embargo on the officers of the cadre of West Bengal Health Service, the West Bengal Medical Educational Service, the West Bengal Public Health-cum-Administrative Service, the West Bengal Dental Service and the West Bengal Dental Education Service to be allowed to resign from the post before completion of at least five years of continuous service with effect from the date of joining.

Such being the position, admittedly the letter of resignation was tendered before completion of five years continuous service with effect from the date of joining and, therefore, the order of the authority cannot be faulted with on such score. However, as on this day, the petitioner has completed five years of service counted from the date of joining as on March 28, 2017, the Tribunal ought to have taken into consideration the aforesaid fact, when the challenge was made to the decision of the authority taken before

completion of five years of service, at the time of disposal of the tribunal application.

Indubitably, five years expired even on the day when the tribunal application was filed and came up for final consideration. There was no pleading required in this regard. The moment pleading is explicit on the date of joining and the date of filing of the tribunal application, such factum should have been taken into consideration to minimize the litigation and avoid the multiplicity of proceedings.

Even if the letter of resignation was tendered at the relevant point of time when the embargo was in vogue, yet by passage of time such embargo has been lifted and, therefore, there is no necessity of relegating the parties to submit the letter of resignation afresh, as it will be the replication of the same facts and the grounds of tendering resignation would still survive. It will give a new dress to the original thing but the approach has to be different, as such embargo is no longer operating against the petitioner.

We, therefore, feel that justice would be subserved if the said letter of resignation is considered in the light of the relevant provisions prevalent as on this date and should not be dismissed on technicalities, more particularly, applying the embargo created in the provision by virtue of Notification dated August 26, 2016.

Though we do not find any infirmity and/or illegality in the order of the authority rejecting the

letter of resignation applying the aforesaid proviso as the petitioner did not complete five years of continuous service from the date of joining but in view of the undisputed facts, the said order needs interference for the purpose of resurrection and/or revival of the letter of resignation to be considered on merit.

The order impugned is thus set aside.

The respondent no. 3 is directed to take fresh consideration on the letter of resignation treating the same to have been filed as on the date and shall pass the reasoned order within three weeks from the date of the communication of this order in the light of the observations made hereinabove.

The writ-petition being **WPST 124 of 2022** thus **disposed of.**

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**

