

**1701
2025**

FRIDAY

Court : 08
Item : DL-224
Matter : CPAN
Status : RULE
Bench ID : 266048
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE**

CPAN 538 of 2023

in

WPST 128 of 2022

DR. SOMAK KRISHNA BISWAS

Vs.

DEBASISH BHATTACHARYA

DIRECTOR OF MEDICAL EDUCATION DEPARTMENT

MR. BISWARUP NANDY, ADVOCATE

..... for the Petitioner

MR. TAPAN KUMAR MUKHERJEE, LD. AGP

MR. SOMNATH NASKAR, ADVOCATE

.....for the alleged contemnor

1. Though by an order dated 27.02.2023, this Court directed the Director of Medical Education Department to take fresh consideration on the letter of resignation treating the same to have been filed as on the date and to pass a reasoned order within three weeks from the date of passing the said order in the light of the observations made therein but the contempt application is taken out alleging that the point which was urged at the time of disposal of the writ-petition having disposed of in a particular manner, is once again projected as a ground for refusal to accept the resignation.
2. On the day of presentation of the contempt application, this Court directed the alleged contemnor to file affidavit dealing with the allegations contained therein, which in fact, has been filed today. Before we proceed to

determine the point, whether there has been an apparent, wilful and deliberate violation of the said order, it would be profitable to recapitulate the facts as well as the points urged by the respondents in the said writ-petition and decided by this Court.

3. The record would reveal that the petitioner joined the service in the Department of Health and Family Welfare, Government of West Bengal on 03.11.2015 and tendered resignation on 28.09.2018. As we usually perceived from the conduct of the State respondent, the said letter of resignation was kept in the file and no decision is taken thereupon which not only constrained the petitioner to approach the Tribunal but in other way, explodes the docket of the Tribunal because of the inaction on the part of the State and its instrumentality.
4. While moving an application before the Tribunal, not only mandatory direction was sought upon the authority to issue the release order but the *vires* of the Finance (Audit) Notification no. 4499-F(P) dated 26.08.2016 was also sought to be declared as *ultra vires*. The Tribunal disposed of the matter on 10.02.2020 recording that the petitioner abandoned the reliefs claimed in respect of the aforesaid Finance (Audit) Notification and argued on the principal relief i.e. issuance of the release order. The Tribunal disposed of the said application directing the Director of

Medication Education and Ex-officio Secretary, Department of Health & Family Welfare, Government of West Bengal to consider the representation and dispose of the same within a timeline.

5. A decision was taken by the authority on 07.08.2020 that in view of the Notification dated 26.08.2016; the resignation letter cannot be considered and/or accepted before the Government Servant completes five years of continuous service with effect from the date of joining in any cadre or different cadre taken together, as the case may be. The said order was further challenged before the Tribunal in OA 599 of 2021 and the Tribunal taking note of the order passed in the case of *Mr. Mukut Mani Adhikari Vs. The State of West Bengal & Ors.* (in OA 28 of 2021 decided on 01.02.2021) held that the said decision had set at rest the issues in this regard and further direction was passed upon the authority to accept the resignation and pass the consequential order thereupon.
6. The State felt seriously affected by such direction, challenged the said order of the Tribunal by filing the writ-petition being WPST 128 of 2022 before this Court. Argument was advanced before this Bench that by virtue of a Notification dated 26.08.2016, the embargo was created in entertaining the application for resignation

unless the concerned Government employee has not completed five years of continuous service from the date of joining. It was further brought to the notice that the order passed in Dr. Mukut Mani Adhikari's case, is assailed by the State before the Supreme Court where notices have been directed to be issued and, therefore, the judgment rendered in that case, cannot be said to be a binding precedent.

7. Taking into account, the aforesaid submission and the stands taken before the Division Bench, it was held that though by virtue of the said Notification dated 26.08.2016, an embargo of tendering resignation before completing five years of continuous service is created but by the time, the said writ-petition has come up for final disposal, the petitioner has completed five years of continuous service in the cadre and, therefore, such letter of resignation should be treated to have been filed as on the date of the said order i.e. 27.02.2023 and be decided on its merit. Obviously, the Division Bench was of the view that such embargo has since been lifted and there is no fetter on the part of the Government employee to file an official application for resignation, it is a duty of the authorities to take into account the aforesaid aspect, more particularly, the said letter of resignation should be treated to have been made as on

the date of the order i.e. 27.02.2023.

8. In the affidavit-in-opposition filed before us, the alleged contemnor has taken a stand that the petitioner has rendered services only for 2 years 11 months and 28 days from the date of joining and in terms of the Notification dated 26.08.2016, he cannot be said to have completed five years of continuous service. However, a further plea is taken that the petitioner was in unauthorized absence and, therefore, the authorities are contemplating to take an appropriate step against him.
9. It appears that the entire shelter is taken under the said Notification and the authorities have treated the said letter of resignation as on the date it was so submitted thereby ignoring the order passed by this Court by which the said letter of resignation was directed to be treated as on the date of the said order and not from a date anterior thereto. Furthermore, the services of the petitioner was never terminated nor any order is passed in this regard and the plea of unauthorized absence only taken for the first time to treat the same as a shield to the rigor of the provisions contained under the Contempt of Courts Act.
10. If the authorities have acted contrary to the said order, even after the direction was passed upon them to consider and dispose of the representation or the letter of resignation in a particular manner, and there is apparent

violation and/or infraction of the same, even if it gives a fresh cause of action, the Court cannot shut its eyes solely on such aspect. The sanctity and majesty of the Court's order is to be ensured and the person who plays with the jugglery of law and the *mala fide* is apparent on the face of the same, there is no fetter on the part of the Court to treat such action as contemptuous one. It is apparent and evident from the affidavit-in-opposition that the authorities are prevaricating their stand at the different stages of the proceeding so that the spirit of the order gets frustrated.

11. We are not unmindful that the contempt application can be maintained if the conduct of the contemnor is tainted with malice and *mala fide* intention is apparent thereupon which in the instant case is evident from the conduct and the defence taken in the affidavit-in-opposition.
12. We thus do not find any satisfactory explanation having offered in the affidavit-in-opposition. The apparent conduct is contumacious in nature and, therefore, the issuance of Rule is inevitable.
13. Let the Rule be issued upon the alleged contemnor which shall be returnable after three weeks i.e. on **07.02.2025**.
14. The service of the Rule shall be effected by speed post immediately upon filing of requisites which shall be filed by the

petitioner by Monday i.e. 20.01.2025.

15. Urgent Photostat Certified copy of this order be given to the parties, if applied, on priority basis.

(HARISH TANDON, J.)

**RULE IS DRAWN
IN SEPARATE
SHEETS.
nandy**

(PRASENJIT BISWAS, J)