

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F.M.A. 200 of 2024

The Kolkata Municipal Corporation & Ors.

Vs.

Rinku Majhi

With

COT 33 of 2024

Rinku Majhi

Vs.

The Kolkata Municipal Corporation & Ors.

For the Appellants in FMA 200 of 2024 & Respondents in COT 33 of 2024	:	Mr. Jaydeep Kar, Sr. Adv. Mr. Avijit Dey, Adv.
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For the Respondents in FMA 200 of 2024	:	Mr. Raghunath Chakraborty, Adv. Mr. Saikat Thakurata, Adv.
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Heard on	:	December 02, 2024
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Judgment on	:	December 20, 2024
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Md. Shabbar Rashidi, J.

1. The appeal and the cross objection are in assailment of judgment and order dated August 21, 2023 passed in WPA No. 15387 of 2017. By the impugned judgment and order, the learned Single Judge, allowed the writ petition directing the appellant to release pensionary benefits, gratuity along with all other admissible benefits to the writ petitioner treating her in continuous service with effect from April 1, 1985 till the date of her superannuation within a period of eight weeks from the date of communication of the order.
2. Being aggrieved with the impugned judgment and order, the respondent Kolkata Municipal Corporation, the appellant herein, preferred the instant appeal. It was contended on behalf of the appellant that the writ petition filed by the writ petitioner/respondent ought to have been dismissed. Learned Single Judge, while passing the impugned judgement and order, wrongly construed the position of law. The findings of learned Single Judge were misconceived, improper and devoid of any substance and merit.

3. It was also submitted on behalf of the appellant that learned trial Judge overlooked the application filed by the writ petitioner seeking voluntary retirement on September 9, 2009 which exhibited that the writ petitioner was in the know of the fact that her resignation was already accepted by the appellant on March 30, 2009.
4. It was further contended that the application of the writ petitioner seeking voluntary retirement dated September 9, 2009 was rejected by the OSD & DMC (P) on November 22, 2009. The writ petitioner approached the court after an unexplained delay of over seven years. Such fact of delay was not taken into consideration by the learned Single Judge. It was also submitted on behalf of the appellant that the writ petitioner was not entitled to withdraw her resignation and the appellant had every right to accept the same. The petition dated February 19, 2009 seeking to withdraw the resignation was never accepted by the appellant authority.
5. In support of their contention, learned Senior Advocate for the appellant relied upon **(2009) 1 Supreme Court Cases 701 (City and Industrial Development Corporation vs.**

Dosu Aardeshir Bhiwandiwalla and others)* and *(2022) 2 Supreme Court Cases 25 (Union of India and Others vs. N. Murugasen and Others).

6. On the contrary, it was submitted on behalf of the writ petitioner/respondent that she resigned from her service by a writing dated July 30, 2008 and thereafter she withdrew her resignation before it was accepted by the authorities, in terms of another letter dated February 19, 2009. Therefore, according to the respondent/writ petitioner, it was not open to the appellant authority to accept the resignation which she had already withdrawn. Such resignation was however, accepted by the appellant authority on March 30, 2009 which was communicated to the writ petitioner by a letter dated May 30, 2009.

7. Not only that, the writ petitioner approached the authorities of the appellant several times seeking permission to resume her duties but she was not allowed on the pretext of her resignation having been accepted. By another letter dated January 29, 2010, the writ petitioner was intimated that her prayer dated September 29, 2009 for treating her

resignation as voluntary retirement was not considered by the authorities. She was also asked to submit her claims for settlement of terminal benefits.

8. On the point of delay, relying upon **(2008) 8 Supreme Court Cases 648 (Union of India and Others vs Tarsem Singh)**, the writ petitioner submitted that the action/inaction on the part of appellant authorities comes within the purview of continuing wrong for which the case made out by the writ petitioner cannot be said to be stale. In support of such proposition, learned advocate for the respondent/writ petitioner also relied upon **(2022) 7 Supreme Court Cases 508 (Sukh Dutt Ratra and Another vs State of Himachal Pradesh and Others)**, **(2010) 12 Supreme Court Cases 538 (State of Madhya Pradesh and Others vs Yogendra Shrivastava)** and **(2008) 14 Supreme Court Cases 295 (Eastern Coalfields Limited vs Dugal Kumar)**. Learned advocate for the respondent also cited a decision in **2009 SCC OnLine Cal 2150 (Oriental Insurance Co. Ltd. Vs Rusi Mudi & Ors)**. However, the facts obtaining in such case and

the ration decided therein have no bearing with the facts of the present case.

9. Contending that a resignation should be in unambiguous and unconditional terms, the resignation tendered by the writ petitioner/respondent was a conditional one and ought not to have been accepted. In support of such contention, learned advocate for the writ petitioner/respondent relied upon **(2003) 1 Supreme Court Cases 701 (Dr. Prabha Atri vs State of U.P. and Others)**.
10. Relying upon the ratio laid down in **(2005) 8 Supreme Court Cases 314 (Srikantha S.M. vs Bharath Earth Movers Ltd.)** and **2022 SCC OnLine Cal 363 (Asis Kumar Sinha vs State of West Bengal and Others)**, it was contended that resignation withdrawn before it was accepted, it was not open to the employer to accept a withdrawn resignation. Learned advocate for the writ petitioner also cited **(2002) 3 Supreme Court Cases 437 (Shambhu Murari Sinha vs Project & Development India Ltd. and Another)** in support of the proposition that even after acceptance of a prayer of employee for voluntary retirement, the employee still

has had the authority to withdraw such prayer until prior to the date assigned for his release.

11. The writ petitioner joined the Kolkata municipal Corporation as junior Assistant on April 1, 1985. In December 1992 she was promoted to the post of Assistant and thereafter S. H. G in the assessment department of Kolkata Municipal Corporation. Ultimately with effect from June 15, 2004, she was promoted as Head Assistant, A. C. (North).

12. Owing to her ailments, the writ petitioner could not attend duties from July, 2004. She has to seek medical leave on and from July 02, 2004 to December, 2004 which was duly communicated to the authorities. In 2006, the Municipal authorities brought a charge of unauthorized absence of the writ petitioner from her duties which culminate into an article of charge dated March 29, 2016 issued by the Joint Municipal Commissioner and Disciplinary Authority, Kolkata Municipal Corporation. A departmental proceeding was initiated against the writ petitioner which was, however, by an order dated June 11, 2008 resulted into her acquittal.

- 13.** The petitioner under the compelling circumstances and the attitude of the Assessor – Collector (North), Assessment Collection Department, was forced to tender her resignation by a letter dated July 30, 2008. However, in consideration with her financial condition, the writ petitioner withdrew such resignation by another letter dated February 19, 2009 addressed to the Deputy Municipal Commissioner (P), Kolkata Municipal Corporation.
- 14.** By an order dated June 01, 2009, the writ petition was intimated by a letter dated March 30, 2009 passed by the Municipal Commissioner, KMC, her resignation was accepted and services of the writ petitioner were terminated with effect from March 30, 2009. It was contended that since the writ petitioner had already withdrawn her resignation by a letter dated February 19, 2009, the authorities of Kolkata Municipal Corporation had no authority to accept her resignation and passed the order dated March 30, 2009.
- 15.** The writ petitioner was also not allowed to resume her duties inspite of repeated requests made on her behalf, last of which was on July 18, 2011. According to the writ petitioner,

the action in passing the order dated March 30, 2009 and not allowing the writ petitioner to join her duties were arbitrary and illegal. The writ petitioner was not only allowed to join her duties but, at the same time, the Kolkata Municipal Corporation did not make payment of the unpaid salary as well as post retirement dues.

16. Ultimately, the writ petitioner by her letter dated April 18, 2017 asked the Kolkata Municipal Corporation to allow her to resume her duties or in the alternative to pay her dues. Such a request of the writ petitioner was never allowed.

17. In such circumstances, the writ petitioner approached this High Court with a writ petition being W.P. No. 15387 (W) of 2017 which resulted in the impugned judgment and order. The Kolkata Municipal Corporation has come up with the instant appeal.

18. It has been alleged on behalf of the appellant that the writ petitioner submitted her resignation on July 30, 2008 which was considered by the authorities and by the order dated March 30, 2009, the same was accepted. Her service with the Kolkata Municipal Corporation was terminated with

the acceptance of such resignation. It was also submitted on behalf of the appellant that the letter dated February 19, 2009, withdrawing the resignation was not found on the records of the Municipal Corporation. As such the authorities were well within their powers to consider and accept the resignation submitted by the writ petitioner. Learned advocate for the appellant has drawn our attention to the letter dated July 30, 2008 and letter dated May 30, 2009.

- 19.** On behalf of the respondent, attention is drawn to the letter dated February 19, 2009. The said letter exhibits that the writ petitioner had withdrawn her resignation submitted by letter dated July 30, 2008. The copy of the letter also discloses that the letter was duly received by the Personnel Department of Kolkata Municipal Corporation on February 19, 2009 itself. The appellant has come up with a definite case that no such letter was received by or found on the records of Municipal Corporation and, as such, the authorities considered and accepted the resignation submitted by the writ petitioner on July 30, 2008. In the teeth of the copy of the letter dated February 19, 2009 coupled with

the endorsement of receipt thereon, we find that the letter withdrawing the resignation was duly received by Kolkata Municipal Corporation in due course. As such the appellant cannot be allowed to utter that the letter of withdrawal of resignation dated February 19, 2009 was not communicated to them before a decision on the letter of resignation dated July 30, 2008.

20. Learned Single Judge, in the impugned order, has held that since the writ petitioner was able to communicate her desire to withdraw the resignation submitted earlier expressing her intention to resume duties upon such withdrawal before it was accepted by the authorities of the appellant, it was not open to the Kolkata Municipal Corporation to accept the resignation dated July 30, 2008.

21. The principles of sending and acceptance of communication has been laid down under Section 4 and 5 of Indian Contract Act, 1872 which is reproduced herein:

“4. Communication when complete.— *The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

5. Revocation of proposals and acceptances.—*A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.*

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.”

22. In the case of **Srikantha S.M.** (supra) the Hon’ble Supreme Court observed that,

“26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in

contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The vinculum juris [[Ed.: vinculum (per OED): A bond of union, a tie. Usually figurative, and juris (per Black's): Of Law; Of Right]], therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993.

27. In the affidavit-in-reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on 4-1-1993. It was because of the request of the appellant that he was continued up to 15-1-1993. In the affidavit-in-rejoinder, the appellant had stated that he reported for duty on 15-1-1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs 13,511 was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could

have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court, in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside.”

- 23.** Similarly, in ***Shambhu Murari Sinha*** (supra), the Supreme Court was of the view that authority to withdraw the communication of resignation extended up to the date of actual release, even if the same was accepted by the authorities. Supreme Court noted that,

“18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the “release memo along with detailed particulars would follow”. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office

memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

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 superannuation, 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.”

24. A Co-ordinate Bench of this High Court, in **Asis Kumar Sinha** (supra), although, quashed the decision of accepting the resignation but it was on the ground that the acceptance of resignation was not by the appropriate authority. The facts obtaining in the said case are not similar to that in the case at hand and therefore, cannot be applied in the case at hand.

25. Relying upon **Dr. Prabha Atri** (supra), a case has been endeavored to be made out that the writ petitioner put in her resignation, being dejected with the attitude of the authorities of the appellant in issuing an article of charge against her. As such, such resignation was not a free and voluntary act on the part of the petitioner rather; it was the result of frustration devolved upon her for vindictive conduct of the authorities. Therefore, the authorities of the appellant could not have accepted such conditional resignation which was not worthy of acceptance. However, a plain reading of the letter

dated July 30, 2008 reveals that the writ petitioner sought to resign from her service purely on medical grounds. Moreover, such reservation was in the form of communication of an unequivocal intention of the petitioner to resign from service. At no stretch of imagination, it can be said to be a conditional resignation or a threatened offer to resign. For such reason, we are unable to accept such contention of the respondent/writ petitioner.

- 26.** Therefore, in view of the discussions made hereinabove, it is evident that the writ petitioner intended to resign from her service in terms of her letter dated July 30, 2008. However, she withdrew such resignation through her letter dated February 19, 2009 which was duly communicated to the appellant authorities. Nevertheless, the authorities proceeded to accept the resignation on March 31, 2009 which was communicated to the writ petitioner by a writing dated May 30, 2009. In the light of ratio laid down in **Srikantha S.M.** (supra) and **Shambhu Murari Sinha** (supra), there was no subsisting offer to resign as on the date of its acceptance which could be considered and decided upon.

27. The appellants have also challenged the impugned judgment and order on the ground of stale approach to court by the writ petitioner. It was contended that the grievances of the petitioner crystallized in 2009 whereas, the writ petitioner waited for long 7-8 years when she approached the court. She cannot be favoured with any relief for her belated approach.

28. In ***City and Industrial Development Corporation*** (supra), the Hon'ble Supreme Court observed that,

“26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

.....

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could

be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

29. Similarly, in the case of **N. Murugesan** (supra), it was noted by the Supreme Court that that,

“22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

30. In the case of **Tarsem Singh** (supra), Hon’ble Supreme Court observed that,

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). **One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.** But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a

period of three years prior to the date of filing of the writ petition.”

31.

In ***Sukh Dutt Ratra*** (supra), the Supreme Court was pleased to observe that,

“18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a “limitation” to doing justice. This Court in a much earlier case — Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329], held : (AIR pp. 335-36, para 11)

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to

place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'."

- 32.** In the case of **Yogendra Shrivastava** (supra), although, the Hon'ble Supreme Court held that where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of

appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. However, claim of for grant of consequential relief of recovery of arrears for the past period was limited to 3 years prior to the date of application.

- 33.** In the case at hand, the writ petitioner tendered her resignation but she withdrew it before it was accepted. The authorities however, proceeded to wrongly accept the resignation. The order of acceptance of the resignation also disclosed that the prayer of the writ petitioner seeking voluntary retirement was not considered. Since then, the authorities acted in a manner as if the employer-employee relationship between the appellant and the writ petitioner had determined. However, in our view, the relationship still subsisted as the authorities were not justified in accepting a retracted resignation. The writ petitioner was denied her legal entitlements on the basis of an illegal acceptance of resignation. The writ petitioner approached the appellants

several times seeking permission to resume her duties which was never considered. Last of such communication on the part of writ petitioner was made in 2011. For the aforesaid reasons, the appellants are also liable to pay interest on the due entitlements of the writ petitioner at the rate of 6% per annum, from the date such dues became due till final payment.

34. In such view of the facts, since, the actions on the part of the appellants were circumscribed by their own wrongful actions i.e. illegal acceptance of retracted resignation and also not considering the prayers of the writ petitioner to resume her duties, the appellants cannot be allowed to shield their action behind the veil of delayed approach or latches on the part of writ petitioner.

35. In the light of discussions made hereinbefore, we find no reason to interfere with the findings of the learned Single Judge in the impugned judgment and order. We however modify the impugned judgment and order to the effect that appellants shall also pay interest on the due entitlements of the writ

petitioner at the rate of 6% per annum; from the date, such dues became due till final payment thereof.

36. The instant appeal being FMA No. 200 of 2024 together with COT 33 of 2024 are accordingly disposed of. Time to comply with the impugned judgment and order is extended for a period of eight weeks from date.

37. In view of the disposal of the appeal, connected applications, if any, shall also stand disposed of.

38. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

39. I agree.

[DEBANGSU BASAK, J.]