

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

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

W.P.S.T. 3 of 2024

WITH

CAN 1 of 2024

CPAN 315 of 2024

Dr. Samir Rana

Vs.

State of West Bengal & Ors.

For the Petitioner	: Mr. D. N. Roy, Mr. Sankha Ghosh, Mr. M. N. Roy, Mr. Biswarup Nandy, Mr. R. K. Shah.
For the State	: Mr. Kishore Dutta, Ld. A.G., Mr. Tapan Kr. Mukherjee, Ld. AGP, Ms. Sangeeta Roy.
For the Respondent No. 5/IIT	: Mr. R. N. Majumder, Mr. S. M. Obaidullah, Mr. R. Chowdhury.
Heard on	: April 24, 2024.
Judgment on	: April 26, 2024.

Madhuresh Prasad, J.:

1. The writ petitioner initially joined the West Bengal Medical Education Services (WBMES) on 13.03.2014 as Demonstrator/ RMP-cum Clinical Tutor at the Midnapore Medical College, Paschim Medinipur in the Department of Radio-diagnosis. While serving in the West Bengal Medical Education Services (WBMES), he has risen up

the ranks firstly as an Assistant Professor on 15.12.2014 and thereafter as an Associate Professor on 27.11.2021.

2. On 28.10.2023, he received an offer of appointment to the post of Associate Professor (Radio-diagnosis) in Dr. B. C. Roy Multi Speciality Medical Research Centre at the Indian Institute of Technology, Kharagpur (IIT). The offer required the petitioner to convey his acceptance within 30 days and to join duties within a maximum of 90 days from the date of offer of appointment letter (28.10.2023).

3. The petitioner thus tendered his resignation with the requisite declarations through the proper channel on 04.11.2023 before the Principal Secretary, Department of Health & Family Welfare, Government of West Bengal as also to the Director of Medical Education of the department. The resignation was with effect from 01.12.2023, so as to enable the petitioner to pursue his better prospects at a renowned institution namely IIT. Copies of the resignation have also been submitted to the Professor and Head of the Department of Radio-diagnosis and Principal of the College of Medicine & Sagar Dutta Hospital, Kamarhati.

4. The petitioner aggrieved by the inaction on part of the State Authorities in releasing his services approached the West Bengal

Administrative Tribunal, whereas per submissions of the petitioner counsel, he was again faced with inertia.

5. The Tribunal after completion of the pleadings, has recorded an order on 04.01.2024 adjourning the matter for hearing on 01.02.2024. It would be relevant to mention here that in the meantime, an order dated 11.12.2023 was issued by the Director of Medical Education, West Bengal rejecting the petitioner's request for resignation by assigning a reason that the rejection is "in the greater interest of public service as there is acute shortage of vacancy under WBMES". He was directed to continue his public duty as an Associate Professor. The petitioner had also assailed the said order before the State Administrative Tribunal.

6. Rather than considering the issue where the West Bengal Service Rules provided discretion in the authority to withhold an application for resignation, in the manner in which it has been done the Tribunal has embarked upon an enquiry into the shortage of medical personnel in the State Services.

7. In the above noted facts and circumstances, the petitioner's time was running out for availing service with the IIT in terms of offer of appointment dated 28.10.2023. The petitioner, therefore, found that he had no efficacious alternative remedy before the Tribunal and approached this Court by way of the instant writ proceedings.

8. Under interim orders passed earlier in this proceedings, liberty was granted to the respondent IIT to employ the petitioner on temporary basis on the basis of a provisional No Objection Certificate which was to be issued by the Respondent No. 2 in terms of the earlier order of this Court dated 15.01.2024. The IIT has not taken advantage of the liberty granted in terms of the said order as according to them, it is not desirable to employ the petitioner in the prevailing uncertainty considering the fact that the appointment would ultimately be subject to the result of the writ petition.

9. The State is represented by the learned Advocate General who after taking instructions from the authorities has tried to impress upon the Court with reference to certain figures during his submissions that there is an acute shortage of Associate Professors. According to his submissions, there is an acute shortage even at the feeder post level, being the post of Assistant Professor. He, thus, submits that by way of promotion also it is not possible to fill up the ever increasing vacancy in the post of Associate Professor. He, thus, submits that refusal to accept the petitioner's representation and to issue release order in his favour is to serve public interest, so as to maintain optimum level of medical education and service in the State Government. By raising a plea of public interest, he has tried to justify issuance of a recent order dated 09.01.2024 by the Principal Secretary, Health Department which contains more or less the same

ground of public interests as a basis to refuse the petitioner's request for resignation.

10. We have given our anxious consideration to the plea of public interest so as to sustain refusal of the petitioner's request of resignation. Though we share the anxiety of Principal Secretary expressed by the learned Advocate General, this plea, however, gives rise to a larger question as to who is responsible for accumulation of a large number of vacancies, where situation has become alarming. Another consequential issue which arises is, whether due to non-filling of posts by the authorities for a long time, the State can deprive its employee a chance of better career option to better his prospects in life, *dehors* the Service Rules; and in excess of the discretion provided under the extant Service Rules/ Conditions. We, therefore, ventured to examine the West Bengal Service Rules.

Section 34 A of the Rules relevant to the case, reads as follows:

"34A. (1) No Government employee shall, unless the Government otherwise directs, be permitted to resign if he fails to serve on his appointing authority due notice at least for-

(a) in the case of a Government employee holding no lien or suspended lien on a permanent post under the Government,.....one month ; or

(b) in the case of a Government employee holding lien or suspended lien on a permanent post under the Government, three months.

Explanation.-In (his rule and in rule 34B "Government employee" means a person appointed to a service or post in connection with the affairs of the State and remunerated otherwise than on a daily, weekly or fortnightly basis.

(2) A Government employee who tenders resignation and quits without giving the notice as provided in sub-rule (1) 'shall, at the discretion of the appointing authority, be liable to forfeiture of his salary for the period by which the notice falls short of the requirements of Resignation. Compendium on Acts and Rules 27 clause (a) or clause (b), as the case may be, of that sub-rule in

addition to such disciplinary action as may be taken against him for contravention of these rules.

***Note.-Regarding the question of taking back in service a Government employee who resigned and subsequently withdrew such resignation letter the following principles shall be followed:-*

(i) A person continues in service if he withdraws his resignation letter before the date from which the resignation is to take effect. The resignation becomes irrevocable and operative after the aforesaid date of resignation. So the question of withdrawal of the resignation letter by the Government employee and taking back such employee in service does not arise. After the resignation has become irrevocable and effective, it cannot be cancelled.

(ii) Resignation does not disqualify a person for fresh appointment and if he is given any appointment after his service in connection with the previous appointment has come to an end on account of resignation, the appointment given subsequently shall always be treated as a fresh appointment without any consideration whatsoever with his previous appointment.

(iii) Such fresh appointment shall not be possible if the age exceeds the limit prescribed in the rules. The Government or Head of the Department, however, reserves to itself the right to relax the age limit in cases of eminently suitable persons.

(iv) In case of such fresh appointment the relevant rules relating to recruitment cannot be relaxed in favour of the persons concerned unless the rules confer such power on the appointing authority.”

11. The said Rule has earlier also fallen for consideration before this Court under similar circumstances where the State Government was refusing to accept a resignation. This Court has consistently, relying on the said Rule held that there is no provision in the Rule clothing the appointing authority with an absolute discretion to reject a resignation or to compel an employee to remain in service, in spite of resignation having been submitted. We are conscious that if any disciplinary or departmental proceeding is pending, criminal proceeding relating to his official capacity may be pending, or where the Government servant has to discharge some liability such as loan or advance taken from the Government or any other financial liability, an authority may in an appropriate case consider it imperative to

retain the employee in service for taking such proceeding/s to its logical end, or for making recoveries in accordance with Rules.

12. But, that is not the case here, as there is nothing on record to suggest that any kind of proceedings whatsoever are pending against the petitioner. In fact, the sole reason put forth to justify withholding of the petitioner's request for resignation is public interest arising out of shortage of Assistant Professors. The rule, however, does not provide for withholding/ refusing a request for resignation. The only requirement as per the rule, quoted above, is to give a notice in the manner as specified therein. The consequences of violating the period for which notice is to be given, also at best entails forfeiture of salary for the period for which the notice falls short of the requirement, depending upon discretion of the appointing authority. In the instant case, there is no such objection also that the petitioner has not complied with the notice period. Since there is no further discretion vested in the appointing authority to refuse resignation, we find that the extant service rules do not confer such direction to refuse resignation, as is sought to be exercised by the Principal Secretary in the instant case by issuing the letter dated 11.12.2023. It is trite law that Government functionaries do not have uncanalized and unbridled powers. When a reason is assigned by a Government functionary in support of his decision, which in the instant case is in respect of a Government servants request for resignation, for which

there is provision and procedure in the Service Rules, the same is required to conform to the Rules.

13. In the instant case the Rules do not provide for rejection of a request for resignation in the manner in which it has been done. The decision of the Principal Secretary is *dehors* the service Rules and suffers from the vice of arbitrariness. This Court, therefore, is not inclined to accept the reason based on public interest to be a valid reason so as to reject the petitioner's request for resignation, when no such discretion is provided for in the applicable Service Rules.

14. Having observed so, we consider it appropriate to mention that the plea of shortage in the WBMES is consistently being taken to sustain refusal of the authorities in accepting resignation in various proceedings, one after the other. In the instant case, at least there are four similar instances on record, namely proceedings arising out of W.P.S.T. 23 of 2016 (Dr. Uttam Kumar Nath Vs. The State of West Bengal & Ors.), W.P.S.T. 86 of 2020 (Dr. Debangshu Ghosh Vs. The State of West Bengal & Ors.), W.P.S.T. 88 of 2022 (The State of West Bengal & Ors. Vs. Dr. Brojen Choudhury) and W.P.S.T. 25 of 2023 (Dr. Rivu Basu Vs. The State of West Bengal & Ors.). In all these four cases, we find that refusal of resignation is in respect of petitioner serving the WBMES. In all these four cases, the Court has considered the West Bengal Service Rules, and after due consideration consistently held that there is no absolute discretion vested in the

appointing authority to refuse resignation once the application is made and the request is in terms of the West Bengal Service Rules. We find that the view of this Court was taken up by the State Authorities by filing SLP against order passed in W.P.S.T. 86 of 2020. The Special Leave to Appeal (Civil) 5327-5328 of 2016 was dismissed on February 23, 2016 since the State undertook to release employees within 48 hours.

15. We have taken note of these four proceedings and the fact that the matter travelled up to Apex Court only to highlight an issue that having suffered at least four Judgments noted above under identical circumstances in the same department, whether it behoves the State Government to again take the same stand in the instant proceedings. In fact, we find that in one of the earlier cases namely W.P.S.T. 88 of 2022 (The State of West Bengal & Ors. Vs. Dr. Brojen Choudhury) the State had been saddled with liability of 50 thousand costs also for reagitating this same issue.

16. We thus record our dis-approval with the manner in which such legally unsustainable grounds are repeatedly being taken by the State to refuse resignation of employees serving the WBMES. By doing so, the State Government is consistently generating unwanted litigation at the cost of the public exchequer, that also to deny its employees what is due to them under the Service Rules. The action of the

respondent authorities, therefore, leaves a lot to be desired from the State functioning as a model employer.

17. Before concluding we must take on record the fact that after having suffered many Judgments, as noted above, during pendency of the instant proceedings also the Principal Secretary, department of Health and Family Welfare has recently passed a “Reasoned Order” dated 09.01.2024 refusing the petitioner’s request for resignation on the same ground of acute shortage of personnel in the WBMES. Apart from the fact that the same reiterates a reason which has consistently been rejected by this Court time and again as noted above, we find that the purported reasoned order has been passed by the Principal Secretary himself as if he is the appointing authority of the petitioner. The said reasoned order is neither passed in terms of any liberty or direction issued in the instant proceedings, nor is it an order of the State Government authenticated in any official manner as required under Article 166 of the Constitution of India, or the rules of executive business. It does not even bear a memo number. We, therefore, find that the purported reasoned order is *non est* in the eye of law and does not deserve even to be considered as it is neither issued in purported compliance of any judicial order, nor communicates the stand of the State Government. At best it may be considered as an attempt to overreach the process of this Court, in the instant proceedings.

18. In the above facts and circumstances and since the Tribunal has failed to provide any efficacious remedy to the petitioner; and since in the instant case time is of the essence for the petitioner as the last extension granted by IIT to the petitioner to submit his joining is till 30th of April, 2024, we consider this an appropriate case to exercise our discretionary writ jurisdiction in favour of the petitioner to quash the letter dated 11.12.2023 issued by the Director of Medical Education West Bengal bearing Memo No. ME/REGN-14-2023/M/2149 and to direct the respondents to ensure acceptance of the petitioner's application for resignation and to issue the consequential release order in his favour so as to enable him to join at IIT.

19. The order of acceptance of the petitioner's resignation and release of his service must be issued by the authorities within 24 hours, failing which the same shall be deemed to have been accepted.

20. The appeal and application, if there be any, are disposed of.

(Madhuresh Prasad, J.)

21. I agree.

(Harish Tandon, J.)