

WPA 5181 of 2022
Dr. Maumita Chakrabarti
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Arnab Chakraborty,
Ms. Pragya Bhowmick,
Mr. Himan Khan

...for the Petitioner

Mr. Alak Kr. Ghosh,
Mr. Arijit Dey

...for KMC

In this case, the Kolkata Municipal Corporation, in its pursuit of remaining accountable has treated the petitioner in a highly reprehensible manner.

The facts, as outlined, are not disputed by the parties before this Court. The petitioner, who held the position of Medical Officer (Specialist in Gynecology and Obstetrics), applied for leave from February 11, 2015, to March 10, 2015. However, after the leave period expired, the petitioner did not resume her duties. Instead, she submitted her resignation by a letter dated July 20, 2017, requesting that her resignation be accepted from the date of submission.

It is important to note that after March 2015, the petitioner did not receive any salary or other payments from the Corporation.

Approximately six years later, on March 27, 2021, the Corporation initiated a proposal to regularise the petitioner's case. The proposal was approved by the

competent authority on April 3, 2021. The relevant resolution, as approved by the Corporation, is reproduced below:

“As per direction of Ch.Manager (P) dt. 17/3/21 it appears that Dr. Moumita Chakraborty M.O. under Health Br-XV was on leave from 11.02.2015 & never joined her duty & subsequently submitted her resignation on 20/07/2017.

However the pray drawn statement shown there is no excess payment in favour of the aforesaid incumbent as the leave w.e.f. 11/02/2015 to 31/03/2015 was duly sanctioned by the then EXE. H.O. dt-26/11/2015 & verified by MPL. ACCH. ON 03/02/2017.

Further it has been stated that the file had not been processed in time as at that time there has been acute shortage of staff & the same had also been intimated to the then EX-H.O BR XV to deploy clerical staff but no such staffs had never been deployed for smooth running the departmental work.

Now in order to regularize the instant case without any further delay, & to cancel the sanction leave w.e.f. 11/02/2015 to 31/03/2015 by the then EX-HO BR-XV & to rectify the pay drawn admissible statement to detect the excess drawn made by the incumbent, your approval is required.”

On April 27, 2021, the Executive Health Officer of the Corporation issued a letter asking the petitioner to return Rs. 70,400 as excess salary drawn, in order to complete the resignation process. This request was reiterated in a subsequent letter dated July 6, 2021.

In these letters, the Corporation contended that instead of resuming her duties after the expiration of her leave, the petitioner had submitted her resignation, in

violation of Regulation 112 of the Kolkata Municipal Corporation Service Regulation Act, 1981, and Clause 11A of the Leave Regulation, 1951. Consequently, the Corporation asserted that the leave granted to the petitioner was effectively cancelled, and it demanded the repayment of Rs. 70,400 as excess salary.

Subsequently, on February 26, 2022, the Executive Health Officer of the Kolkata Municipal Corporation wrote a letter to the officer-in-charge, Entally Police Station to convey the petitioner that the Corporation has decided to recover Rs. 70,000/- as excess salary drawn along with Rs. 1,25,246/- (three months gross salary drawn i.e. November, 2014 to January, 2015).

Mr. Alak Kr. Ghosh, learned counsel for the Kolkata Municipal Corporation, has argued that the petitioner's leave was never formally sanctioned. He contends that the petitioner should have handed over charge prior to her leave and resumed her duties after the leave expired. In the absence of this, it is argued that the petitioner continued her leave indefinitely. Furthermore, Mr. Ghosh asserts that, under the Corporation's Rules, an employee is required to give three months' notice. Consequently, the Corporation treated the period from November 2014 to January 2015 as the petitioner's notice period and sought to recover the salary paid during that period.

This argument advanced on behalf of the Corporation is rejected by the Court.

The Court finds it surprising that the Corporation sought to resurrect this issue after a lapse of six years. The resolution adopted by the Corporation regarding the regularization of the petitioner's leave indicates that the leave period from February 11, 2015, to March 31, 2015, was duly sanctioned on February 3, 2017. The Corporation also cannot dispute that the petitioner had not received any salary after March 2015.

In the Court's view, no further action was required by the Corporation to regularise the petitioner's leave, as it had already been regularised. Therefore, there was no justification for reopening the issue and attempting to recover money from the petitioner.

The petitioner's counsel rightly refers to the decision in ***G. Rajendran v. The Secretary to Government, Health and Family Welfare Department & Ors. (2006) 2 MLJ 686***, which lays down that once leave is sanctioned by the authority, it cannot ordinarily be cancelled.

Regarding the issue of resignation, it must be emphasised that the petitioner tendered her resignation by letter dated July 20, 2017. However, the Corporation failed to communicate any response regarding the acceptance of her resignation for almost four years. In

light of this delay, it must be assumed that the petitioner's resignation was accepted, effective from the date of submission of her resignation letter, i.e., July 20, 2017.

It is also noteworthy that the Corporation never declined to accept the petitioner's resignation; rather, it sought to regularize her leave and resignation, albeit in an unacceptable manner.

The Corporation's attempt to treat the period from November 2014 to January 2015 as a notice period and recover the salary drawn during that time is without merit. Having received the resignation letter on July 20, 2017, the Corporation's failure to communicate anything for four years renders it too late for the Corporation to now claim that the petitioner did not provide proper notice.

The petitioner's counsel has submitted that the petitioner simply wishes to resolve the complications caused by the arbitrary actions of the Corporation, and is not interested in receiving her terminal dues.

This Court is also surprised that the Corporation has involved the local police station in what is essentially a service-related matter, wherein the police have no legitimate role to play.

In view of the above, the writ petition is allowed, and the petitioner is deemed to have resigned from her service

on July 20, 2017. The employer-employee relationship shall be considered to have ceased from that date. The Corporation is permanently restrained from recovering any amounts from the petitioner or taking any coercive actions against her.

Accordingly, **WPA 5181 of 2022** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)