

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

**BEFORE:
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA**

**W.P.A. 7255 of 2016
NALINAKSHA CHATTERJEE
VS.
HOWRAH MUNICIPAL CORPORATION & ORS.**

For the Petitioner : Ms. Nandini Mitra
Mr. Sanjay Saha
..... advocates

For the H.M.C. : Mr. Sandipan Banerjee
Mr. Pinaki Chakraborty
Mr. Ankit Sureka
.... advocates

Reserved on : 28.11.2024

Judgment on : 17.03.2025

HIRANMAY BHATTACHARYYA, J.:-

1. The petitioner has prayed for quashing the decision of the Mayor in Council of Howrah Municipal Corporation in its meeting held on 29.06.2015 holding that there is a break of service during the period from 28.01.1999 till 18.11.1999.

2. Petitioner claims to have been appointed as an Assistant Engineer under the Howrah Municipal Corporation (for short “the Corporation”) on 27.11.1987. Pursuant to an advertisement published in the Employment News on 03.09.1994 inviting applications from the aspiring candidates to fill up the post of Executive Engineer (Roads and Bridges) on “transfer on deputation basis” (including short term contract), the petitioner applied for the post of Executive Engineer (Roads and Bridges) under the Ministry of Surface Transport, Government of India. The petitioner joined the post of Executive Engineer under the Ministry of Surface Transport (Roads Wing) on deputation basis for a period of three years or untill further orders with effect from 28.10.1998 vide the letter of appointment dated 28.10.1998. The Ministry of Surface Transport by a letter dated 17.03.1998 proposed to terminate the deputation of the petitioner with effect from 27.01.1999. After termination of such deputation, the petitioner joined Howrah Municipal Corporation in the post of Assistant Engineer vide order of Commissioner of the Corporation dated 18.11.1999.
3. The period from 28.01.1999 i.e., the date immediately after the date of termination of deputation till the date of appointment to the post of Assistant Engineer under the Corporation on 18.11.1999 was treated to be a “break in service”. The reason for treating the said period as “break in service” was that the petitioner voluntarily resigned from the Corporation for joining the post of Executive Engineer under the Government of India, Ministry of Surface Transport.
4. Ms. Mitra, the learned advocate appearing for the petitioner submits that the petitioner applied for the post of Executive Engineer under the Ministry of Surface Transport (for short “MoST”) on transfer on deputation basis. The Corporation with an ulterior motive compelled the petitioner to resign from the post of Assistant Engineer of the Corporation as a condition for issuance of the release order by the Corporation for appointment to the post of Executive Engineer under Government of India, MoST. The learned advocate appearing for the petitioner contended that the petitioner was compelled to

issue the letter of resignation but such letter cannot constitute “resignation” as the same was a conditional one. The learned advocate for the petitioner placed reliance upon the decisions of the Hon’ble Supreme Court in the case of **Dr. Prabha Atri vs. State of U.P. and Others** reported at **(2003) 1 SCC 701** and **Moti Ram vs. Param Dev and Another** reported at **(1993) 2 SCC 725** in order to buttress his contention that the letter issued by the petitioner cannot be construed as a letter of resignation.

5. He further contended that the petitioner should be considered as continuing in service starting from the date of his original appointment under the Corporation. In support of such contention he placed reliance upon a decision of the Hon’ble Supreme Court in the case of **Sushil Kumar Yadunath Jha vs. Union of India and Another** reported at **(1986) 3 SCC 325**.
6. The learned advocate appearing for the Corporation seriously disputed the contentions made by the learned advocate for the petitioner. He contended that after the petitioner submitted his resignation, he was released from the office of the Corporation with effect from 27.01.1999 vide letter dated 03.02.1999. He further contended that the petitioner voluntarily resigned from the service of Corporation on 27.01.1999 and was appointed afresh by an order of the Commissioner of the Corporation vide letter dated 18.11.1999. He contended that with the resignation of the petitioner from the service of the Corporation, the deputation to MoST, Government of India also ceased to exist with effect from 27.01.1999. Thus the petitioner was neither in service of the Corporation with effect from 28.01.1999 till 18.11.1999, nor he was on deputation with the MoST, Government of India. Thus, the period from 28.01.1999 till 18.11.1999 was rightly treated to be “break in service”.
7. Heard the learned advocates for the parties and considered the materials placed.

8. While the petitioner was working as an Assistant Engineer under the Corporation, MoST, Government of India issued an advertisement inviting the aspiring candidates to apply for the post of Executive Engineer (Roads and Bridges) on transfer on deputation basis (including short term contract). The period of such deputation was for three years.
9. Petitioner applied for the post of Executive Engineer by way of transfer on deputation basis.
10. The authorities of the Corporation issued no objection certificate if the petitioner is selected and appointed as Executive Engineer (Roads and Bridges) in Government of India, MoST. The Corporation also certified that no vigilance case is pending against the petitioner and also that no major /minor penalty has been imposed on the petitioner during his service career. It was also certified by the Corporation that the petitioner is a dependable officer who is capable of taking higher responsibility.
11. Petitioner, by letters dated 23.03.1998 and 08.05.1998 prayed for releasing him from the service.
12. Thereafter, the Commissioner of the Corporation issued a letter dated 07.08.1998 informing the petitioner that he may be released from the service of a Corporation on resignation only for appointment in the post of an Executive Engineer (Roads and Bridges) in MoST (Roads Wing).
13. The petitioner was appointed to the post of Executive Engineer in MoST (Roads Wing) on deputation basis for a period of three years or until further orders whichever is earlier with effect from 20.10.1998. However, the Government of India MoST issued an Office Memorandum dated 17.03.1999 stating that the deputation of the petitioner to MoST has ceased to exist as he has resigned from the Corporation. In the said Office Memorandum it was stated that the authority of MoST proposed to terminate the deputation of the petitioner with effect from 27.01.1999 and the petitioner was given a chance to give his version before further action in the matter is contemplated. However, the deputation of the petitioner ceased to exist.

Thereafter, the petitioner was appointed as an Assistant Engineer by the order of the Commissioner of the Corporation dated 18.11.1999.

14. Mr. Banerjee would contend that such an appointment was a fresh appointment and, therefore, the petitioner cannot claim continuity in service.
15. Petitioner applied for appointment on transfer on deputation basis to the post of Executive Engineer (Roads and Bridges) under Government of India MoST. The Corporation by a letter dated 03.09.1994 informed the Government of India MoST that the Corporation has no objection if the petitioner is selected and appointed as Executive Engineer under MoST.
16. With reference to the telegram dated 14.11.1995 and the letter dated 13.10.1994 of the Secretary to the Government of India, MoST, the Chief Engineer, Howrah Municipal Corporation issued a letter dated 23.02.1995 informing such authority that the petitioner has been working in the Corporation from 27.11.1987 as an Assistant Engineer (Roads) in the scale of Rs. 2200 to 4000. The Chief Engineer of the Corporation also informed the said authority of MoST by a letter that the Corporation has no objection if the petitioner is selected and appointed as Assistant Engineer (Roads and Bridges) in MoST; no vigilance case is pending against the petitioner; no C.R.Dossiers are maintained in the office of the Corporation and no major/minor penalty has been imposed upon the petitioner during his service career.
17. Thus, it is evident from the materials on record that the Corporation was well aware that the petitioner applied for appointment to the post of Executive Engineer, Government of India, MoST on transfer on deputation basis and the Corporation also did not raise any objection against the petitioner being selected and appointed to the post of Executive Engineer under MoST on transfer on deputation basis.
18. It does not appear from any of the documents that the Corporation took a stand that the petitioner would not be sent by the Corporation on transfer

on deputation basis. In the event such an objection was raised prior to selection and appointment of the petitioner on the said basis, the petitioner could not have been selected and appointed on transfer on deputation basis.

19. It appears to this Court that the dispute cropped up at the time of releasing the petitioner by the Corporation for joining the post of Executive Engineer, Government of India, MoST (Roads Wing). It further appears from the letter issued by the Commissioner dated 07.08.1998 that the Corporation imposed a condition upon the petitioner that he may be released from the service of Corporation on resignation only for joining the post of Executive Engineer in MoST (Roads wing). The letter issued by the petitioner pursuant to the letter of the Commissioner of the Corporation dated 07.08.1998 tendering the resignation was a conditional one as the Corporation insisted on tendering resignation as a condition for issuing the release order, from the service of the Corporation for joining the post of Executive Engineer in MoST (Roads Wing).
20. At this stage it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of **Dr. Prabha Atri** (supra) wherein it has been held that in order to constitute a binding and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of relinquishment. It was observed in the said reported decision that to constitute a resignation, it must be unconditional and with an intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office.
21. In **Moti Ram** (supra) the Hon'ble Supreme Court held that resignation means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment.

22. From the aforesaid decisions it follows that there has to be an intention to relinquish the office and the same has to be an unconditional one.
23. This Court, therefore, has to consider whether the letter issued pursuant to the letter of the Commissioner dated 07.08.1998 was an unconditional one with an intention to give up or relinquish the office.
24. The petitioner applied for the post of Executive Engineer in the Government of India, MoST on transfer on deputation basis. Resignation from the service of the Corporation would automatically result in the deputation to come to an end.
25. It defies logic that the petitioner having been selected and appointed as an Executive Engineer under Government of India, MoST by way of transfer on deputation basis would give up or relinquish the service under the Corporation which would amount to automatic cessation of appointment as an Executive Engineer on transfer on deputation basis. The letter alleged to have been issued by the petitioner cannot also be said to be an unconditional one as the same was issued only for the reason that the Corporation insisted on tendering resignation by the petitioner as a condition for issuance of a release letter.
26. This Court, therefore, holds that the letter styled as a resignation letter was issued by the petitioner as the Corporation imposed such a condition for issuance of the release order and, therefore, the same cannot be treated to be an unconditional one. Therefore, the said letter issued by the petitioner cannot be construed to be a letter of resignation.
27. However, the fact remains that the deputation of the petitioner to the MoST ceased to exist with effect from 27.01.1999 on the ground that the petitioner resigned from service of the Corporation.
28. The question that arises for consideration is whether the period from 28.01.1999 till 18.11.1999 could have been treated to be a “break in service” by the Corporation.

29. From the materials on record it is evident that the petitioner after being selected to the post of Executive Engineer in the Government of India, MoST, was compelled by the authorities of the Corporation to issue a letter tendering resignation which ultimately resulted in termination of his deputation.
30. The petitioner after being selected to the post of Executive Engineer, Government of India, MoST, was required to obtain a release order from the Corporation for joining the post on transfer and deputation basis. At that point of time the authorities of the Corporation insisted upon the petitioner to tender his resignation as a condition for issuance of such release order. Considering the position which the petitioner was facing at the relevant point of time, this Court is of the considered view that the petitioner was in no position to bargain with the authorities of the Corporation but was compelled to accept the terms that were imposed upon him by the Corporation as a condition for issuance of the release order.
31. It is not in dispute that the Corporation subsequently appointed the petitioner to the post of Assistant Engineer by an order dated 18.11.1999. Record reveals that the Corporation in its letter dated 23.02.1995 certified that the petitioner is a capable and a dependable officer who can take higher responsibilities and also that no major/ minor penalty has been imposed on the petitioner during his service career and he was also subsequently appointed as an Assistant Engineer. Though the order of the Commissioner dated 18.11.1999 states that the petitioner was newly appointed but the fact remains that the petitioner was previously serving as an Assistant Engineer and due to the reasons as mentioned hereinbefore his deputation to the Government of India, MoST stood terminated and the petitioner was again appointed by a letter dated 18.11.1999.
32. It is not the case of the Corporation that the appointment of the petitioner vide order dated 18.11.1999 was pursuant to a fresh selection process being initiated and the petitioner had been selected on the basis of such selection process.

33. The reasons for which the petitioner could not render any service to the Corporation during the period from 28.01.1999 till 18.11.1999 was not because of any fault of the petitioner. The reasons are solely attributable to the Corporation as the Corporation insisted upon tendering resignation by the petitioner as a condition for issuing the release order for joining the post on transfer on deputation basis.
34. The petitioner started to perform his duties as an Assistant Engineer vide order of the Commissioner of the Corporaton dated 18.11.1999.
35. The reasons for the petitioner not being able to render service during the period from 28.01.1999 to 18.11.1999 are solely attributable to the Corporation as observed hereinbefore. No materials have been produced by the Corporation to show that the conduct and the performance of the petitioner after he started rendering service pursuant to order dated 18.11.1999 or that prior to the issuance of the release order was not satisfactory.
36. In ***Sushil Kumar Yadunath Jha*** (supra) the Hon'ble Supreme Court noted that the appellant therein was in no position to bargain for a better deal and in the straightened situation in which he found himself, was compelled to accept the term that was dictated to him. The Hon'ble Supreme Court after noting the facts of the said case and having regard to interest of justice opined that the appellant therein was entitled to an order condoning the break in service and held that he should be considered as continuing in service throughout from the date of his original appointment and directed release of all consequential financial and other benefits by treating the appellant therein in continuity of service from the date of his original appointment.
37. The said decision shall squarely apply to the facts of the case in hand. The appointment of the petitioner as an Executive Engineer on transfer on deputation basis ceased for the reasons as stated hereinbefore. Thereafter, the petitioner was newly appointed as an Assistant Engineer by the order of

the Commissioner of the Corporation dated 18.11.99. At the relevant point of time the petitioner was not in a position to bargain with the Corporation for a better deal and was compelled to accept the terms that were dictated to him.

38. Though it is not in dispute that the petitioner accepted the terms of appointment as contained in the order dated 18.11.99 and this Court is conscious of the proposition of law that the parties are bound by the terms of the contract but the proposition of law laid down in **Sushil Kumar Yadunath Jha** (supra) as well as the subsequent conduct of the petitioner has swayed the mind of this Court to take a slightly different view having regard to the interest of justice.
39. Though the said order dated 18.11.99 stated that the petitioner was newly appointed but by mere use of such term, in the facts and circumstances of the case in hand, cannot be used by the Corporation as a ground to treat the period as “break in service”.
40. Thus, by applying the ratio laid down in **Sushil Kumar Yadunath Jha** (supra) this Court holds that the petitioner herein should be relieved of the disadvantage suffered by him pursuant to the use of the term “newly appointed” in the order dated 18.11.1999 and the period treated to be as “break in service” by the decision of the Mayor in Council dated 29.06.2015 should be condoned and the petitioner should be considered as continuing in service throughout from the date of his original appointment. The petitioner shall also be entitled to all the consequential financial benefits flowing from such continuity of service.
41. For all the reasons as aforesaid the writ petition stands allowed. The decision of the Mayor in Council of the Howrah Municipal Corporation dated 29.06.2016 stands set aside and quashed. The authorities of the Howrah Municipal Corporation are directed to condone the “break in service” of the petitioner and to treat him as in continuous service with effect from the date of his original appointment with all consequential financial and other

benefits. The authorities of the Howrah Municipal Corporation are directed to release the amount representing the arrear financial as well as retirement benefits in terms of this order after adjusting the amounts already paid within a period of six weeks from the date of receipt of the server copy of this order. There shall be however no order as to costs.

42. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)