

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA-774 of 2022

Dr. Chandrani Mallik -- **VERSUS** – The State of West Bengal & Ors.

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| Serial No. and Date of order | For the Applicant | : Mr. M.N. Roy, Mr. S. Ghosh, Ld. Advocates. |
| <u>06</u> 20.12.2023 | For the State Respondent | : Mr. G.P. Banerjee, Ld. Advocate. |

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Responding to the first ground of rejection which is “no sufficient reason” given in her letter of resignation. Mr. Roy, learned counsel for the applicant submits that it is apparent that the applicant had stated in her letter stating a valid reason for spending quality time with her family, in particular, her young son. On the reason given by the respondent for the two resignation letters being contradictory to each other, Mr. Roy submits that there is no contradiction at all. Both the resignation letters had mentioned the family as the primary reason for tendering such resignation letter. In the first resignation letter dated 30.01.2015, the reason mentioned was “unavoidable family circumstances” and on the second resignation tendered on 07.06.2022, she had mentioned her family, in particular, her young son to be looked after. As regards, the respondent authority not being sure of the status of the applicant during the period from 01.04.2015 to 07.07.2022, Mr. Roy points out that at para 4 of the same reasoned order dated 07.11.2022, it is clear that the respondent has recorded the fact that the last working date of Dr. Mallik has been recorded as 31.01.2015 and her last salary was paid for the month of February, 2015.

Mr. Roy submits that from this statement of the reasoned order, it is easy to understand that after submission of the resignation letter, the applicant waited for three months and since there was no response from the respondent, it was presumed that her resignation letter has been accepted and she continued to stay at home. Finally, Mr. Roy in response to statement of the

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reasoned order points out that as it is clear from the reasoned order itself after expiry of the child care leave on 31.03.2015 and having submitted her resignation letter, she did not resume her duty believing that her resignation letter has been accepted.

In response to the submissions made by Mr. Roy on behalf of the applicant against the four statements made by the respondent authority, Mr. Banerjee, learned counsel for the State respondent submits that there is no Rule that allows an employee to “presume” that after lapse of three months from the date of submission of resignation letter, the resignation letter has been accepted. If no response has been received against the resignation, the applicant should not have presumed that it has been accepted. On the contrary, the applicant was issued a Show Cause Notice on 13.07.2018 for her long absence from duty. Neither such show cause was responded nor she resumed her duties. Instead on 07.07.2022, she served another notice before the respondent requesting to accept her resignation letter. Supporting the point of contradiction in her two resignation letters as stated in the reasoned order, Mr. Banerjee refers to the resignation letter dated 09.06.2022 where the applicant had mentioned her maternity leave since May 2014. Having remained in maternity leave without it being sanctioned for eight long years is not a valid ground for seeking resignation from Government service. Concluding his submission, Mr. Banerjee reiterates the Rule that leave is not a matter of right of an employee, any kind of leave needs a sanction from the employer. Without such sanction, the Government employee cannot avail and proceed on leave on her own. Since her unauthorised absence for eight years has not been regularised and since she has not submitted any application for regularising of such leave, the question of accepting her resignation letter does not arise.

Disagreeing with the submission made by Mr. Banerjee, Mr. Roy submits that Note to Rule 34A of WBSR Part-I be relied, which is as under :

“34A.(1) No Government employee shall, unless the Government otherwise directs, be permitted to resign if he fails to serve on his appointing

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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

Note : (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.”

Let the matter appear under the heading “**Further Hearing**” on **03.07.2024**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

HS/SS