

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. - OA 774 OF 2022

DR. CHANDRANI MALLIK - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. Sankha Ghosh,
and Mr. M.N. Roy,
Date of Mrs. S. Das,
order Advocates

8 For the State Respondents : Mr. Gautam Pathak Banerjee,
25.07.2024 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.

The applicant has prayed for setting aside the impugned reasoned order passed by the Principal Secretary, Department of Health and Family Welfare on 07.11.2022. In terms of an order of this Tribunal in O.A. 459 of 2022, the Principal Secretary was directed to respond to the letter of resignation submitted by the applicant. After giving some reasons the prayer for acceptance of such resignation letter was rejected. The reasons given were as follows:

- “a. There is no sufficient reason mentioned in application dated 07/06/2022 for acceptance of resignation w.e.f. 07/07/2022.*
- b. Previous application for accepting resignation w.e.f. 01/03/2015 vide prayer dated 30/01/2015 and the latest one w.e.f. 07/07/2022 are contradictory.*
- c. Not sure about the status of Dr. Mallik during the period from 01/04/2015 to 07/07/2022.*
- d. Not sure, whether she joined after the expiry of Child Care Leave as on 31/03/2015.”*

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Dr. Chandrani Mallik, the applicant had joined the West Bengal Medical Education Service on 24.01.2011 as R.M.O. cum Clinical Tutor. She submitted a prayer for acceptance of her resignation with effect from 01.03.2015 on grounds of family circumstances. After submission of such prayer she did not join her duties. It also transpires that she had been on Commuted Leave from 17.06.2014 to 17.07.2014, Maternity Leave from 20.07.2014 to 15.01.2015 and Child Care Leave from 16.01.2015 to 31.03.2015. The reasoned order also records that her last working day was 31st January, 2015 and she had received her salary upto February, 2015. From the records it also comes to notice that she submitted one more letter of resignation and prayed for acceptance of it with effect from 07.07.2022. Since there was not any response from the respondent authorities, an application O.A. 459 of 2022 was filed in this Tribunal which was disposed of after a direction to the Principal Secretary as noted in the foregoing paragraph.

From the submissions of the learned counsels and records in this application, the following can be observed :

- (i) The resignation letter submitted by the applicant dated 30.01.2015 was neither accepted nor rejected by the respondent authorities.
- (ii) The applicant is not under any disciplinary proceedings and vigilance enquiry against her. It was only after a direction from this Tribunal that the Department responded to her resignation letter, the first one submitted on 30.01.2015 and the second one on 07.06.2022.

The Service Rules relating to resignation letters and consideration by the employer are very well defined and there is no ambiguity on this matter. The relevant Rule, Rule 34A(1) of West Bengal Services Rules Part 1, 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 authority due notice at least for –

- (a) in the case of Government employee holding no lien or suspended lien on a permanent post under the Governmentone month;”

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Similarly in W.P.S.T. 86 of 2020 in Dr. Debangshu Ghosh vs. The State of West Bengal & Ors., the Hon'ble High Court observed the following:

“As is elementary, since it is impossible to make an unwilling horse work, a suit or order in the nature of directing the performance of any work by an individual may not lie or be made. At the highest, the employer may obtain damages in lieu of what the employee was obliged to do. In any event, an employee always has the right to resign and walk out. The only notable exceptions being when there are departmental or disciplinary proceedings pending against the employee or there is a bond period that the employee has to serve or there is a claim that the employer has against the employee which has to be discharged only by performance. Even if an employer has a claim in money against the employee, the employee is not obliged to continue in service till the claim is discharged; since it is always open for the employer to enforce the claim in accordance with law.”

Similar to the cases considered by the Hon'ble High Court as noted above, in this case also the only core issue revolving in this litigation is that the applicant had submitted her letter of resignation, but it was not being responded by the authorities. Only after the direction from this Tribunal the Department passed a reasoned order refusing to accept her resignation letter. It amuses this Tribunal to note that the four grounds relied on to reject her application are neither relevant nor legally tenable. For instance, the Department wants to know “*sufficient reason for such resignation*”. The Tribunal wonders whether rules relating to acceptance / rejection of resignation letters empower the employer to ask for sufficient reasons? Does the employer has the mandate to decide what is “sufficient” and what is “insufficient”? Both the resignation letters had cited family as the compelling reason. The second reason given by the respondent authority is also superfluous by stating that the two resignation letters are contradictory to each other. What

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contradiction was seen is not mentioned by the authority. A resignation letter is an intent expressed by the employee to exit the organisation, expressed in plain and unambiguous language. The two resignation letters would have been contradictory to each other, if one letter asks for acceptance and the other asks for non-acceptance by the authority. The respondent authorities are also not sure about the status of the applicant during the period 01.04.2015 to 07.07.2022. In the same reasoned order, it is recorded that her last working day was 31st March, 2015 and her salary was paid upto February 2015. From such statement of the reasoned order, the Tribunal learns that the applicant performed her last duties on 31.03.2015 within a period of 60 days from the date of communication of this order, if she is otherwise eligible. It is to be understood by the authority that, thereafter, she did not perform her duties. The Tribunal is of the opinion that these reasons are not relevant and in no way legally deny the right of the applicant to seek resignation.

In view of above observations, this Tribunal is constrained to come to this conclusion that the impugned order refusing acceptance of the applicant's resignation letter is bad in law and it is quashable and thus quashed and set aside with a direction to the respondent No. 2, the Principal Secretary, Department of Health & Family Welfare to accept her resignation letter with effect from 01.04.2015 within a period of 60 days from the date of communication of this order, if she is otherwise eligible. Accordingly, the application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.