

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble Dr. A. K. Chanda
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 228 of 2018

Dr. Basab Bagchi Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Dibyendra Narayan Ray,
Mr. Sankha Ghosh,
Advocates.**

**For the State Respondents:-Mr. Soumendra Narayan Ray,
Advocate.**

Judgment delivered on : 3.5.2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

- “a) An order do issue thereby setting aside/quashing/rescinding/revoking/withdrawing/cancelling the reasoned order dated 26.02.2018 passed by the Director of Medical Education, Health & Family Welfare Department, West Bengal within a stipulated time period.
- b) An order do issue directing the concerned respondent authorities to forthwith issue release order in favour of the applicant after accepting his resignation letter, so made by him on 30.11.2015 before The Director Medical Education, Department of Health & Family Welfare, West Bengal, after setting aside the reasoned order dated 26.02.2018.
- c) An order do issue directing the concerned respondent authorities to forthwith issue “Release Order” in favour of your applicant without causing any further delay, so as to enable your applicant to choose his profession accordingly.
- d) An order do issue directing the concerned respondent authorities to transmit all the records pertaining to the instant application so that conscionable justice can be administered.

e) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the interest of the applicant.”

2. (i) According to applicant, he had joined West Bengal Medical Education Services on 19.05.2010 as a RMO-cum-Clinical Tutor in the department of Haematology, NRS Medical College, Kolkata. However, due to his personal reason, he tendered resignation through proper channel on 30.11.2015 indicating the same would be effective from 15.12.2015 before the Directorate of Medical Education, Department of Health & Family Welfare, Govt. of West Bengal. The said resignation letter was subsequently forwarded by the concerned authority on the same date i.e. on 30.11.2015. As after waiting for a considerable period, no release order was issued therefore, being aggrieved, he filed one OA – 938 of 2017, which was disposed of by the order dated 01.12.2017 holding, inter alia,

“The Tribunal now feels the Application should be disposed of with a direction that after scrutiny of 13 Points Query following the letter of Resignation is complete the Health Department will convey its decision to Dr. Bagchi forthwith. It would be appreciated in the event such endeavour is taken within a period of 6 weeks from the date of communication of this Order.”

(Annexure B)

However, even after the communication of the said direction, the respondent authority did nothing. As a result, the applicant was compelled to move one contempt petition being CCP No. 14/2018.

However, during the pendency of the contempt application the respondent authority passed the impugned order dated 26.02.2018 (Annexure C), rejecting the prayer of resignation on the ground of non-fulfillment of provisions of Rule 34A.1(b). Being aggrieved with, he has filed the instant application.

(ii) During the course of the hearing, the Counsel for the respondent has submitted one report dated 17.04.2018 on behalf of the Director of Medical Education which states, inter alia,

“Report in the matter of O.A. No. 228 of 2018 (Dr. Basab Bagchi -Vs- The State of W.B. & Ors.)

In compliance of order of the Hon’ble WBAT passed on 01.12.2017 in OA No. 938 of 2017 a Reasoned Order has been passed by the DME, WB on 26.02.2018 with rejection of the prayer for resignation of Dr. Basab Bagchi since provision of Rule 34A.1(b) have not been complied with (copy enclosed).

Due to acute shortage of doctors, patient’s cares have been suffering in the all corners of West Bengal. Hence the DME, WB is not in a position to allow the prayer for resignation of Dr. Basab Bagchi or apply any discretionary power or forfeiture of his salary for the period by which the notice falls short of the requirements as per Rule 34A(2) provided in sub-rule (1) of WBSR, Part-1.”

The Counsel for the respondent has further submitted that the aforesaid report may be treated as a reply to the Original Application and the instant application may be disposed of accordingly.

During the course of the hearing, the Counsel for the applicant has submitted that in the impugned order the respondent had rejected the prayer for resignation of the applicant on the ground of non-compliance of provision of Rule 34A.1(b). However, in the instant report submitted by the respondents, the respondents have taken a view that as due to acute shortage of doctors, patients' care being suffering, hence the Director of Medical Education is not in a position to allow the prayer for resignation of the applicant or apply its discretionary power or forfeiture of his salary in the period by which notice falls short of the requirements as per Rule 34A(2) provided in sub-Rule 1 of WBSR part-1. The Counsel for the applicant has further referred a judgement passed by the Hon'ble High Court, Calcutta in WPST No. 22/2016 dated 18.02.2016, which was further affirmed by the Apex Court vide their order dated 23.02.2016 passed in SLP (C) No. 5327-5328/2016. The Counsel for the applicant has submitted that both the Rule 34A and the issue of public interest has been dealt by the Hon'ble High Court and Apex Court and was ordered in favour of the applicant. Since the applicant similarly circumstanced with the petitioners of the aforesaid case, therefore the benefit of the said judgement should be extended to him.

3. Heard both the parties and perused the record as well as the judgement as referred by the applicant. It is noted that the resignation of the applicant was rejected on the ground of non-compliance of the provisions of Rule 34A1.(b).

Rule 34A of WBSR part-1 is 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 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 this 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 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 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 or contravention of these rules.”

However, subsequently through their report, the respondents have submitted that due to acute shortage of doctors, the Director of Medical Education is not in a position to allow the prayer of the

applicant as well as apply in discretionary power or forfeiture of salary for the period by which the notice falls short as per Rule 34A(2) of WBSR. Moreover, the Hon'ble High Court in their judgement dated 18.02.2016 after considering the Rule 34A has observed, inter alia,

“It is evident from a bare perusal of the Rule that a person who tenders his/her resignation without giving notice can at best be liable for forfeiture of his/her salary for the period by which the notice falls short. The State can in no manner refuse to accept the letter of resignation. The submission of the learned counsel for the State that it is because of the lack of Doctors and Specialists in the State that the resignation has not been accepted is unsustainable. The State cannot prevent a person from improving his/her prospects and career in some other organisation. There is no provision in the Rules by which a person is duty bound to continue in employment of the State Government endlessly and in perpetuity. Fortunately, we are not living in a regime where the State can decide the career for its citizens; nor can it bind a person to continue forever in service without there being any law for that purpose. The State cannot dictate to its citizens the career opportunities that he/she will avail of.

We are convinced that the action of the State in not releasing the petitioner is illegal, arbitrary, whimsical and capricious and without any foundation of law. We,

therefore, set aside the impugned order of the Tribunal. The State is directed to accept the petitioner's resignation and issue a release order by the close of the working hours today so that the petitioner can join her new place of employment tomorrow, which is the date of joining.

Mr. Majumder learned counsel appearing for the State is directed to communicate this order immediately to the authorities concerned.

Mr. Majumder now states that the Joint Director of Medical Education, Mr. Arup Maitra is present in court who is authorised to accept the resignation. He shall, therefore, accept the resignation of the petitioner and ensure that a release order is issued to her.”

Subsequently, the Hon'ble Apex Court in their judgement dated 23.02.2016 has observed, inter alia,

“The dispute in the matter is regarding the legal authority of the State to insist upon certain period of time before an employee (two Doctors in the case in hand) could be relieved from its service pursuant to their resignation. By the impugned order dated 18.2.2016, the High Court opined that the decision of the State not to relieve the respondents herein is arbitrary and illegal and, therefore, directed the petitioner State to accept the resignation of the respondents and to release them forthwith.....”

4. In view of the above, as the issue involved in this case being same and identical and has already been considered by the Hon'ble High Court as well as Apex Court and the applicant, being similarly circumstanced, is entitled to get the benefit of the said judgement. Accordingly, the order dated 26.02.2018 passed by the Director of Medical Education, Health & Family Welfare Department, West Bengal is set aside and quashed. The respondent authority is directed to accept the resignation of the applicant dated 30.11.2015 and to issue release order forthwith from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and directions with no order as to cost.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)