

(2017) 07 CAL CK 0010
In the Calcutta High Court
Case No : 192 of 2016

Dr. Mousumi Kar

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

[West Bengal Services Rules, 1971](#), Rule 34A(1) -
[General Clauses Act, 1977](#), [Section 6](#)

Citation : (2017) 07 CAL CK 0010

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : D. N. Roy, M. N. Roy, Biswarup Nandy, Gaurav Halder, Joytosh Majumder, L. K. Gupta, Pinaki Dhole, Debashis Sarkar

Judgement

1. The short issue which arises for consideration is to whether the proviso to Rule 34A(1) of the West Bengal Service Rules, Part-I (hereinafter referred to as the said Rules) introduced by way of an amendment vide notification dated 26th August, 2016 within the period of haitus towards acceptance of resignation tendered by the petitioner, interdicts the petitioner's right to be considered for resignation.

2. The said issue needs to be considered in the back drop of the facts that the petitioner was appointed to the post of Demonstrator of Pathology on 20th December, 2012 under the West Bengal Medical Education Service Cadre. By a representation dated 1st August, 2016 addressed to the Director of Medical Education through proper channel, the petitioner prayed for resignation. As the respondents did not consider the said representation, the petitioner preferred an original application being O. A. 905 of 2016 before the learned Tribunal without having any knowledge about the fact that during the period of haitus for a month, as provided under Rule 34A(1) of the said Rules, a proviso to the said Rule was introduced on 26th August, 2016 to the effect that the provision of the said sub-rule (1) of Rule 34A shall not be applicable prior to completion of a

period of at least five years of continuous service with effect from the date of joining. Considering the said notification the learned Tribunal dismissed the original application by an order dated 27th September, 2016 observing, *inter alia*, that the amendment became effective before the petitioner acquired any vested right to have her resignation accepted since during the period of haitus in view of Rule 34A(1), the new amendment came into effect and that the petitioner is bound by the rigors of the said amendment.

3. Mr. Roy, learned advocate appearing for the petitioner submits that the right to be considered for resignation accrued in favour of the petitioner on 1st August, 2016 when she submitted her representation tendering her resignation and such accrued right comes within the ambit of the words "any right accrued" in Section 6(c) of the General Clauses Act, 1897 and the same cannot be curtailed by an amendment to the said Rules brought in effect from 26th August, 2016 since every statute or statutory Rule is prospective unless it is expressly or by necessary implication said to have retrospective effect. In support of such contention reliance has been placed upon the judgments delivered in the case of *M/s. Ambalal Sarabhai Enterprises Ltd. - vs- M/s. Amrit Lal & Co. & Anr.*, reported in (2001) 8 SCC 397 and in the case of *Videocon International Ltd. -vs- Securities & Exchange Board of India*, reported in (2015) 4 SCC 33.

4. Drawing the attention of this Court to clause 6 of the letter of appointment, Mr. Majumder, learned advocate appearing for the respondents submits that the petitioner is bound by the provisions of the notification dated 26th August, 2016. Once appointed to his/her post or office the Government servant acquires a status and his rights and obligations are determined by statute or statutory rules which may be framed and altered unilaterally by the Government. In support of such contention reliance is placed upon a judgment delivered in the case of *Roshan Lal Tandon: Kunj Behari -vs- Union of India*, reported in AIR 1967 SC 1889.

5. He further argues that merely because the application for resignation was submitted prior to the amendment, it cannot be construed that a substantial right vested upon the petitioner. Such right is subject to notice and discretion of the employer. No employee can claim a vested right to resign and an application for resignation has necessarily to be dealt with according to the rules in force on the date of the disposal of the application. No right to resign did crystallize in favour of the petitioner prior to the amendment and as such the provisions of Section 6 of the General Clauses Act, 1897 have no manner of application in the instant case. In support of such contention reliance has been placed upon judgments delivered in the case of *State of T.N. -vs- M/s. Hind Stone etc. etc.*, reported in (1981) 2 SCC 205 and in the case of *Howrah Municipal Corpn. & Ors. -vs- Ganges Rope Co. Ltd. & Ors.*, reported in (2004) 1 SCC 663.

6. Heard the learned advocates appearing for the respective parties. The proviso inserted in Rule 34A(1) of the said Rules does not contain any express provision

giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule is not retrospective, it cannot adversely affect the right of an employee to apply for consideration of a representation for resignation. On the date of submission of the representation for resignation, the petitioner had the eligibility to be considered for resignation. The right accrued under the unamended Rules cannot be retrospectively amended. By way of amendment the eligibility criterion towards resignation has been altered, it is not just a change of forum. Clause (c) of Section 6 of the said Act refers to "any right" which may not be limited as a vested right but is limited to be an accrued right and as such the judgments delivered in the cases of State of T.N. (Supra) and Howrah Municipal Corpn. (Supra) have no application to the facts in the present case. The State cannot deny consideration of the petitioner's claim upon application of a subsequent amendment in the said Rules which were not even born on the date the petitioner applied for consideration of his prayer for resignation. Furthermore, construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

7. It is true that an employee does not get any right to resign by merely making an application for the same, but right is created in his/her favour for being considered for resignation. If an employee applies for resignation in terms of the existing Rules, he acquires a right to be considered for resignation in accordance with the then existing Rules. This right cannot be affected by the unilateral alteration of the provision towards resignation since amending Rule is not retrospective in nature and as such the judgment delivered in the case of Roshan Lal Tandon (Supra) has no manner of application in the instant case.

8. Sub- rule (1) of Rule 34A(1) confers authority upon the employer to permit an employee to resign even if he fails to serve due notice under sub-clauses (a) and (b). Such wide discretion is conferred since it is never the intent of a Welfare State to bind it's employees to continue forever in service unless of course the employee had obtained training and expertise for the vocation at State expense. The embargo imposed by the amendment incorporating a pre-condition of five years service unless appropriately explained may be arbitrary, however, we defer our endeavour to decide such issue in an appropriate case where such amendment is challenged.

9. The learned Tribunal, in our opinion, erred in law in observing that as the amendment was introduced within the period of haitus, the petitioner is bound by the rigors of the same while dismissing the original application.

10. For the reasons discussed above, the order dated 27th September, 2016 passed in O.A. 905 of 2016 is set aside and the respondents are directed to consider the petitioner's representation dated 1st August, 2016 praying for resignation and to pass a final order applying the provisions of the West Bengal Service Rules, Part-I as existing on the date of submission of such representation

and to communicate the decision to the petitioner within a period of two weeks from date. With the above observations and directions the writ petition is disposed of.

11. There shall, however, be no order as to costs.

12. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.