
(2005) 07 GAU CK 0016
In the Gauhati High Court
Case No : WP (C) No. 115 of 2001

Dr. Sadhan Dutta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Citation : (2006) 1 GLR 610 : (2008) GLT 857 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and S. Chakraborty, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The petitioner was a Medical Officer in Grade-III of the Tripura Health Services (for short THS") w.e.f. 14.12.1977 and was placed in-charge of the Department of Gynaecology in the Indira Gandhi Memorial Hospital (for short IGM Hospital), Agartala w.e.f. 12.8.1987. On 21.11.1990 he was promoted to Grade-II of the said service and posted as Head of the Department of Gynaecology of the said Hospital. He was, however, not happy with the working condition in the said hospital and awkward situation had often developed due to nonavailability of certain incentives for proper treatment of patients for which he had to face irate patient parties. The situation gradually turned worse compelling him to proceed on leave from time to time and from 1989, he had to take long leave, spell by spell. On 14.11.1990 he resumed duties after expiry of leave. Again he went on leave on several occasions and finally on 15.5.1991 he submitted a conditional resignation expecting that the State respondents would remove difficulties and create congenial workable condition in the hospital for performing his duties properly. But on 30.5.1991, the State respondents asked him to submit resignation addressed to the Secretary of the Department as his earlier conditional resignation was addressed to the Superintendent of the hospital, who was not the competent authority. Again on 31.5.1991, the

petitioner submitted another resignation letter addressed to the Secretary of the Department in continuation of his earlier resignation letter dated 15.5.1991. According to him, he received no response to his resignation letters and so, he sent a notice of demand for justice on 3.2.1992 stating that in the department, there were no equipment, infrastructure and other materials, which were essential for running the department. On 24.2.1992, the Joint Secretary of the department informed him that the State Government could not accept his conditional resignation. It was further stated that if unconditional resignation of the petitioner was not received within one month, the department would be constrained to initiate a disciplinary proceeding for his unauthorised absence. On 29.4.1992, the petitioner addressed a letter to the Joint Secretary of the department in response to his letter dated 24.2.1992 refusing to submit unconditional resignation on the ground that the causes of his resignation were created artificially with a view to remove him from service. On 5.12.1997, the petitioner again addressed a letter to the Secretary of the department stating that he made up his mind to resume duties with further request to provide congenial atmosphere removing impediment and unfavourable situation in the hospital as pointed out by him earlier. On 10.12.1997, he resumed his duties and on 15.12.1997, he addressed a letter to the Director of Health Services about his joining duties. After joining duties, he started treating patients, but to his dismay the situation remained same and all his requests for improvement of working conditions fell into deaf ear. The petitioner, however, was running a private Nursing Home with the permission of the authority, but it had to be closed. He, however, requested the Chief Medical Officer on 15.1.1998 for issuing registration/licence for running the Nursing Home again. However, he was informed by the Chief Medical Officer by his letter dated 4.2.1998 that since he was a Grade-II Medical Officer of the THS, registration/ licence of the private Nursing Home could not be granted in his name. Following that reply, he requested the Chief Medical Officer to treat his application for registration as cancelled and he submitted another application in the name of his wife Smti Paramita Dutta seeking registration, which was ultimately given. However, on 16.12.1997, he sent a notice conveying his intention to go on voluntary retirement w.e.f. 1.4.1998. He also applied for 30 days leave w.e.f. 16.12.1997 to 14.1.1998 to enable him to proceed to Kolkata for his wife's treatment. On 30.3.1998, he again resumed his duties and on 31.3.1998 he relinquished his charge unilaterally on voluntary retirement, which took effect from 1.4.1998 though there was no acceptance of his notice for voluntary retirement. After submitting the application for voluntary retirement, he had pursued the matter in the office of the Director of Health Services and came to know that by order, dated 13.9.1991, the Governor had been pleased to accept his resignation with retrospective effect from 1.9.1991. It was a shock and surprise to him as he was never communicated about such acceptance by the Governor and according to him the order of acceptance was arbitrary, illegal and mala fide and, therefore, liable to be quashed. The petitioner completed 20 years of service on 14.12.1997, which made him eligible for seeking voluntary retirement w.e.f.

1.4.1998. He was also entitled to all the service benefits including the retiral benefits. On 28.9.2000, he was informed that his resignation dated 15.5.1991 had been accepted w.e.f. 1.9.1991 vide order dated 13.9.1991 and all his communications thereafter stood disposed of accordingly. By this writ petition, the petitioner prayed for quashing the notification, dated 13.9.1991 by which his resignation was accepted and notification dated 28.9.2000 by which it was confirmed that his resignation was accepted w.e.f. 1.9.1991 disposing thereby all communications subsequently made by him. He has also prayed for a direction to the respondents for acceptance of his voluntary retirement dated 16.12.1997 and to pay him all arrear of salary and other service benefits including regularisation of his leave.

2. The State respondents contested the claim of the writ petitioner contending, inter alia, that the petitioner tendered resignation raising several issues therein including the difficulties faced by him, but the resignation letter was addressed to the Superintendent of the IGM Hospital, who was not the appropriate authority. Accordingly, in reply to his said resignation dated 15.5.1991 (Annexure-2) the petitioner was intimated by the Special Secretary (Health) by his letter dated 30.5.1991 that the matter was discussed at the appropriate level and it had been decided that if the petitioner was keen to resign from THS, he should address a formal letter of resignation to the Secretary, Health. After receiving the letter, the petitioner addressed his resignation letter to the Secretary, Health on 31.5.1991 submitting his resignation once again. He mentioned in that letter that the earlier resignation letter dated 15.5.1991 should be treated as notice. This resignation letter accordingly was processed by the respondents and after expiry of the notice period of three months, the same was accepted by the Governor w.e.f. 1.9.1991. The order of acceptance dated 13.9.1991 was notified in the official Gazette (Annexure-19). It is further contended that copy of the said acceptance order was communicated to the petitioner and all other concerned authorities and, therefore, the petitioner had no reason to submit any demand notice on 3.2.1992 or make any correspondence thereafter as he ceased to be a member of the THS after the relationship was severed w.e.f. 1.9.1991. As regards the subsequent correspondences, particularly the letter dated 24.2.1992, issued by the Joint Secretary, Health (Annexure-6) intimating that the conditional resignation of the petitioner could not be accepted and requesting him to submit a unconditional resignation confusing the entire matter, the respondents explained that the letter of acceptance of the resignation was dealt within a separate file of the hospital establishment and Anr. file was processed earlier on receipt of his notice of resignation and those two files were not linked to each other creating a communication gap leading to issue of the letter dated 24.2.1992. Admitting that such letter should not have been issued after the resignation was accepted w.e.f. 1.9.1991, the respondents contended that such later communication by the Joint Secretary cannot be interpreted to have any effect of reviving the service of the petitioner or obliterating the letter of acceptance of resignation issued in the name of the Governor. As the petitioner

continued to make several communications and submitted fresh prayer for voluntary retirement, which were totally uncalled for, after he ceased to be the member of the THS, the respondents issued a notification on 28.9.2000 (Annexure-20) clarifying that his resignation letter having been accepted w.e.f. 1.9.1991 by order dated 13.9.1991, he was no longer a Medical Officer of THS and that notification disposed of all communications made by him subsequent thereto. The correct factual position placed, thus, the respondents contended that the prayer of the petitioner in the writ petition for acceptance of his voluntary retirement treating him in service even after 1.9.1991 deserves no consideration and should be rejected in limine.

3. The petitioner thereafter filed a rejoinder on 30.8.2003 raising again the issues regarding working condition in the hospital including insufficient light and condemned instruments, which exposed him to public assault and loss of reputation. He denied that his resignation was ever accepted or was at all served upon him. Referring to his notice dated 3.2.1992 and letters dated 29.4.1992 and 15.12.1997, he adumbrated his allegation that with mala fide intention he was put to perform operations without improving the condition in the hospital. Other averments made in the rejoinder are of no relevance for disposal of the present writ petition.

4. I have heard Mr. K.N. Bhattacharjee, learned senior counsel, assisted by Mr. S. Chakraborty, learned Counsel for the petitioner and Mr. A. Ghosh, learned Counsel for the State respondents.

5. The respective pleadings of the parties, as set out above, focus on the central point of controversy whether the resignation of the petitioner was accepted by the respondents. Though at Annexure-19, a copy of the order of the Governor dated 13.9.1991 has been placed showing that the resignation of the petitioner was accepted w.e.f. 1.9.1991, the second respondent being the Joint Secretary of the Department has published a copy of the same in the Official Gazette dated October 12, 1991 A.D. It appears from the said Gazette that the Health & Family Welfare Department published the order of the Governor dated 13.9.1991 issued from F.2(34)-VM/77(Sub-File-@), which reads thus :

Government of Tripura Health and Family Welfare Department No. F.2(34)-VM/77(Sub-File-@) Dated/Agartala, the 13th September, 1991. ORDER

The Governor, Tripura is pleased to accept the resignation of Dr. Sadhan Datta, Grade-II of T.H.S., Head of the Department of Obst. & Gyne., IGM Hospital, Agartala with effect from of the forenoon of 1-9-1991.

By order of the Governor N.C. Sinha Joint Secretary to the Government of Tripura.

The above Gazette Notification sets at rest this controversy and no subsequent correspondence including the letter dated 24.2.1992 issued by the Joint Secretary of the Department, in my considered view, can change the position

reviving the service of the petitioner or in any way obliterate the order of the Governor. The reason for issuing such a letter on 24.2.1992 (Annexure-6) has been sufficiently explained though such letter does not speak well about the performance of the department, the negligence and callousness on their part being writ large.

6. The learned Counsel for the petitioner referred to a decision of the Supreme Court in Punjab National Bank Vs. P.K. Mittal, In that case, a permanent officer of the Punjab National Bank sent a communication to the bank by which he purported to resign from a future date adding that the date of receipt of his letter should be treated as date of commencement of notice period. However, the bank informed him by a letter that his resignation was accepted with immediate effect by waiving a condition of notice. It was held that such letter would be without jurisdiction. The resignation of the employee would have become effective only on the expiry of three months from the date thereof or from the date on which he wished to resign. It is not clear to me how this decision has relevance to the case of the petitioner, whose specific case is that his resignation was a conditional one and was not accepted by the respondents. As I have discussed above, the petitioner in resignation letter dated 31.5.1991 addressed to the Secretary of the Department clearly mentioned in the last para that his earlier letter of resignation dated 15.5.1991 should be treated as notice. Thus, on expiry of three months only the letter of resignation was accepted by the Governor w.e.f. 1.9.1991. This being the facts situation, in the case in hand, the decision relied on by the learned Counsel for the petitioner does not appear to have any relevance as the two situations are not in pari materia.

7. The second important issue is whether the resignation tendered by the petitioner was a conditional resignation and whether such a resignation can be accepted by the Governor ?

8. Mr. Bhattacharjee, learned senior counsel for the petitioner submits that both the resignation letters dated 15.5.1991 addressed to the Medical Superintendent, IGM Hospital and the subsequent letter of resignation dated 31.5.1991 addressed to the Secretary of the Department were conditional resignation and, therefore, acceptance of the same by the Governor even if at all issued by the impugned order dated 13.9.1991 (Annexure-19) is illegal, ultra vires and liable to be quashed. To buttress the submission, he placed reliance on a decision of the Supreme Court in Dr. Prabha Atri Vs. The State of U.P. and Others, . In that case, the appellant was working as anaesthetist in Kamla Nehru Memorial Hospital, Allahabad. On 5.1.1999, a Memo was issued by the respective authority bringing home a notice that she left the hospital without informing Dr. Banerjee when he requested her around 1300 hrs. to give anaesthesia to one patient admitted in emergency with shock due to ruptured uterus, which needed urgent operation. It was mentioned therein that such conduct on the part of Dr. Atri not only amounted to negligence, but was also against the medical ethics. She was asked to submit her explanation by 5 p.m. on 6.1.1999 failing which it would be taken

that she has accepted the lapse and the Hospital would be at liberty to proceed against her as per Service Rules. On receipt of the Memo, she replied to the Secretary of the Hospital that she had already clarified her position verbally in his presence that on that day she was sick and very tired. In the formal reply she added "Your letter is uncalled for and should be withdrawn. I have been working in this Hospital since May 10, 1978 and have always worked in the best interest of the patients. It is tragic instead of taking lenient view of my sickness you have opted to punish me. If the foregoing is not acceptable to you then I have no option left but to render my resignation with immediate effect". (emphasis supplied). This letter has been interpreted by the Apex Court as a conditional resignation. After examining the language and tenor of the resignation letter, the Apex Court in para 10 of that judgment held, thus :

10. We have carefully considered the submissions of the learned Counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a "resignation", it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramnatchandra Iyer (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple.

9. As the language and wordings in the resignation letter are very important in order to decide whether that is conditional or unconditional, the same cannot be explained de hors the context. In the letter dated 31.5.1991, addressed to the Secretary of the Department, the petitioner has not mentioned any specific condition, not even his grievance about the working condition in the hospital. He has simply stated that his earlier letter of resignation should be treated as notice and the latter one as resignation. The resignation letter (Annexure-3) reads, thus :

To

The Secretary to the Government of Tripura, Health & Family Welfare Department, Agartala.

(Through Proper Channel)

Sir,

I would like to resign from say post vide my letter dated the 15th May, 1991 addressed to the Medical Superintendent, I.G.M. Hospital.

Since I have not been communicated the acceptance of my resignation tendered in that letter and hence, I have performed say duties but the situation has not been made congenial as yet.

I, therefore, submit this resignation to you for your kind acceptance treating my aforesaid letter as a notice.

Thanking you,

Dated, Agartala,

The 31st May, 1991.

Yours Faithfully, Sd/- (Sadhan Datta) Seal.

If we compare the resignation letter of the petitioner with the letter of Dr. Atri in the ease noted (*supra*), it would appear that the words "If the foregoing is not acceptable to you used by Dr. Atri are totally absent in the resignation letter of the petitioner. It is not necessary to examine the previous letter dated 15.5.1991, which was full of grievances as the same has to be treated as only a notice or has been replaced by the letter dated 31.5.1991 addressed to the correct authority, the Secretary of the Department.

10. Mr. Bhattacharjee submits that in the notification dated 28.9.2000 (Annexure-20), it has been stated that consequent upon tendering of resignation dated 15.5.1991 by the petitioner, which had been accepted w.e.f. 1.9.1991, the petitioner was no longer a Medical Officer of the THS. Giving emphasis on the date 15.5.1991, he tried to canvas a point that the respondents had accepted the previous resignation of the petitioner, which was dated 15.5.1991 and the same was full of grievances. It was actually not a resignation at all as by it he was trying to seek redress to his grievances by citing several instances of pathetic working conditions in the hospital.

11. I am unable to accept this submission, particularly for the reason that the order dated 13.9.1991 accepting the resignation, which has been notified in the Official Gazette, has not referred to resignation letter dated 15.5.1991. The word "resignation" only has been mentioned in the said order. In view of this position, the notification dated 28.9.2000 (Annexure-20), which only disposed of all subsequent correspondences received from the petitioner, has no relevance for determining resignation, which was accepted by the impugned letter of acceptance. As admittedly, the letter dated 15.5.1991 addressed to a wrong authority was converted into a notice only by the petitioner himself and he termed the letter dated 31.5.1991 addressed to the Secretary as his letter of resignation, it has to be held that the Governor has accepted that resignation letter only. There is no scope to interpret the subsequent notification dated 28.9.2000 (Annexure-20) having any bearing on the letter of acceptance dated 13.9.1991.

12. Mr. Ghosh has given some more light on this issue by submitting that the

date 15.5.1991 in the notification dated 28.9.2000 (Annexure-20) has been mentioned wrongly only because the petitioner himself in his second letter of resignation referred to his earlier letter dated 15.5.1991 to be treated as notice. Once the relation of employee and employer has been severed by a notification, all the subsequent correspondences or notification disposing all communications from the petitioner cannot be interpreted in any other way to alter the meaning of the letter of acceptance.

13. The above discussions essentially lead to the conclusion that the letter of resignation dated 31.5.1991 addressed to the Secretary of the Department was not a conditional resignation and the same was accepted by the Governor by order dated 13.9.1991 w.e.f. 1.9.1991. As the said order has been notified in the Official Gazette, it has to be held that it has been brought to the notice of all concerned including the petitioner and, therefore, no prejudice can be said to have been caused to the petitioner and all his subsequent correspondences for leave and for acceptance of his voluntary retirement are misplaced, of no consequence and have no relevance as he ceased to be the member of the THS w.e.f. 1.9.1991.

14. Situated, thus, the prayers of the petitioner in this writ petition are of no substance and the same are liable to be set aside, which I hereby do.

15. In the result, this writ petition being devoid of any merit stands dismissed.

No cost.