
(2014) 08 CAL CK 0024
In the Calcutta High Court
Case No : W.P.S.T. No. 208 of 2014

State of West Bengal

APPELLANT

Vs

Tonmoy Mondal

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 4
Constitution of India, 1950 — Article 226

Citation : (2014) 4 CHN 464

Hon'ble Judges : Jayanta Kumar Biswas, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Joytosh Majumdar, Mintu Kumar Goswami and Tapas Kumar Mondal, Advocates for the Appellant; Partha Sarathi Bhattacharya and G.P. Banerjee, Advocates for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The five petitioners in the WPST under Article 226 of the Constitution of India dated August 5, 2014 are questioning an order of the West Bengal Administrative Tribunal dated November 18, 2013 allowing the respondent's OA No. 754 of 2013. The respondent was in the West Bengal Health Services. He was working as Medical Officer in Bolpur S.D. Hospital in the district Birbhum. On November 25, 2011 he applied in prescribed form for voluntary retirement with effect from February 17, 2012. Although no decision was taken on the application, the respondent stopped attending office and discharging duties from March 1, 2012.

2. Then alleging inaction on the part of his appointing authority in that the authority did not take necessary decision on his application for voluntary retirement, the respondent moved the Tribunal by filing an OA No. 710 of 2012. By an order dated July 31, 2012 the Tribunal disposed of the OA on its admission day recording that in spite of notice none appeared for the respondents therein and directing the Principal Secretary, Health & Family Welfare Department, Government of West Bengal to take a decision on the respondent's application for voluntary retirement.

3. In compliance with the order the Principal Secretary gave a decision dated February 22, 2013 rejecting the respondent's application for voluntary retirement saying as follows:-

"We know that the public interest is the welfare or wellbeing of general people. The Welfare of general public is ensured, inter alia, through recognition, promotion and protection of the same by the Government or its agencies. The Government or its department cannot adversely affect the rights, health and finance of the public at large. The applicant, i.e. Dr. Tanmoy Mondal is a doctor and his service is indispensable in public interest. At this stage, the Health & Family Welfare Department is having many vacancies and it is necessary to retain doctors to provide service to people."

4. Questioning the decision of the Principal Secretary the respondent moved the OA that the Tribunal allowed by the impugned order recording that, in spite of notice, nobody appeared for the Health & Family Welfare Department to contest it. In WPST para. 5 the petitioners have stated that the Tribunal allowed the OA ex parte on the date of admissions itself and without giving them any opportunity of filing Reply.

5. Referring to Rule 75(aaa) of the West Bengal Service Rules, Part I (admittedly the rule was applicable to the respondent's case), the Tribunal said as follows:-

"It would appear that there is specific provision for voluntary retirement of a State Govt. employee in Rule 75(aaa) of WBSR Part I. It appears that relating to prayer of voluntary retirement, there has been further clarification issued by the Govt. time to time and the sum and substance of such rule appears to be fulfillment of certain condition by the willing Govt. employee desiring to avail of the privilege of voluntary retirement."

6. After referring to Rule 75(aaa), the Tribunal made the following comments:-

"It is pertinent to mention that while rejecting the prayer of voluntary retirement of the present Petitioner, the department of Health and Family Welfare did not mention any lapses or any lacking of condition by the Petitioner regarding his prayer of voluntary retirement, but, the department recorded that for public interest and specifically, for dearth of Medical Officer and keeping in mind the requirement of ailing people of the State, the prayer of voluntary retirement cannot be considered."

7. The order of the Tribunal reveals that advocate for the respondent contended before the Tribunal that since the rule did not provide that citing public interest the respondent's appointing authority could reject the respondent's prayer for voluntary retirement, the Principal Secretary rejected the prayer citing public interest going beyond the rule.

8. The Tribunal accepted the contention and said as follows:-

"In our considered view also, so far the present rule stands, as it does not bring

into its fold any ground to reject such prayer in public interest, the Health Department, in our considered view, cannot take that ground to reject the prayer of voluntary retirement."

9. Mr. Majumder appearing for the petitioners has referred to Note 3 below sub-rule (aaa) of Rule 75 of the rules and has submitted that the Tribunal, evidently, passing the order in ignorance of the provisions of the note has committed a patent error of law in holding that citing public interest the respondent's appointing authority could not reject his application for voluntary retirement.

10. Mr. Bhattacharya appearing for the respondent has submitted as follows:-

It is wrong to say that the petitioners were not given any opportunity of contesting the OA, or that the Tribunal passed the impugned order ex parte. It was recorded in the order that in spite of notice the petitioners did not appear to contest the OA. No law empowered the petitioners to curtail the respondent's right not to work. The provisions of Rule 75(aaa) do not empower the petitioners to refuse a Government employee voluntary retirement unless the employee is under suspension. The documents produced with the OA will reveal that the petitioners permitted similarly situated Medical Officers voluntary retirement. Hence the case of public interest was introduced only for the respondent, who has been subjected to hostile discrimination.

11. The West Bengal Administrative Tribunal was constituted under section 4 of the Administrative Tribunals Act, 1985 and it is to function as such according to the provisions of the West Bengal Administrative Tribunal (Procedure) Rules, 1994. No provision of the rules provides that on the admission day the Tribunal can dispose of an OA and allow it ex parte on the grounds that in spite of notice the respondent has not appeared to contest it.

12. The respondent getting notice of admission, even if remains absent on the date of admission, cannot be deprived of the opportunity of filing Reply to the OA and contesting it at the final hearing stage, unless the OA is dismissed. In this case, the Tribunal allowed the respondent's OA on the admission date itself. The followed procedure contravened the provisions Rules 11, 12, 13 & 17 of the rules and caused a manifest injustice to the petitioners.

13. Although the order of the Tribunal is liable to be set aside on the grounds that the Tribunal passed it in evident contravention of the provisions of the rules, having regard to the issue involved in the OA, we think a remand of the case to the Tribunal will not serve the purpose of justice, especially when the issue can be decided on the basis of the materials produced with the OA.

14. The only issue involved in the OA was whether citing public interest the respondent's appointing authority could reject his application for voluntary retirement dated November 25, 2011.

15. The provisions of sub-rule (aaa) of Rule 75 of the rules are quoted below:-

"(aaa) Any Government employee may, by giving notice of not less than 3 months in writing to the appointing authority, retire from Government service after he has attained the age of 50 years, if he is in Group A or Group B (erstwhile gazetted) service or post, and had entered Government service before attaining the age of 35 years; and in all other cases, after he has attained the age of 55 years, provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this sub-rule."

16. Note 3 below sub-rule (aaa) of Rule 75 is quoted below:-

"3. The appointing authority should invariably keep on record that in his opinion it is necessary to retire the Government employee in pursuance of aforesaid rule in public interest."

17. The provisions of sub-rule (aaa) of Rule 75 of the West Bengal Service Rules, Part I entitle a Government employee to retire from Government service in the circumstances mentioned therein. The provisions empower the appointing authority to withhold permission to a Government employee under suspension to retire under the sub-rule. A close examination of the provisions of the rule reveals that that Government employee seeking to retire from Government service must be permitted by his appointing authority to do so.

18. While the provisions of the sub-rule provide that the appointing authority is empowered to withhold permission to a Government employee under suspension, the provisions of Note 3 below the sub-rule provide that in every case where permission is granted to the employee to retire under the rule the appointing authority of the Government employee shall invariably keep in the records his opinion that it is necessary to retire the Government employee under the rule in public interest.

19. A reading of the whole rule makes it evidently clear that in every case the appointing authority granting permission to a Government employee to retire under rule 75 must record his opinion that the permission to the Government employee to retire is necessary in public interest. It leads to the conclusion that if in the opinion of the appointing authority of the Government employee seeking permission to retire under Rule 75 the permission will be contrary to public interest, the appointing authority cannot grant the employee permission to retire under the rule.

20. Therefore while the provisions of sub-rule (aaa) of Rule 75 entitled the respondent to retire from the Government service in the circumstances mentioned in the sub-rule, his appointing authority was empowered to refuse him permission to retire under the rule, if his appointing authority was of the opinion that the permission to retire would be contrary to public interest. Hence we are unable to see how the respondent could contend that the provisions of sub-rule (aaa) of Rule 75 created his absolute right to retire under Rule 75.

21. The Principal Secretary refused the respondent permission to retire under Rule 75(aaa) citing public interest and explaining the nature of the public interest.

22. The Tribunal was patently in error in holding that nothing in the sub-rule empowered the respondent's appointing authority to refuse him permission to retire from the Government service. Simply because the respondent fulfilled the requirements mentioned in the sub-rule, he did not acquire an indefeasible right to get permission to retire under the rule. His legal right to retire could not prevail over the public interest.

23. We find no merit in the respondent's case that in the matter of permission to retire under Rule 75 he was discriminated against. Every case of retirement under Rule 75 is to be examined by the appointing authority of the Government employee on the facts of the case concerned. Permission granted to one Medical Officer to retire under the rule cannot necessarily lead to the conclusion that another Medical Officer seeking to retire under the rule is also entitled to the permission.

24. Services of two Medical Officers may not serve the same or similar public interest. The extent of public interest involved in the case is to be examined by the appointing authority objectively and the opinion of the appointing authority on the existence of public interest against the permission cannot be judicially reviewed, unless it is the case that it was recorded with malice aforethought.

25. The respondent's application for voluntary retirement under sub-Rule (aaa) of Rule 75 of the rules had nothing to do with his right not to work. By applying for permission to go on voluntary retirement, the respondent, in effect, did not exercise his right not to work, but a right to take voluntary retirement with all financial benefits. It was not a case of resignation. Only a case of resignation may be related to the concept of one's right not to work.

26. In view of the foregoing discussion, we are of the opinion that the Tribunal was wrong in allowing the respondent's OA and directing his appointing authority to accept his prayer for voluntary retirement. For these reasons, we allow the WPST, set aside the order of the Tribunal dated November 18, 2013 and dismiss the respondent's OA No. 754 of 2013. No costs. Certified xerox.

Ishan Chandra Das, J.

I agree.