

(2023) 05 CAL CK 0041
In the Calcutta High Court
Case No : WPA No. 24829 Of 2022

Tapati Basu & Anr.

APPELLANT

Vs

State Of West Bengal And Others .

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Citation : (2023) 05 CAL CK 0041

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : Ekramul Bari, S.P. Lahiri, Ankita Dey, Rajesh Naskar, Sudipta Dasgupta, Arka Nandi, Sandwip Sutradhar, Sutirtha Nakey, Shalini Ghosh, Sutapa Sanyal, Joyee Maiti

Final Decision : Disposed Of

Judgement

Rabindranath Samanta, J

1. Challenging the acceptance of the resignation of them by an educational institution namely Noble Mission of South Calcutta by its written communications dated 9th March, 2021, 29th June, 2022 and 2nd September, 2022, the petitioners have approached this Court by filing this writ petition.

2. The facts giving rise to filing of this writ petition may briefly be stated as under:

Some respectable persons established a school for disabled children under name Noble Mission of South Calcutta. The school is registered under the Societies Registration Act. Initially, this educational institution situated at premises no. 122/1/1/4A, Monoharpukur Road, Kolkata- 700026. Presently, the school situates at Barakhola, Krishakpally, Mukundupur, Kolkata-700099. This institution was established to impart training to mentally retarded children.

3. The petitioners Tapati Basu and Sudipa Banerjee are the Assistant Teachers of the institution. By order dated 15th March, 2022 issued by the Joint Secretary of

Mass Education Extension Department, Government of West Bengal academic recognition was sanctioned to Noble Mission of South Calcutta as an institution for handicapped children and by the order the institution was informed that it should follow the norms of the department. The Department of Mass Education Extension inspected the institution and verified all the documents as regards students, curriculum and organising teaching and non-teaching staff of the institution. Being satisfied with the functioning of the school, the documents relating thereto and the qualifications of the teaching and non-teaching staff the Mass Education Extension Department granted sponsorship to the institution in terms of Memo No. 553 Edn (MME) dated April 20, 1995. Subsequently, by an order dated 16th November, 2010 issued by the OSD, Ex-Officio Joint Secretary, Department of Mass Education Extension, sanction of sponsorship was granted to the institution with the students strength of 93 and 17 teaching and non-teaching posts. By the order dated 16th November, 2020 the OSD, Ex-Officio Joint Secretary directed the Director of Mass Education Extension that eligible organising teaching and non-teaching staff of the institution would be absorbed against the respective post as sanctioned and would be placed in respective scales of pay. This order dated 16th November, 2020 was issued with the concurrence of the Finance Department and approval of the cabinet on October 27, 2020. After receiving the order of sponsorship, the institution authority made prayer to the Director of Mass Education Extension to approve the appointment of the eligible teaching and non-teaching staff of the institution as they were discharging their duties with a nominal remuneration. By a memo dated 14th January, 2011 the concerned State authority asked the institution to reconstitute managing committee with certain members whose designation were mentioned in the Memo.

4. After the Managing Committee was formed, the Secretary of the Managing Committee by a letter dated 14th February, 2011 requested the Director of Mass Education Extension for granting approval of organising teaching and non-teaching staff of the school. The petitioners who were appointed as Assistant Teachers possessed the requisite qualification for such post.

5. Since, the Director of Mass Education Extension failed to accord approval to the appointment of organising teaching and non-teaching staff despite representations made by the Institution authority, the petitioners as well as the school authority approached this Court by preferring writ application. Ultimately, in compliance with the Court's order, the Director of Mass Education Extension vide Memo dated 12th May, 2022 and pursuant to G.O No. 195/MEE/Sectt dated 12.05.2022 accorded approval to the appointment to ten organising teaching and non-teaching staff of Noble Mission of South Calcutta situated at Barakhola, Krishakpally, Mukundupur, Kolkata- 700099. Amongst the organising teaching staff whose appointment has been approved by the Directorate of Mass Education Extension, the petitioners Tapati Basu and Sudipa Banerjee are two teaching staff. By absorption and approval of the service of the petitioners, the Directorate of Mass Education Extension released all the service benefits in their

favour in recognition of their continuity of service.

6. The petitioners complain that due to undue pressure and misguidance by the institution authority during pendency of the proceedings before this Court, the petitioners had to tender resignation by letters dated 2nd March, 2021 and 3rd March, 2021 so that they could get the arrear salary. The Secretary of the Governing Body of the educational institution by letters dated 9th March, 2021 informed the petitioners that their resignation letters were accepted by the institution authority. However, such decision of the authority was communicated to them through online mode on 6th April, 2021. The appointment of the petitioners as organising teachers of the institution has been approved with effect from November 16, 2010 when the sponsorship was granted to the institution.

7. The petitioners submit that the institution authority had no power to accept the resignation of them and their alleged resignation under compulsion were not accepted by the concerned authority. They further allege that they had to put in the resignation under misconception and coercion of the institution authority.

8. As regards release of the service benefits of the teaching and non-teaching staff of the institution, the institution authority by a cryptic letter dated 29th June, 2022 informed the petitioners that they were absorbed as organising staff of the institution by the Directorate of Mass Education Extension, Government of West Bengal vide Memo dated 12th May, 2022 and the Government settled the arrears on June, 2022. In the communication it was wrongly mentioned that the Government body of the institution accepted the alleged letters of the petitioners submitted on 2nd March, 2021 and 3rd March, 2021. The petitioners were asked to pay an excessive amount of Rs. 68,000/- to a third party for the purpose of preparation of their service books to get the service benefits. The petitioners challenge such demand of the institution authority as illegal. By representation dated 22nd August, 2022, the petitioners requested the school authority to allow them to join in their respective post. But, in reply thereto the institution authority by communication dated September 2, 2022 gave a reply which was vague, improper and unfair. The petitioners assert that vide Memorandum dated 12th May, 2022 approval was accorded to their appointment as Assistant Teacher with effect from the date of sponsorship on 16th November, 2010. Since they are entitled to get the arrear salary for the duties discharged by them as Assistant Teacher with effect from 16th November, 2010 on approval of appointment by the Directorate of Mass Education Extension, the governing body has no right to accept their resignation.

9. Under the aforesaid circumstances, the petitioners pray for quashing of the communications dated 9th March, 2021, 29th June, 2022 and 2nd September, 2022 and direction upon the concerned respondent authorities to allow them to join their respective post forthwith.

10. In their report in the form of affidavit the respondent nos. 1, 3 and 4 admit

that the Directorate of Mass Education Extension vide Memo dated 12th May, 2022 accorded approval to the appointment of ten organising teaching and non-teaching staff of the educational institution namely Noble Mission of South Calcutta with effect from 16th November, 2010. These answering respondents admit that the school authority submitted a proposal for sanctioning of Rs.3,46,03,778/- towards arrear salary and adhoc bonus for the period from 16.11.2010 to 31.05.2022 and such proposal was approved by the concerned authority. They state that the petitioner No.1 Smt. Tapati Basu tendered her resignation on 3rd March, 2021 on health issues and the petitioner No. 2 tendered resignation on 2nd March, 2021 on health as well as family issues. As per Rule 4(1) (a) of Government order No. 1068-Edn (MEE) dated 28th July, 1997, the governing body is the appointing authority. The government only approves the appointment and disburse the salary as per the claim of the institution. The Government has no authority to accept the resignation since the petitioners were not the Government Employees. Their service is guided by the Government Order dated 28th July, 1997. Clause 23 of the Government order speaks of the mode of tendering resignation and acceptance of the resignation by the Government body. Since the governing body of the institution accepted the resignation of the petitioners, the state authority has no role in this regard.

11. On the other hand, the respondent Nos. 6 to 9 i.e. the institution authority in their report in the form of affidavit deny that due to pressure and misguidance by the school authority during the pendency of the proceedings before this Court, the petitioners had to put in the resignation. They state that at the material time when the resignation of the petitioners was accepted then the Governing body was the competent authority to accept the resignations. On such grounds and denying the averments as made in the writ application these answering respondents submit that the writ application is liable to be dismissed with exemplary costs.

12. It appears from a Memo bearing No. 211-MEE/Sectt./ 3's'-31/2002 dated 15th March, 2022 i.e Annexure P/1 issued by the Joint Secretary to the Government of West Bengal, Mass Education Extension Department that academic recognition without any financial involvement was sanctioned to the educational institution Nobel Mission of South Calcutta. Admittedly, the petitioners, since their appointment as organising teaching staff of the institution, had been discharging their duties as such. Undisputedly and as it is evident from a Memo No. 1083-MEE/Sectt/ EM/O/3'S'-89/08 dated 16th November, 2010 (Annexure P/3), sponsorship was accorded to the institution Noble Mission of South Calcutta as a special school for mentally retarded students. By this Memorandum dated 16th November, 2010, 17 (seventeen) teaching and non-teaching posts detailed in Annexure thereto were created with effect from 16th November, 2010. In terms of this Memorandum the employees of the institution will have to abide by the rules and regulations framed by the Department in respect of a institution for disabled which will be communicated to them by the Directorate of Mass Education Extension, West Bengal. It was

directed by the Memo that the managing committee of the institution would have to be reconstituted within one month from 16th November, 2010 in terms of Government order dated 23rd October, 2009. As I find, this order was issued with the concurrence of the Finance Department. As the minutes of the meeting of the managing committee, in terms of the Memorandum dated 16th November, 2010, copies of which are annexed to the writ application, reveal, the managing committee was reconstituted in strict compliance of the Memorandum dated 16th November, 2010. Though sponsorship was sanctioned to the Institution by the Department of Mass Education Extension and Library Services, the Directorate of Mass Education delayed the matter towards according approval of appointment of organising teaching and non-teaching staff of the institution. While a number of representations submitted to the concerned state authorities by the school authority failed, the school authority and others including the petitioners approached this Court by filing a writ petition being WP 11488(W) of 2017 seeking direction upon a state authority to accord approval to the appointment of teaching and non-teaching staff of the institution. As it appears, by order dated 4th June, 2018 passed by learned Single Bench, the writ petition was disposed of directing the state authority to accord approval to the appointment of the organising teaching and non-teaching staff of the institution. Since the concerned authority failed to comply with the court's order, a contempt application being CPAN No. 635 of 2019 was brought by the petitioners.

However, ultimately, in compliance with the direction of the learned Single Bench, the Department of Mass Education Extension and Library Services, Government of West Bengal by a Memo No. 195/MEE/Secc dated 12.05.2022 accorded approval of appointment of ten organising teaching and non-teaching staff of the institution with effect from the date of sponsorship i.e. 16th November, 2010.

13. By the memo dated 12.05.2022 issued by the Directorate of Mass Education Extension, Government of West Bengal in terms of the memo dated 12.05.2022 of the Department of Mass Education Extension and Library Services, Government of West Bengal approval was accorded to the appointment of ten teaching and non-teaching staff of the educational institutions. It is found from the Memorandum dated 12.05.2022 issued by the Director of Mass Education Extension that the appointment of petitioner no.1 Tapati Basu, B.sc, Diploma in Mental Retardation from NIMH and the appointment of petitioner no.2 Sudipa Banerjee, B.A, Diploma in Mental Retardation from NIMH was approved with effect from 16th November, 2010 placing them in pay scale of Rs. 7100-37600 with G.P 4100.

14. As regards release of arrear salary and adhoc bonus of approved ten teaching and non-teaching staff the institution authority initially by a letter dated 19th May, 2022 submitted proposal to the Directorate of Mass Education Extension. Subsequently, by a letter dated 24.05.2022 a revised proposal claiming Rs. 3,46,03,778/- was submitted to the same authority towards release of salary and adhoc bonus to the approved teaching and non-teaching staff for

the period from 16.11.2010 to 31.05.2022. Admittedly, the proposal as made by the school authority was sanctioned by the Directorate of Mass Education and the aforesaid amount of Rs. 3,46,03,778/- was disbursed towards payment of salary and adhoc bonus to the approved teaching and non-teaching staff. The employee wise summary sheet as annexed to the proposal evinces that petitioner no.1 Tapati Basu was entitled to get an amount of Rs. 38,08,624 and petitioner no.2 Sudipa Banerjee was also entitled to get the similar amount of Rs.38,08,624 for the period from 16.11.2010 to 31.05.2022. There is no denying the fact that such amount of money as admissible to the petitioners was disbursed to them.

15. In the aforesaid backdrop, the point which now falls for consideration is whether the resignation tendered by the petitioner no.1 Tapati Basu on 03.03.2021 and the resignation tendered by the petitioner no.2 Sudipa Banerjee on 02.03.2021 and acceptance of the resignation by the school authority on March 9, 2021 are tenable in law?

16. As stated above, the petitioners complain that due to undue pressure and misguidance by the school authority they had to put in the resignation. However, such allegations as made by the petitioners are denied by the school authority in their report.

17. Learned Counsel appearing for the state respondents fairly submits that since the educational institution is a sponsored institution, the rules under which the teaching and non-teaching staff of the institution are governed are the service rules for the employees of the sponsored institution for the handicapped students and the rules of such institution were published vide Memorandum dated 28th July, 1995 by the Government of West Bengal, Mass Education Extension Department.

18. Rule 23 relating to resignation by or termination of service of an employee reads as under:

a) The service of a permanently appointed employee may not be terminated without giving three months notice nor the service of a temporary employee by terminated without giving one month notice/likewise, a permanent employee may not resign from his or her post without giving three month's and a temporary employee one month notice, except where otherwise provided for in the terms of appointment. In those cases a shorter notice may be accepted by either party.

b) The Governing Body/Managing Committee shall see that an employee who gives notice of resignation is not detained unnecessarily beyond the permissible limit unless there is any specific reason for doing so. In such a case the reason should be communicated to the employee in writing.

c) The sponsored institution shall be liable to pay the employee's salary for the full period, if the requisite notice is not served before terminating his or her service and an employee shall forfeit his or her salary for the full period if he or

she leaves the sponsored institution before expiry of the prescribed period of the notice.

d) The sponsored institutions shall issue the last pay certificate of the employee at the time of his or her leaving the institution.

19. The resignation letters dated 2nd March, 2021 and 3rd March, 2021 as noted above do not spell that the petitioners being permanent employees of the organisation before tendering resignation gave three months notice to the Governing body of the institution. Therefore, to speak in legal parlance, the resignation letters as above as submitted by the petitioners were not in accordance with Rule 23 of the said rules. As the letters dated 9th March, 2021 issued by the institution authority show, the institution authority simply accepted the resignation tendered by the petitioners. As mandated by Rule 23, the sponsored institution shall issue the last pay certificate of the employee at the time of his or her leaving the institution.

20. In such context learned counsel appearing for the petitioner submits that the letters dated 9th March, 2021 by which the resignation of the petitioners was allegedly accepted does not spell that on accepting the resignation the petitioners were relieved from the service. Learned counsel submits that in the absence of release of the petitioners from service the jural relationship between the petitioners and their employer did not come to an end. Learned Counsel further submits that since the resignation put in by the petitioners was not voluntary in nature and the resignation was under compulsion, such resignation had no legal force in the eye of law. In support of his contention learned counsel has cited a catena of decisions in the cases which are as under:

i) Power Finance Corporation Ltd.-Vs- Pramod Kumar Bhatia reported in (1997) 4 SCC 280

ii) Shambhu Murari Sinha-Vs- Project & Development India Ltd and Another reported in (2002) 3 SCC 437

iii) Srikantha S.M. -Vs- Bharath Earth Movers Ltd reported in (2005) 8 SCC 314

iv) Chand Mal Chayal-Vs- State of Rajasthan reported in (2006) 10 SCC 258

v) Modern School -Vs- Shashi Pal Sharma and Others reported in (2007) 8 SCC 540

vi) Decision dated 25.02.2022 rendered by Division Bench in MAT 1316 of 2021 (Asis Kumar Sinha-Vs- The State of West Bengal and Others)

21. In the decisions in Power Finance Corporation Ltd., Shambhu Murari Sinha, Srikantha S.M., Chand Mal Chayal and Modern School (supra) it has been consistently held by the Hon'ble Apex Court that on accepting a resignation if the employer does not relieve or release the employee from service, jural relationship between the employer and employee does not come to an end.

22. In the decision rendered by a Division Bench in MAT 1316 of 2021 (of which Rabindranath Samanta, J was a member) this Court has postulated that if a resignation tendered by an employee is not voluntary in nature the resignation is not acceptable. However, since the allegations of the petitioners that they were compelled to put in resignation under compulsion are denied by the school authority, the facts in this regard now become disputed. That being so, the decision rendered in MAT 1316 of 2021 is not applicable.

23. Be that as it may, from the resignation letters and the letters of acceptance as indicated above clearly demonstrate that neither the resignation nor its acceptance was warranted by Rule 23 of the Service Rules for the employees of institutions for handicapped students. It is not found from the letters of acceptance dated 9th March, 2021 that on accepting the resignation the school authority released the petitioners from their service and issued last pay certificate to them on their leaving the institution. In such legal scenario, the letters of acceptance of resignation are vitiated with illegality.

24. If viewed from another angle, appointment of the petitioners as Assistant Teacher of the institution was approved with effect from 16th November, 2010. As noted above, arrear salary and adhoc bonus were disbursed to the petitioners during the period from 16th November, 2010 to 31st May, 2022. While the petitioners' right to get the arrear salary with effect from 16th November, 2010 revived due to according approval to their appointment, their legal rights as permanent employees of the institution also revived with effect from 16th November, 2010. That being the real state of affair, the acceptance of the resignation by the school authority shall have no legal force in the eye of law and such letters of acceptance shall be deemed to be legally non-est.

25. As the approved teachers of the institution the petitioners will be governed by the aforesaid service rules for the employees of sponsored institutions for handicapped students.

26. As the Rule 4(1) (II) and Rule 24(a) of the aforesaid Rules relating to disciplinary action against an employee enjoin, the Governing body/Managing Committee may take disciplinary proceeding against an employee and suspend an employee, but subject to the prior approval of the Government i.e. the Director of Mass Education Extension. If analogy is drawn from these two provisions, this legal proposition unequivocally comes to the fore that before releasing an employee from service on acceptance of his/her resignation prior approval is necessary from the concerned Government authority, here, the Director of Mass Education Extension, Government of West Bengal.

27. Therefore, viewed from all aspects, the letters dated 9th March, 2021 by which the school authority accepted the resignation of the petitioners tendered on 2nd March, 2021 and 3rd March, 2021 are vitiated with illegalities. As a consequence thereof, the subsequent communications of the institution authority on acceptance of resignation are also vitiated with illegalities.

28. Therefore, the point as posed for consideration is answered in the negative.

29. In the result, all the communications issued by the institution authority on acceptance of resignation of the petitioners not being warranted by law are also liable to be quashed.

30. In view of the above, the writ petition succeeds and accordingly the writ petition is allowed on contest.

31. The letters dated 9th March, 2021 issued by the institution authority accepting the letters of resignation dated 2nd March, 2021 and 3rd March, 2021 of the petitioners are hereby quashed. The communications dated 29th June, 2022 and September 2, 2022 issued by the institution authority to the petitioners reiterating the acceptance of their resignation are also quashed.

32. The respondents are directed to allow the petitioners to discharge their duties as Assistant Teachers of the Educational Institution within seven days from date treating their service as continuing service as the Assistant Teachers of the institution. The concerned respondents are further directed to release the arrear salary to the petitioners for the period from 1st June, 2022 to 30th April, 2023 within four weeks from their joining the institution and they shall pay the current salary to them month wise in accordance with law.

The educational institution is directed to prepare the service books of the petitioners at the expenses of the institution authority and send the same to the concerned state authority, if required, immediately.

33. With the aforesaid directions the writ application and connected application, if any, stand disposed of.

34. Interim order of stay as passed earlier stands vacated.

35. No order as to costs.

36. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.

37. Urgent certified website copy of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.