

22.03.2024
Court No.13
Item No.27
AP

WPA 8647 of 2024

**Dr. Pranat Tudu
Vs.
The State of West Bengal and Ors.**

Mr. Billwadal Bhattacharyya
Mr. Sayak Chakraborti
Mr. Anish Kumar Mukherjee
Mr. Wrickbrata Roy

... For the Petitioner.

Mr. Amal Kumar Sen
Ms. Ashima Das (Sil)

... For the State.

1. The petitioner is a serving doctor with the Jhargram Government Medical College and Hospital, Vidyasagar Pally, Jhargram. The petitioner has tendered his resignation on 19th March, 2024 from Government Service on the sole ground that he intends to contest in the forthcoming Parliamentary Elections this year.

2. In aid of such letter of resignation, the petitioner submitted a proforma as per the Rules of the State. Against the question at Question 20 of the proforma : “Whether the applicant is serving any Government Bond Obligation period (if, yes details of)”, the answer given by the petitioner is “Nil”, meaning No.

3. The petitioner is extremely anxious to receive response from the Government. He has, therefore, approached this Court and prays for a Writ of Mandamus to direct respondents to forthwith accept his resignation application dated 19th March, 2024. The anxiety of the

petitioner is that he would not get enough time to campaign for his election, if the Government delays the acceptance of resignation.

4. Learned Senior Counsel for the State, Mr. Amal Kumar Sen has raised three fold objections. The first objection is that the petitioner has not even given breathing time to the respondents to respond to petitioner's application. The writ petition is, therefore, premature.

5. The second objection taken by Mr. Sen is that the petitioner has suppressed materials facts in his proforma attached to the application for resignation. It is submitted that the writ petitioner had availed Study Leave between the year 2020-2021 and 2021-2022 for two years to undergo "DNB (PDCET-2020), Radiodiagnosis, Session 2020 at Apollo Gleneagles Hospital, Kolkata - 700054.

6. He was allowed such Study Leave subject to observance of West Bengal Service Rules, Part I, Appendix No.5, Clause 2(a). His leave salary during the Study Leave period would also be governed by the West Bengal Service Rules Part I, Appendix No.5, Clause 7(2). The petitioner was admittedly granted one year initial Study Leave by an order dated 29th June, 2020. The leave was extended for a further period of 12 months on 29th July, 2021.

7. It is submitted that to determine as to whether the petitioner has, in fact, executed any bond or not would

take time. Even assuming that the petitioner has not executed any bond, he would in terms of Clause 14 of Appendix 5 of Part I of the West Bengal Service Rules, be bound to make refund to the amounts mentioned therein.

8. Mr. Amal Kumar Sen has thirdly argued by reference to Clause 14 above, that the concept of public interest is vital to the invocation of any benefit under Clause 14.

9. The petitioner, therefore, cannot claim permanent discharge by resignation from the service of the State. No Writ of Mandamus, therefore, can be issued in favour of the petitioner.

10. The fourth point urged by Mr. Sen is that the benefit under Clause 14 Sub-Clause (3) sought by the learned counsel for the petitioner is not even have been pleaded in the writ petition. There is no application made to the Governor as on date.

11. The Court, therefore, should not entertain any plea of the writ petitioner in this context. He, therefore, prays that for the reasons aforesaid, the writ petition ought to be dismissed.

12. This Court has carefully heard the arguments advanced by Mr. Billwadal Bhattacharyya, learned counsel for the petitioner and Mr. Amal Kumar Sen, learned counsel for the State.

13. An allegation of suppression of facts must be demonstrated stringently the challenger. Admittedly the reply to the question No.20 to the proforma application for resignation from service has been given in the negative by the petitioner.

14. The question as already set out hereinabove is whether the petitioner is serving any Government Bond Obligation or not. The petitioner has categorically stated on affidavit and reiterated across the Bar through his counsel that he has not, in fact, executed any Bond with the State in terms of Clause 4(a) of Appendix 5.

15. This Court is of the view that the petitioner has not suppressed any material facts. In the event the petitioner had, in fact, executed any Bond the terms and conditions of such Bond would prevail over and above Appendix 5 and the restrictions contained thereunder. Such restrictions cannot be more stringent than Clause 14 of Appendix 5. It is only in respect of any gray area or matters not dealt with under any Bond that would have have to be addressed by reference to the Clauses under Appendix 5.

16. The question that remains, therefore, is the liability of the petitioner, in the absence of any Bond under Clause 14 of Appendix 5. Clause 14 is set out hereinbelow:-

“14. Resignation or retirement after study leave. – (1) If a Government employee resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty, he shall be required to refund –

(i) the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government,

(ii) the actual amount, if any, of the cost incurred by other agencies, such as foreign Governments, foundations and Trusts in connection with the course of study, together with interest thereon at rates for the time being in force on Government loans, from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise:

Provided that nothing in this rule shall apply-

(a) to a Government employee who, after return to duty from study leave, is permitted to retire from service on medical grounds;

or

(b) to a Government employee who, after return to duty from study leave, is deputed to serve in any statutory or autonomous body or institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said statutory or autonomous body or institution in the public interest.

(2) (a) The study leave availed of by such Government employee shall be converted into regular leave standing at his credit on the date on which the study leave commences, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave.

(b) In addition to the amount to be refunded by the Government employee under sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave.

(3) Notwithstanding anything contained in this rule, the Governor may, if it is necessary or expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under sub-rule (1) by the Government employee concerned or class of Government employees.”

17. This Court is of the clear view that the petitioner is bound by Clause 14 of Appendix 5 and the same is a pre-condition for his resignation to be accepted.

18. Across the Bar Mr. Billwadal Bhattacharyya, learned counsel for the petitioner submits on instructions that his client is willing to refund all and every some specified in Clause 14 above.

19. On the last objection raised by Mr. Amal Kumar Sen on the absence of pleadings for the benefit under Clause 14 of Appendix 5 to the West Bengal Service Rules, it is now well-settled that relief under Article 226 of the Constitution of India can always be moulded by the High Court. The absence of prayers and pleadings may only be fatal where a Rule or law is invoked wholly unconnected with or alien to the facts and circumstances pleaded in the writ petition.

20. This Court is of the view that the benefit of Clause 14 of Appendix 5 of the West Bengal Service Rules being sought by the petitioner is something that arises out of the facts of the case as also and the arguments advanced by both parties in respect of Appendix 5 of the West Bengal Service Rules indicated hereinabove.

21. On the issue of public interest being the primary consideration under Clause 14, apart from the same being directory, this Court is of the view that when any person seeks to contest an election to the post of a public representative, he is deemed as a person seeking to represent the public at large. There is, therefore, deemed public interest in a person seeking to contest in an election and to be a representative of the people.

22. In the above circumstances, this Court directs the respondent No.2 to accept the resignation of the petitioner within a period of 48 hours of all and any refund being made by the petitioner under Clause 14 of Appendix 5 of the West Bengal Service Rules referred to hereinabove.

23. Upon making such refund, the petitioner shall be entitled to treat himself as having discontinued the service of the State.

24. Any differences and deficit in calculation of the sums of money required to be deposited in terms of Clause 14 may be adjudicated against the petitioner and retained from any benefits of his service by the State.

25. In addition to the above, post refund in the peculiar facts and circumstances, the petitioner shall be entitled to approach the Governor for any reduction and/or waiver of any sums of money already paid under Clause 14 above. If any prayer under Clause 14 is

entertained and allowed by the Governor, the respondent No.2 shall be obliged to refund such amounts to the petitioner.

26. With the aforesaid directions, the writ petition is disposed of.

27. There shall be no order as to costs.

28. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)