

(2013) 07 CAL CK 0092

Calcutta High Court

Case No: W.P. No. 19097 (W) of 2013

Mousumi Banerjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 18, 2013**Citation:** (2014) 1 CHN 590**Hon'ble Judges:** Debasish Kar Gupta, J**Bench:** Single Bench**Final Decision:** Disposed Off

Judgement

Debasish Kar Gupta, J.

Let affidavit-of-service filed in Court today be kept with the record. This writ application is filed by the petitioner challenging the action on the part of the respondent Nos. 7, 8 and 9 in the matter of restraining the petitioner to resume her service as an assistant teacher of Sari Krishna Mani Girls' High School, District - Burdwan.

2. On recommendation of the West Bengal School Service Commission, Eastern Region, the petitioner was appointed to the post under reference. Her appointment to the above post was provisionally approved by the respondent No. 3 for a period of two years under Memo. No. 852/2 dated May 17, 2006. The petitioner remained absent from her duties from July 20, 2006 to August 17, 2006 and from June 26, 2007 till November 11, 2011. The petitioner submitted a letter to the respondent No. 9 on November 11, 2011 expressing her willingness to resume her duties.

3. It is submitted on behalf of the petitioner that the cause of long absence of the petitioner is the sudden death of her husband and her illness.

4. The respondent No. 7, 8 and 9 did not allow the petitioner to resume her duties by an order passed by the West Bengal Board of Secondary Education dated November 19, 2013. The respondent-school was directed to settle the issue amicably taking a humanitarian approach. According to the petitioner, the respondent-school did not

pay any heed to the above instruction.

5. It is submitted on behalf of the respondent Nos. 7, 8 and 9, on instruction, that a resolution has already been passed in the meeting of the respondent No. 7 to treat the case of absence of the petitioner as a case of deemed to be termination of the service of the petitioner in accordance with the provisions of regulation 11(i) of the Leave Rules.

6. I have heard the learned Counsel appearing for the respective parties carefully and I have given a thoughtful consideration to the facts and circumstances of the case. It is not in dispute that by a communication dated November 11, 2011, the petitioner approached the respondent-school to resume her duties. It is also not in dispute that the above communication was submitted by the petitioner before expiry of the period of five years to examine the scope of invoking the above provisions of Rule 11(i) of the Leave Rules. The same is quoted below:-

11. (i) No permanent teaching or non-teaching employee shall be granted leave of any kind for a continuous period exceeding 5 years. Where such an employee does not resume his or her duty after remaining on leave for a continuous period of 5 years or where such an employee after the expiry of his or her leave remains absent from duty, otherwise on ground of suspension for any period, which together with the period granted to him or her exceeds 5 years, he or she shall, unless the Board on reference from the school authorities and in view of exceptional circumstances of the case, otherwise determines, be deemed to have resigned and shall accordingly cease to be in the employment of the school.

7. After perusing the above rule, I find that since the petitioner approached the respondent-school before expiry of the period of five years so far as her period of absence is concerned, the above rule has no manner of application in this case. That apart it is also not in dispute that the above decision of the managing committee has not been communicated to the petitioner. It is the settled principles of law that a decision becomes an order when it is communicated to the person concerned. Reference may be made to the decision of the [State of Punjab Vs. Amar Singh Harika](#), and the relevant portion of the above decision is quoted below:

11. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate

authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May, 1951.

8. The above settled principle, has been repeated and reiterated by the Hon"ble Supreme Court time and again. Reference may be made to the decision of [Mahabir Auto Stores and others Vs. Indian Oil Corporation and others](#), .

9. In view of the above settled principles of law it is an admitted position that no order has yet been passed by the respondent-school so far as the deemed resignation is concerned.

10. In that view of the matter, I am of the opinion that at this stage the respondent No. 3 is the person concerned to extend the tenure of appointment of the petitioner beyond the period of provisional appointment of her service taking into consideration the facts and circumstances of this case.

11. In view of the above, I direct the respondent No. 3 to take a decision with regard to extension of the approval of the appointment of the petitioner taking into consideration all facts and circumstances of this case and the cause of absence of the petitioner from her service under reference by passing a reasoned order in accordance with law within a period of four weeks from the date of communication of this order after giving opportunity of hearing to the petitioner and an authorized representative of the respondent-School and any other person as the respondent No. 3 may deem fit and proper and to communicate the same to all concerned within a week thereafter. While taking a decision in the above matter the respondent No. 3 shall also take a decision so far as the payment of salary and allowances of the petitioner during the period of her absence from the school is concerned.

12. It is necessary to point out that the respondent No. 3 shall pass the above order to discharge his statutory function without being influenced by the direction of the Secretary to the Government of West Bengal, School Education Department or that of the West Bengal Board of Secondary Education.

13. With the observations and discussions made hereinabove, this writ application stands disposed of.

14. There will be, however, no order as to costs. Urgent photostat copy of the order, if applied for, shall be given to the parties on the usual undertakings.