

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2015 OF 2010

1. State of Maharashtra)
through the Principal Secretary, Medical Education)
and Drugs Department, having office at Mantralaya,)
Mumbai-400 032)
2. The Director,)
Medical Education and Research, Maharashtra State,)
Mumbai, having his office at 4th floor, Government)
Dental Building, St. George's Hospital Compound)
Fort, Mumbai-400 001.)
3. The Dean,)
Sr. J.J. Group of Hospitals and Grant Medical College,)
Byculla, Mumbai-400 008)..Petitioners

versus

1. Dr. Kavita Pravin Tilwani)
residing at 254/256, Walkeshwar Road,)
3rd and 4th floors, Near Raj Bhawan, Mumbai-400 006)
2. Dr. (Mrs.) Rekha Gustad Daver,)
Professor & Head of Department of Gynaecology &)
Obstetrics, Grant Medical College and Sir J.J. Group)
of Hospitals, Balaram Building, 4th floor, Byculla,)
Mumbai-400 008.)..Respondents

WITH

WRIT PETITION NO. 2016 OF 2010

1. State of Maharashtra)
through the Principal Secretary, Medical Education)
and Drugs Department, having office at Mantralaya,)
Mumbai-400 032)

2. The Director,)
Medical Education and Research, Maharashtra State,)
Mumbai, having his office at 4th floor, Government)
Dental Building, St. George's Hospital Compound)
Fort, Mumbai-400 001.)
3. The Dean,)
Sr. J.J. Group of Hospitals and Grant Medical College,)
Byculla, Mumbai-400 008)..Petitioners

versus

1. Dr. Disha Andhiwal Rajput)
residing at 5/7, Panchasheel, 1st floor,)
J.J. Hospital Campus, Byculla,)
Mumbai-400 008)
2. Dr. (Mrs.) Rekha Gustad Daver,)
Professor & Head of Department of Gynaecology &)
Obstetrics, Grant Medical College and Sir J.J. Group)
of Hospitals, Balaram Building, 4th floor, Byculla,)
Mumbai-400 008.)..Respondents

In both matters:

Mr. A.A. Kumbhakoni, Special Counsel, with Mr. S.R. Nargolkar, Assistant Government Pleader, for the petitioners.

Dr. Kavita Pravin Tilwani, Respondent No.1 in W.P. No. 2015 of 2010 present.

Dr. Disha Andhiwal Rajput, Respondent No.1 in W.P. No. 2016 of 2010 present.

**CORAM: P.B. MAJMUDAR &
R.G. KETKAR, JJ.**

DATE: APRIL 13, 2010.

ORAL JUDGMENT: (Per P.B. Majmudar, J.)

At the request of the learned counsel appearing for the petitioners, respondent No.2 in both these petitions is deleted from the array of parties as

she is not a necessary party for deciding these petitions. Rule. Respondents in both petitions waive service of Rule.

2. With the consent of the parties appearing in the matters, both these petitions are taken up for hearing forthwith.

3. By way of these petitions, the petitioners i.e. State of Maharashtra and others have challenged the order dated 19th January, 2010, passed by the Maharashtra Administrative Tribunal, Mumbai Bench, in Original Application Nos. 1265 and 1266 of 2009. By the impugned order, the Tribunal allowed the applications filed by respondent in each petitions by holding that the resignations tendered by the applicants were under duress and by way of frustration and as such resignations could not have been accepted.

4. The respondent, Dr. Kavita Pravin Tilwani, in Writ Petition No. 2015 of 2010 was appointed on the post of Assistant Professor in the Department of Obstetrics & Gynaecology at the Grant Medical College, Mumbai, which is under the control of the State Government. The appointment was made on 18th September, 2007. So far as respondent, Dr. Disha Andhiwal Rajput, of Writ Petition No. 2016 of 2010 is concerned, she was appointed on the post of Lecturer of Obstetrics and Gynaecology by an order dated 11th March, 2005 at the State run Grant Medical College, Mumbai. It seems that initially she was

appointed on temporary basis till regular vacancy is available as per the order, a copy of which is annexed as Annexure-2 at page 55 of the petition. Her services came to be regularised by order dated 22nd January, 2009. a copy of which is annexed as Annexure-3 at page 58 of the petition. Both the respondents are referred to hereinafter as “the respondents”.

5. The respondents along with four other doctors tendered the joint resignation on 21st August, 2009. In the said resignation letter, it is stated that the same is a conditional resignation with one month’s notice. It is stated in the said resignation letter that as a protest against Government’s apathy and non-action against injustice and humiliation meted to them that they are resigning. The so-called resignation letter was addressed to various Ministers including the Chief Minister as well as to the Chief Secretary and Secretary, Medical Education and Drugs Department, Maharashtra State. In the resignation letter, some averments have been made regarding some of the grievances on the part of the said doctors. It is also mentioned in the said resignation letter that they are now submitting “*resignation letter in blood*”. In the body of the resignation, it is clearly mentioned that the same is a conditional resignation. In the said resignation letter it is also mentioned that one month’s notice is given to the Government because of the injustice meted out to them.

6. Subsequently, by another letter dated 27th August, 2009, the

respondents along with other four doctors who tendered the resignation letter withdrew the same by way of a joint application. The withdrawal letter was addressed to the Secretary to the Government of Maharashtra, Medical Education and Drugs Department, Mantralaya, Mumbai. However, prior to 27th August, 2009, the respondents were served with relieving order dated 26th August, 2009 stating that the resignation given by them has been accepted by the Government. After getting the said relieving order, on 28th August, 2009, the respondents addressed a letter stating that there was no intention to give resignation at all and if it is construed as a resignation letter, it should be treated as withdrawn. However, since the respondents were not permitted to resume duties on the ground that their resignation were already accepted that they approached the Maharashtra Administrative Tribunal by way of an application. Respondent of Writ Petition No. 2015 of 2010 herein preferred Original Application No. 1265 of 2009 and respondent of Writ Petition No. 2016 of 2010 preferred Original Application No. 1266 of 2009. At this stage, it is required to be noted that so far as other four doctors who had tendered their resignation along with the respondents herein by joint letter, their resignation was not acted upon and they were permitted to serve in the department. Even though the withdrawal letter was written by the present respondents along with four others jointly, the respondents herein were not permitted to join duties but the other four were permitted to resume their duties. They were not served with any relieving orders. The Tribunal by the impugned order came to the

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conclusion that the resignation given by the respondents were not made with free will but it was a conditional one. It was found by the Tribunal that it was not open for the Department to act upon such resignation by relieving the respondents from service. The Tribunal accordingly allowed the application in terms of prayer clauses IX (a). The prayer of the applicants regarding reinstatement in service with continuity of service was granted by the Tribunal after setting aside the order dated 26th April, 2009. It is the aforesaid order of the Tribunal which is impugned at the instance of the present petitioners in these petitions.

7. It is submitted by Mr. Kumbhakoni, learned counsel appearing for the State of Maharashtra, that so far as the resignation tendered by the respondents in these petitions is concerned, since the same was accepted before withdrawal letter, the Tribunal committed an error in passing the impugned order. It is argued by Mr. Kumbhakoni that it was not proper on the part of the respondents to tender resignation by putting a thumb impression with blood. Mr. Kumbhakoni further submits that the resignation could have been withdrawn before its acceptance on 26th August, 2009. Since it was accepted it was not open for the respondents to withdraw the same as such by letter dated 27th August, 2009 and as such the same will be of no consequence.

8. As against the said argument, the respondents who are present

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before us submitted that since irregularities were going on in the hospital in the matter of cleanliness and proper hygienic conditions were not maintained that certain doctors which includes the respondents made grievance to the concerned department from time to time. Since the conditions had not improved and as the administration has not taken any steps to improve the hygienic conditions of the hospital thereby patients were affected by bacteria that by way of protest they have written the said letter which letter cannot be said to be a resignation letter at all. According to the respondents, the said letter was written with a view to seeing that the Administration may take steps to improve the conditions in the hospital so that the patients may not suffer. According to the respondents, the communication dated 21st August, 2009 was not a resignation but merely an expression of an intention to resign. It is submitted that there was no reason to discriminate them as against the four other doctors as there was a joint resignation submitted by these doctors and against that four doctors no relieving order was passed and relieving order was passed against the respondents only. It is submitted that a revengeful action has been taken against the respondents and, therefore, the Tribunal after considering the material on record has passed the impugned order which requires no interference in the present petition.

9. We have heard Mr. Kumbhakoni, the learned counsel for the petitioner and the respondents are great length. We have also gone through the

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order of the Tribunal as well as other material forming part of these proceedings. Since the only point which is pressed into service by the learned counsel for the petitioners is that the respondents had no right to withdraw the resignation letter after accepting the relieving order passed on 26th August, 2009. We are only required to consider as to whether it was open to the respondents to withdraw the resignation in case it is found that the same was accepted. In the present petition, therefore, this Court is required to consider only the aforesaid limited aspect as no other arguments were advanced on behalf of the petitioners while challenging the order of the Tribunal.

10. On a bare reading of the resignation letter, no other meaning than the one given by the Tribunal is possible. In the resignation letter, it is clearly mentioned that the said resignation is conditional one and with a view to see that appropriate improvements may be made within within a period of one month. By reading the resignation, it is impossible to hold that the same is given with an intention to relinquish the employment. In fact, it is merely an expression of an intention to resign, if things are not improved in the hospital. In any case, even if it is presumed that the respondents wanted to re sign from service on their free will, then also it is required to be noted that as per Service Rules, three months notice period is required to be given at the time of tendering resignation. As per Rules viz. Maharashtra Honorary Medical Officers (Recruitment and Conditions of Service) Rules, 1976, Rule 8 provides tenure of

office which reads as under.

“8. *Tenure of office.*- (1) The tenure of office of every Honorary Medical Officer shall be five years in the first instance, after completing the probationary period of one year to the satisfaction of the State Government.

(2) Subject to the provisions of the last preceding rule, the State Government may, after consulting such authorities including the Director as it deems necessary, from time to time, renew the appointment of any Honorary Medical Officer for a further term of five years. Such renewal shall be notified in the Official Gazette.

(3) The appointment of all Honorary Medical Officers shall be during the pleasure of the State Government. Any such appointment shall be liable to be terminated by the State Government, after holding such enquiry as it deems fit. Before any such order is made against any Honorary Medical Officer, a notice of three months shall be given to him.

(4) Any Honorary Medical Officer may by giving notice of three months in writing, resign his office; but he shall stand relieved of the post only from the date of acceptance of the resignation by the State Government.”

Any Medical Officer may by giving notice of three months in writing resign his office but he shall stand relieved of the office only from the date of acceptance of the resignation by the State Government. It is the requirement of rule that a person has to give three months notice in writing at the time of tendering his resignation. Even in a given case after giving three months notice, one may not be automatically said to have been relieved, as the Government, in view of the exigencies of service, may not accept the resignation within three months. Mr.

Kumbhakoni has fairly submitted that it cannot be said that on completion of three months period one can be said to have been relieved unless specific order is passed so that even after three months notice if the services of a doctor are necessary, Government may pass relieving order even after three months. It cannot be said that by reading the said rule that if any relieving order is passed within three months, then also a person stands relieved from service. In the present case, respondents have not made any request for waiving this statutory period of three months notice period. The said fact as such is not in dispute. While accepting the so-called resignation, it is not stated that the Government has waived the aforesaid requirement of three months notice period. In view of the same, it is absolutely clear that the resignation in question would come into effect only on expiry of three months period and that too subsequently to be followed by relieving order. In a given case statutory requirement of three months notice can be waived. In the instant case the respondents have not prayed for such waiver in the resignation letter nor there is anything on record to suggest that Government has waived the aforesaid requirement. As pointed out earlier, even after three months period, an employee cannot be said to have been relieved straightway unless specific order after the said period of three months requirement is passed by the State. Considering the said aspect, it was not open for the department to pass relieving order without waiting for the required period of three months as per the Rules. Even otherwise, on reading the resignation letter, it is clear that the respondents have clearly stated that they

are giving the Government one month's notice because of the injustice done to them. If the said clause in the resignation is considered, it is clear that one month's notice has been given by the respondents. Therefore, the resignation can come into effect only after the said period of one month and not before that. In view of the same, it was open for the respondents to withdraw the resignation at least one month from the date of such conditional resignation.

11. In view of the aforesaid factual aspect, it is not in dispute that the respondents have withdrawn the resignation within one month after tendering the same as the same has been withdrawn within six days of tendering the same. Considering the said factual aspect, since the so-called resignation is withdrawn before one month, even on that ground, it was not open to the Department to accept the resignation and issue relieving order without waiting for the period of one month which was the notice period given by the respondents in the resignation letter. Considering the aforesaid aspect, in our view, the Tribunal has rightly set aside the action of the Department in the matter of acceptance of resignation of the respondents and set aside the order of relieving the respondents from the services.

12. There is also an additional aspect as to why action of the department is not sustainable and that is the discriminatory treatment meted out by the department so far as the present respondents are concerned. It is not in dispute

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that a joint resignation letter was addressed to the department by six doctors. However, the relieving order was sent only to the respondents herein and there was no relieving order issued to other four doctors on the ground that they were senior doctors. In our view, when the facts of the case are identical, there was no reason to give a separate treatment to the respondents and other four doctors. In this connection, the Tribunal has observed in para 20 that strangely the Government of Maharashtra chose to accept only 2 doctors resignation and not 4 other very senior doctors and that there was no explanation given in the affidavit in reply that why the Government had not accepted resignations of other doctors. In our view, it was expected from the department to give similar treatment to the concerned doctors who gave resignation by same letter and subsequently withdrew the resignation by common letter. Considering the aforesaid aspect, we are of the opinion that the order passed by the Tribunal is just, fair and legal and requires no interference at our hands in the present petitions. As pointed out earlier, the only argument which was advanced before us is in connection with the acceptance of resignation. In our view there is no substance in the aforesaid argument advanced by Mr. Kumbhakoni, learned counsel for the petitioners. The respondents jointly gave so-called resignation along with four other doctors on 21st August, 2009. The department accepted resignation of the respondents only on 26th August, 2009. If at all the department intended to treat the communication dated 21st August, 2009 as a resignation, it ought to have accepted the resignation of all the doctors and not

the respondents. It was not open to the department to selectively accept resignation of the respondents and not to act upon the resignation of four other doctors as it was a joint resignation letter.

13. Mr. Kumbhakoni, however, faintly submitted that the reason to give different treatment to the respondents herein and the four doctors is that respondents herein were on probation or, in any case they were not permanent employees and that is why there may be a justification giving different treatment. However, Mr. Kumbhakoni fairly conceded that so far as the question about acceptance of resignation is concerned, the case of the respondents is identical to other four doctors as there was joint resignation given and by joint letter the same was withdrawn, though of course the respondents' resignation was accepted before request for withdrawal was made by them. The concerned respondents, however, stated that they were not on probation. It is clarified that this aspect is not required to be examined by this Court and Mr. Kumbhakoni has also not taken us further on this point as this Court is not required to adjudicate this point in the present proceedings nor the said point was argued even before the Tribunal. We are not required to consider the said point in the present proceedings as the same is not the subject matter in issue. Even the Tribunal, in our view, has rightly found that the resignation in question, was tendered without a free will and the same was given under duress and frustration. It is highly doubtful whether it can be a resignation letter as at the

most it can be said to be merely an expression of intention to resign in a particular eventuality.

14. In view of the above, both the petitions are accordingly dismissed. The order of the Tribunal dated 19th January, 2010, is accordingly confirmed. Rule is discharged. No order as to costs.

15. Mr. Kumbhakoni submits that in view of the above, if the respondents report for duty, they will be allowed to resume their duty immediately subject to the rights and contentions of the department, if any, in accordance with law. In view of the submission of Mr. Kumbhakoni, the petitioners are directed to allow the respondents to resume duty latest by 19th April, 2010.

P. B. MAJMUDAR, J.

R.G. KETKAR, J.