

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND

THE HON'BLE JUSTICE SANDIP KUMAR DE

WPCT No. 258 of 2025

Shrimati Shubra Das and another

Vs.

Union of India and others

For the petitioners: Mr. Atreya Chakraborty, Adv.

For the Union of India: Mr. Subhankar Chakraborty , Adv.,
Mr. Sudipta Maiti , Adv.,
Ms. Sayani Gupta , Adv.,
Mr. Goutam Malik, Adv.

For the ICAR: Mr. Bijoy Kumar, Adv.

Last heard on: 01.09.2026

Judgement on: 10 .09.2026

SANDIP KUMAR DE, J.:

1. The present writ petition arises out of judgement and order dated September 4, 2025 passed by the Central Administrative Tribunal Bench at Kolkata in OA no.738 of 2023.

2. The original application being OA no.738 of 2023 was filed challenging the office order dated April 23, 2003 treating the predecessor of the writ petitioners as deemed to have resigned from service of the Indian Council of Agricultural Research ('ICAR' in short) with effect from December 29, 1991 as well as a reasoned order dated January 18, 2018 rejecting the claim for pension and/or pensionary benefits claimed by the petitioners.
3. The facts involved in the case are that that predecessor of the writ petitioners, viz., Dr. Dhurjati Prasad Das joined service of the ICAR as a scientist on September 28, 1976 and he availed study leave from September 28, 1981 to September 27, 1982. The said study leave was again extended from September 28, 1982 to September 27, 1983 on the basis of an application made by him in this behalf. The predecessor of the writ petitioners again applied for extension of leave which was refused. Subsequently, from January 1, 1985 to December 31, 1985 the predecessor of the writ petitioners applied for extraordinary leave which was refused and he was directed to join his duties on and from February 27, 1985. It further appears from the materials on record that from January 1, 1986 to June 22, 1986 the predecessor of the writ petitioners was treated to have been absent in an unauthorized manner and had been awarded penalty of censure. The predecessor of the petitioner again remained absent from November 21, 1987 to November 15, 1990 without any leave being sanctioned in his favour for this entire period. As a result, ICAR initiated disciplinary proceedings and such period of absence from duty was treated as *dies non*. Subsequently, the predecessor of the petitioners was transferred to Sambalpur.

4. Challenging the actions of the ICAR treating the service of the predecessor of the writ petitioners with regard to the unauthorized absence as *dies non*, original application being OA no.1197 of 1996 was filed in Central Administrative Tribunal Kolkata Bench. Pending hearing of said original application, by a communication dated April 23, 2003, the competent authority of ICAR issued an office order whereby the predecessor of the writ petitioners was deemed to have resigned from his service on and from December 29, 1991 on account of continuous absence from duties. A representation was filed seeking recall of the said order and in response, the competent authority of ICAR confirmed that the said office order dated April 23, 2003 regarding that the predecessor of the writ petitioners deemed to have resigned from service was rightly issued.
5. The original application being OA 1197 of 1996 was dismissed by the learned tribunal on November 30, 2004 recording that the said original application was devoid of any merit. Challenging the same, the predecessor of the writ petitioners filed a writ petition before this Court being WPCT 189 of 2006 which was dismissed on contest by a Division Bench of this court by judgement and order dated May 15, 2007. While dismissing the said writ petition, the Division Bench recorded that the predecessor of the writ petitioners had abandoned his service. Subsequently, by order dated March 08, 2013 passed in RVW 5 of 2011 the said Division Bench of this Court disposed of a review application by expunging the observations that the predecessor of the present writ petitioners had abandoned service.
6. Thereafter, the predecessor of the petitioners filed OA 547 of 2016 before the learned Central Administrative Tribunal, Kolkata Bench at

Kolkata seeking pensionary benefits and the learned tribunal, by order dated November 13, 2017, disposed of the original application by directing the respondent/authorities to consider the case of the predecessor of the present writ petitioners for pension and passed a reasoned order, ultimately, by a reasoned order dated January 18, 2018, the competent authorities of the ICAR rejected the claim for pension and pensionary benefits in favour of the predecessor of the present writ petitioners. Later on, an application seeking execution of the order dated November 13, 2007 as well as a review application were disposed of by the learned tribunal.

7. Challenging the office order recording that the predecessor of the present writ petitioners deemed to have resigned from service, being office order dated April 23, 2003 and the reasoned order dated January 18, 2018 rejecting the claim of the predecessor of the present writ petitioners with regard to pension and pensionary benefits, OA 738 of 2023 was filed. Meanwhile, the predecessor of the present writ petitioners passed away on January 17, 2022. By judgement and order dated September 4, 2025 the learned tribunal dismissed OA 738 of 2023 recording that the said OA is devoid of any merit. Challenging the same, the present writ petition has been filed.
8. Learned counsel for the writ petitioners submitted that the office order dated April 23, 2003 did not specify under which provisions of law such order has been passed. However, the reasoned order dated January 18, 2018 recorded that the same is based on Rule 26 of the CCS (Pension Rules), 1972. The learned counsel further argued that the provisions of deemed resignation was introduced in Rule 12 of the CCS (Leave) Rule, 1972 Rules on March 29, 2012 and the same would not have been

applied in the year 2003, Rules itself being not there. Secondly, the learned counsel for the writ petitioners questioned the jurisdiction to issue the office order dated April 23, 2003 as he submitted that the President of the ICAR is the appointing as well as the disciplinary authority with regard to service of the predecessor of the writ petitioners and any authority other than the President of ICAR could not have issued such office order. Relying on the office memorandum dated July 13, 1981, the learned counsel for the petitioner submitted that a mere statement that the office order has been issued with consent of the competent authority is insufficient. He further submitted that in the absence of provision for deemed resignation at the relevant point of time i.e., in 2003 the appropriate course of action would have been to initiate disciplinary proceeding against the predecessor of the present writ petitioners according to law as Rule 25 (2) of the CCS (Leave) Rules, 1972 Rules clearly provides that full absence from duty after expiry of leave renders a government servant liable to disciplinary action. He further submitted that internal communications exchanged within ICAR indicate that authorities were minded to initiate disciplinary proceeding but instead, the office order dated April 23, 2003 was issued.

9. The learned counsel for the writ petitioners strenuously argued that the questions raised regarding lack of statutory power, lack of jurisdiction and intent to circumvent lawful process prescribed under the statutory rules have been pleaded in the original application before the learned tribunal but the same were brushed aside in the impugned order dated September 4, 2025 by the learned tribunal. He further submitted that the office order dated April 23, 2003 was not the subject matter of the WP.CT 189 of 2006. He further submitted that Rule 7 of the All India

Services (Leave) Rules of 1955 also envisages the provision for deemed resignation which was incorporated much later in the said Rules of 1955.

10. The learned counsel for the writ petitioners then relied on a judgement delivered by the Hon'ble Supreme Court in cases of ***D.K. Yadav vs. JMA Industries*** reported in (1993) 3 SCC 259 and ***Krushnu Kant B. Parmar vs. Union of India*** reported in (2012) 3 SCC 178. The learned counsel for the petitioners argued that the predecessor of the petitioners was entitled to a reasonable opportunity to present his case as a matter of right before the orders involving civil consequences were passed against him. Furthermore, it was to be considered by the authorities whether the absence is wilful or because of compelling circumstances before holding him guilty of failing of devotion of duty or behaviour unbecoming of a government servant. The learned counsel for the petitioner submitted that in case the orders under challenge were not there, the predecessor of the writ petitioners would have qualifying service of more than 10 years and as such he would have been entitled to pension.
11. On the basis of such stance, the learned counsel further submitted that the present writ petitioners are entitled to pensionary benefits including family pension etc., in terms of the 1972 Rules. He submitted that the instant writ petition be allowed and the reliefs sought for herein be granted to the petitioners by this Court.
12. Learned counsel for the respondents submitted that the service of the predecessor of the present writ petitioners is governed by the rules and regulations framed by the Government of India from time to time in terms of Rule 30 of the Rules and By-laws of the ICAR. He further

submitted that action with regard to the unauthorized absence from duty or overstay of leave is taken in consultation with the department of personnel and the Ministry of Finance. He further submitted that Rule 12 of 1972 Rules envisages that no government servant shall be granted leave of any kind for continuous period exceeding five years. Citing such rule, he further submitted that the amendments were substituted with regard to deemed resignation later on, but the time limit of five years was there all along and in the case of the predecessor of the present writ petitioners the leave exceeded five years.

13. Learned counsel for the respondents submitted that the present writ petition is not maintainable as the learned tribunal by order dated November 30, 2004 upheld the office order of *dies non* and the same has been confirmed by the Division Bench of this Court in the earlier round of litigation. The question relating to deemed resignation was already before this Hon'ble Court in the earlier round of litigation. He further submitted that the judgement cited by the learned counsel for the writ petitioners in ***D.K Yadav (supra)*** is not covered by any statutory rules or regulation and the said matter pertains to industrial dispute. As such, the same is factually distinguishable. He further submitted that the other decision of ***Krushnu Kant Parmar (supra)*** as cited by the learned counsel for the petitioners is also factually different from the present case and as such not applicable in the instant case.

14. The learned counsel for the respondents relied on a decision of the Hon'ble Supreme Court in the case of ***Puja Fero Alloys Pvt. Ltd. Vs. State of Goa*** reported in ***(2025) INSC 217*** and submitted that the present writ petition is based on the principle of *res judicata*. He then referred to another judgement of the Hon'ble Supreme Court in the case

of ***Ashok Kumar Dabas vs. Delhi Transport Corporation*** reported in (2025) INSC 1404 which justified the case of deemed resignation. He submitted that the Hon'ble Supreme Court held in the case that only inescapable consequence that on resignation of the employee his past service stood forfeited. Hence, he will not be entitled to any pension. The learned counsel for the respondent submitted that the writ petition is liable to be dismissed.

15. In reply, the learned counsel for the writ petitioners submitted that the judgements cited by the respondents in the case of ***Puja Fero Alloys (supra)*** is not applicable as the learned tribunal itself held that Doctrine of *Res judicata* is not applicable in the instant case as the cause of action is different. The office orders dated April 23, 2003 and January 18, 2018 were not under challenge in the earlier round of litigation.
16. He then submitted that the decision in the case of ***Ashok Kumar Dabas (supra)*** is distinguishable on facts as in the said cited decision, the concerned employee had actually submitted letter of resignation which is not the case at hand.
17. Heard the learned counsel for the parties.
18. It appears from the record that the learned tribunal in the judgement and order impugned has recorded that the original application is not barred by *res judicata* as the subject matter has not been adjudicated in any of the previous cases. It further appears from the record that although provision for deemed resignation were brought in the relevant statutory provisions in both 1955 Rules as well as in 1972 Rules much later than the office dated April 23, 2003 was issued, the fact remains that the provision for non-granting of leave of any kind to a government servant for a continuous period exceeding five years was already there in those

Rules and the leave exceeded such time limit in the present case. In the present case, decision with regard to deemed resignation was taken more than ten years after the date of commencement of the continuous absence from work by the predecessor of the present writ petitioners.

19. On perusal of materials on record, it appears that the predecessor of the petitioners joined the service of ICAR as a scientist on September 28, 1976 and due to series of absence from duties by him led to a disciplinary proceeding which ended up in an order dated September 25, 1991 declaring his long period of absence as *Dies-non* and he was subsequently transferred. After prolonged litigation, the said order dated September 25, 1991 was considered on merit by the Learned Tribunal in OA 1197 of 1996 with MA 311 of 1996. By order dated November 30, 2004, the Learned Tribunal held that his absence from duties was rightly treated as *Dies-non* and he was not entitled to any salary for such period. Accordingly, the said proceeding was held to be bereft of any merit and was dismissed by the learned Tribunal. Such Dismissal gave rise to WPCT 189 of 2006 before this Hon'ble Court and a Division Bench of this Court by judgment and order dated May 15, 2007 was pleased to dismiss the writ application by holding that the writ petitioner was not entitled to any mandamus relief and the order passed by the learned Tribunal was upheld. In the said order, the Division Bench recorded that the petitioner had abandoned his service and such recording was subsequently been deleted from the order by virtue of the order dated March 8, 2013 passed in RVW 5 of 2011 by the Division Bench of this Court. Therefore, the decision of the authorities of ICAR regarding *Dies-non* stood confirmed.

20. The order with regard to deemed resignation was passed by the competent authority of ICAR dated April 23, 2003 and subsequent order dated January 18, 2018 was passed rejecting the claim of the predecessor of the petitioners for pension and pensionary benefits. The predecessor of the petitioners passed away on January 17, 2022. The said two orders were challenged before the Learned Tribunal in OA 738 of 2023 alongwith ancillary relief of pensionary benefits by the present petitioners which was dismissed as devoid of any merit by the Learned Tribunal by judgment and order dated September 4, 2025. Challenging the same, the present writ petition has been filed in this Court.
21. It further appears that the Learned Tribunal held that in the facts and circumstances of the case, Rule 12(2) of the CCS (Leave) Rules, 1972 is rightly attracted. The Learned Tribunal further found, on perusal of the record, that the predecessor of the petitioners was granted ample opportunities in the past to explain his absence and to improve his conduct. Therefore, the orders under challenge did not suffer from any illegality. The predecessor of the petitioners also did not suffer any prejudice.
22. It further appears that ICAR issued another letter dated July 3, 2003 confirming the decision of deemed resignation of the predecessor of the petitioner from service and such decision was not under challenge.
23. The decisions of the ICAR under challenge were issued by the competent authority and as such, the challenge based on Office Memorandum dated July 13, 1981 is not attracted as the orders under challenge contained reasons. Furthermore, the issue relating to Dies-non is no longer *res integra* and as such, resorting to such challenge would not be maintainable any further. Rule 7 of the All India Services(Leave)

Rules, 1955 being *Pari materia* with Rule 12(2) of the CCS (Leave) Rules, 1972 speaks of deemed resignation which was 'substituted' in 2004 and not 'inserted'. Bye-Law 30 of the ICAR envisages that the rules of the Central Government regarding finance and service would apply to ICAR. Therefore, the challenge in this regard is of no merit.

24. We respectfully agree with ratio laid down in the decision in ***DK Yadav (Supra)*** as relied upon by the petitioners regarding the right to defend and right of hearing but in the present case, such opportunities were granted to the predecessor of the petitioner several times as it is evident from record. Therefore, the decision is not applicable against the respondents in the instant case. We further respectfully agree with the ratio laid down in the decision in ***Krushnakant B. Parmar (Supra)*** but, in the instant case, the facts giving rise to the matter clearly indicate that the element of wilful absence is apparent on the face of record and as such, the element of compelling circumstances cannot be brought in to counter the issue of failure of devotion to duty or behaviour unbecoming of a government servant. However, the principle of *res judicata* as observed in the decision of ***Puja Ferro Alloys (Supra)*** relied on by the respondents would not be applicable as the cause of action was different in the original application from the earlier ones. Secondly, the decision in ***Ashok Kumar Dabas (Supra)*** is also not applicable in the facts of the present case as the same deals with actual resignation and not a deemed resignation.

25. To conclude, it is clear from the conduct of the predecessor of the petitioners that he was absent from his duties for prolonged period without any explanation despite being granted several opportunities and indulged in litigations. He had no intention to perform his duties even

though there was no restraint or any order to that effect from working, as held by this court on earlier occasion as well as the learned Tribunal. Therefore, such a person cannot claim pensionary benefit as a matter of right without performing his duties.

26. As a result, the writ petition being WPCT 258 of 2025 stands dismissed without any order as to costs. The judgment and order dated September 4, 2023 passed in OA 738 of 2023 passed by the Central Administrative Tribunal, Kolkata Bench at Kolkata stands upheld.
27. Urgent Photostat certified copy of this order/judgment if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree.

(SANDIP KUMAR DE, J.)

(SABYASACHI BHATTACHARYYA, J.)