

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)  
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. U / 3 of 2020

**DR.SANTANU SUBA** Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>1</p> <hr/> <p>11.05.2020</p>	<p>For the Applicant : Mr. D.N. Ray, Mr. M.N. Roy, Mr. G. Halder, Mr. B. Nandy, Advocates</p> <p>For the Respondents : Mr. G.P. Banerjee, Advocate</p> <p>In this application, Dr. Santanu Suba, the applicant has prayed for certain reliefs, the relevant portion of which is as under:</p> <p>(a) An order do issue directing the respondent authorities to allow the applicant the benefit of “Lien” as enshrined in West Bengal Service Rules, Part-I for a period of two years from his present place of posting (putting the present permanent post of “Assistant Professor” on suspended lien), enabling him to join the post of “Associate Professor”, department of Burns &amp; Plastic Surgery, AIIMS,</p>	

**ORDER SHEET**

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	<p>Bhubaneswar on or before 30.06.2020.</p> <p>(b) An order do issue thereby directing the respondent authorities to issue “relieving order” in favour of the applicant within a stipulated time period enabling him to join the post of “Associate Professor”, department of Burns &amp; Plastic Surgery, AIIMS, Bhubaneswar on or before 30.06.2020.</p> <p>(c) An order do issue directing the concerned respondent authorities to forthwith dispose of the representation dated 18.04.2020 and to communicate the decision thereof to the applicant herein within a stipulated time period.</p> <p>It appears from the application that the applicant had joined West Bengal Medical Education Service (W.B.M.E.S.), Department of Health and Family Welfare, Government of West Bengal, as RMO-Cum-Clinical Tutor in the Department of Plastic Surgery, Medical College, Kolkata on 20<sup>th</sup> August, 2015. Subsequently, on 11<sup>th</sup> November, 2019 the applicant was appointed on</p>	

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	<p>promotion to the rank of “Assistant Professor” in the discipline of Plastic Surgery at Medical College, Kolkata.</p> <p>Pursuant to the advertisement dated 28<sup>th</sup> January, 2019, the applicant sought for no objection letter on 11<sup>th</sup> March, 2019 for participating in the selection process for the post of Associate Professor in the Department of Burns &amp; Plastic Surgery, AIIMS, Bhubaneswar, Odisha. Accordingly, the applicant made a representation dated 17<sup>th</sup> November, 2019 before the Director of Medical Education, Department of Health &amp; Family Welfare, Government of West Bengal praying for issuance of no objection letter for appearing in the said interview. Thereafter the Director of Medical Education by memo dated 20<sup>th</sup> December, 2019 granted permission “for appearing in the interview only” subject to certain conditions as stipulated therein. In the said interview the applicant qualified for the post which was intimated by letter dated 17<sup>th</sup> March, 2020 by the Director of AIIMS, Bhubaneswar and the applicant was offered with an appointment letter asking to join within a month. But owing to the precarious situation, AIIMS, Bhubaneswar asked the applicant to join on or before 30<sup>th</sup> June, 2020 positively failing which the appointment letter of the applicant would be cancelled. Being selected for the post of “Associate Professor” in AIIMS, Bhubaneswar, the applicant made a representation on 6<sup>th</sup> April, 2020 before the Director of Medical Education and Ex-Officio</p>	

**ORDER SHEET**

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	<p>Secretary, Department of Health &amp; Family Welfare, Government of West Bengal, Kolkata, the respondent no.2 praying for issuance of necessary discharge / relieving certificate. Thereafter another representation was filed on 18<sup>th</sup> April, 2020 before the said respondent no.2 praying for benefits of lien from the present post to enable him to join AIIMS, Bhubaneswar. According to the applicant the representations are yet to be answered.</p> <p>Mr. D.N. Ray, learned advocate appearing on behalf of the applicant submits that as the authorities by memo dated 20<sup>th</sup> December, 2019 had allowed the applicant to appear in the interview and as the applicant fulfils all the conditions for grant of benefit of lien, as enshrined in West Bengal Service Rules, Part I, for a period of two years in the present place of posting (putting the present “Associate Professor” on suspended lien), the respondent authorities are legally bound to grant the benefit of “lien” to enable him to join to the post of “Associate Professor” at AIIMS, Bhubaneswar on or before 30<sup>th</sup> June, 2020 and to issue “relieving order” to enable him to join the said post before 30<sup>th</sup> June, 2020. According to him as representations were submitted on 6<sup>th</sup> April, 2020 and thereafter on 18<sup>th</sup> April, 2020 and as the respondent authorities are yet to respond, appropriate order may be passed.</p> <p>Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents, submits that since the</p>	

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	<p>applicant had joined service on 20<sup>th</sup> August, 2015 and as he is covered by the amended Sub-Rule (1) of Rule 34 (A) of West Bengal Service Rules, Part-I, issued on 26<sup>th</sup> August, 2016 by the Principal Secretary to the Government of West Bengal, he is not entitled to the benefits as prayed for. According to him unless the applicant completes five years of permanent service, he is not entitled to benefits of lien. Assuming the applicant joins the post on lien and does not revert back to the parent place of posting, the applicant would be treated as resigning from the parent place of posting which would create an anomalous situation. Referring to the memo dated 20<sup>th</sup> December, 2019 it is submitted that though permission was granted to the applicant to appear in the interview, the authority had reserved its discretionary power and in the present situation as overwhelming majority of doctors have been directed to treat COVID Pandemic patients, no order may be passed.</p> <p style="text-align: center;">Heard learned advocates for the parties.</p> <p>Having heard learned advocates for the parties and considering the facts and circumstances of the case, the application is disposed of by directing the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, Kolkata, the respondent no.1 to dispose of the representations dated 6<sup>th</sup> April, 2020 and 18<sup>th</sup> April, 2020, filed before the Director of Medical Education and Ex-Officio Secretary, appearing from pages</p>	

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SCN.	<p>26 to 30 of this application by passing a reasoned order to be communicated to the parties within 30<sup>th</sup> May, 2020 after verifying the records.</p> <p>Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	