

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Officiating Chairperson and Member (J).

**Case No. CCP – 42 of 2022 (OA – 573 of 2019)**

**Dr. Anil Kumar Gupta - VERSUS – Sri Dr. Siddhartha Niyogi, Director of Health Services, Govt. of W.B. & Others**

Serial No. For the Applicant : Mr. G. Singh,  
and Advocate

Date of order

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30.08.2022

For the Contemnor : Mr. S.N. Ray,  
O.P.(s) Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26<sup>th</sup> August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed being aggrieved with the non-compliance of the order dated 02.12.2021, whereby the following direction was made:

**“In view of the above, Respondent No. 2, Director of Health Services, West Bengal is directed to implement the order dated 24.07.2009 and 21.06.2010 within a period of six weeks from the date of the receipt of the order. Accordingly, OA is disposed of.”**

It is noted that vide order dated 02.12.2021, this Tribunal had directed the Director of Health Services to implement the order dated 24 07.2009 and 21.06.2010. The order dated 24.07.2009 passed in O.A. No. 521 of 2009 is as follows:

**“After hearing Mr. Neogi and after going through the contents of the reasoned order passed by the Principal Secretary, and also after going through the**

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different representations, filed by the petitioner, time to time, challenging his transfer order from Asansol to Islampur, we are of the considered view that this application should be disposed of at this stage for the best interest of the petitioner himself in the following manner:- We direct the petitioner himself in the following manner:-We direct the petitioner to comply with the transfer order from Asansol to Islampur and to join at Islampur Sub-Divisional Hospital within 4 (Four) weeks from this date and to submit a joining report at the appropriate authority of that Hospital with copy to the Principal Secretary of the Health Department for his personal knowledge; we direct the authority of Islampur Sub-Divisional Hospital to make arrangement for regular payment of salary of the petitioner after his joining and the question of payment of salary, for the period when the petitioner was absent from duty, shall be considered by the Principal Secretary of the Health Department on the basis of application, which the petitioner shall make before him after joining at Islampur Sub-Divisional Hospital.

We further direct the petitioner to make application for regularisation of his leave for the absent period within 4 (Four) weeks after his joining and we direct the Principal Secretary to dispose of the application accordance with rule within 6 (Six)

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weeks on receipt of such application.

We grant liberty to the petitioner to renew his prayer for transfer order to any place of his choice and convenience provided, the authority finds merit in the said application and to consider that application with an open mind, forgetting the past history related to his transfer order.

The petitioner shall file such application with a reasonable time after joining at Islampur Sub-Divisional Hospital and the Principal Secretary, to whom the application shall be addressed, shall again dispose of that application in the manner, already we have indicated, within 6 (Six) weeks of receipt such application and intimate the result to the petitioner, accordingly, within a fortnight after taking the decision.

With this observation, we dispose of this application.”

The order dated 21.06.2010 passed in O.A. No. 294 of 2010 is as follows:

“The petitioner, by filing this application, has alleged that, in spite of direction from this Tribunal recorded in OA No. 521 of 2009 on 24<sup>th</sup> July, 2009, and, in spite of making representation by the petitioner for regularization of his leave and also for his transfer to any place of convenience, the authority has not done

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anything. The further allegation and grievance of the petitioner is that of non-payment of his salary at Islampur Sub-Divisional Hospital, although, he joined there as per order of this Tribunal and his joining was accepted by the authority.

As State-Respondent is not appearing and as we find from the original application and with reference to the order dated 24<sup>th</sup> July, 2009, recorded in OA No. 521 of 2009, that we granted liberty to the petitioner for filing representations and also directed the authority to dispose of those representation as there is allegation of non-compliance of our order, which has not been disputed by the authority in this application, we like to dispose of this application, at this stage, by reiterating that the appropriate authority, within 3 (Three) months from communication of this order, shall dispose of the pending petition of the petitioner for regularization of his entire period of absence, with reference to leave, available to his credit, and with reference to applicable rule of W.B.S.R. Part-I and, at the same time, we direct the authority to dispose of the representation of transfer of the petitioner by that date, positively.

As Mr. Neogi submits that petitioner is getting monthly salary, we only add that if the petitioner has

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**not been paid his salary since his joining at Islampur Sub-Divisional Hospital, the authority of said Hospital shall make arrangement for payment of his salary, due from the date of his joining at that Hospital, within a period of 3 (Three) months from date.**

**The application, accordingly, stands disposed of.”**

Contemnor has placed one reasoned order dated 12.04.2022 and has submitted that they have complied with the order dated 02.12.2021.

However, the counsel for the applicant has submitted that the Contemnor has not complied with the order as his entire period of leave has been treated as dies-non, whereas for the entire period of absence from 07.08.2003 to 18.08.2009.

Heard the parties and perused the order dated 12.04.2022 passed by the Special Secretary, Health and Family Welfare Department, Govt. of West Bengal. From the perusal of the order dated 12.04.2022, it transpires that though the Contemnors have shown different period of leave available / credited in account of the applicant from item no. 2 to 5 i.e. Earned Leave for 85 days for the period from 22.08.2009 to 04.09.2010 and Commuted Leave 139 days for the period from 19.02.2010 to 30.09.2010. Further Commuted Leave for 11 days for the period from 01.11.2010 to 11.11.2010 as well as E.O.L. from 12.11.2010 to 07.11.2011 for 361 days. However, it is noted that the entire period of absence from 07.08.2003 to 18.08.2009 has been treated as dies-non as per Rule 34, which is contrary to the direction of this Tribunal's order dated 21.06.2010.

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Even Rule 34 has not been properly dealt with and E.O.L. has been granted for subsequent period from 12.11.2010 to 07.11.2011, which is not a subject matter of the O.A. Therefore, court is not satisfied with the compliance of the order dated 02.12.2021. However, Respondents are granted one chance to take appropriate steps by passing appropriate order as per direction of the court.

Let the matter be listed on **03.11.2022** under the same heading.

URMITA DATTA (SEN)  
Officiating Chairperson and Member (J)

A.K.P.