

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

HON'BLE JUSTICE SOUMITRA PAL, HON'BLE CHAIRMAN.

Case No. –OA 118 of 2020.

DR. MANAS KONAR & 10 OTHERS - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicants	: Mr. M.N. Roy, Learned Advocate.
<u>8</u> 10.3.2021	For the State Respondents	: Mr. G.P. Banerjee, Learned Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24th December, 2020 issued in exercise of the powers conferred under sub section (6) of section 5 of the Administrative Tribunals Act, 1985.

As prayed for, leave granted to the applicants to add a prayer being 1(a) to the original application.

In this application, the applicants, who belong to the cadre of West Bengal Dental Services, have prayed for certain reliefs, the relevant portion of which is as under :-

“ (a) An order do issue thereby setting aside and/or quashing the purported reasoned order dated 11.11.2019 passed by the respondent No.3 herein, communicated vide No. HF/O/Dental/220/2019 Dated Kolkata, 11th November, 2019 by the Deputy Secretary to the Government of West Bengal, Department of Health & Family Welfare, Dental Branch, in empty compliance of the solemn Order dated 12.09.2019 passed by this Hon'ble Tribunal in O.A. No. 558 of 2019.

(b) An Order do issue directing the respondent authorities to appoint your applicants to the post of “Assistant Professor” under West Bengal Dental Education Service immediately considering the fact that the all the applicants herein are eligible enough and fulfils the criteria to be appointed to the post of “Assistant Professor” under West Bengal Dental Education Service from the post

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of “Dental Surgeon” in the cadre of West Bengal Dental Service with immediate effect..”.

It appears earlier the applicants moved an application being OA 558 of 2019 (Dr. Arindam Banerjee & Ors –Vs- The State of West Bengal & Ors) challenging the order of transfer dated 17th July, 2019. It was submitted on behalf of the applicants that the action of the State authorities in transferring the applicants and in releasing them just after the Original application challenging the order of transfer was served on the respondents speaks of vengeance and malafide as they have been deprived of their rights under the West Bengal Dental Service cadre. It was submitted that the action of the respondents in releasing the applicants after receiving the copy of the original application is contrary to the law as laid down in Dr. Hari Pada Poddar – versus- S.R. Das, Secretary to Govt. of West Bengal, Department of Health in 1974 CLJ, particularly the law laid down in paragraphs 12, 13 and 17 thereof. On a query it is submitted on behalf of the applicants that they have joined the transferred post.

Mr. G.P. Banerjee, learned advocate for the State respondents submits that as the reasoned order is just and proper, no order may be passed.

It is evident that earlier the applicants had moved an original application, which was disposed of “*by directing the Commissioner, Government of West Bengal, Department of Health and Family Welfare, Dental Branch “Swasthya Bhawan”, Kolkata, the respondent no. 3 to dispose of the representation dated 19th July, 2019 by passing a reasoned order to be communicated to the parties within*

ten weeks from the date of presentation of a copy of this order after giving an opportunity of hearing to the applicant no. 1 or any other applicant so authorised by the applicant no. 1, after verifying the records and after considering the law laid down in Dr. Hari Pada Poddar (Supra). Since it has been contended by Mr. Roy that the applicants have been released after notice was issued on the State respondents to move the Tribunal and is contrary to the principles of law laid down in Dr. Hari Pada Poddar(Supra), the reasoned order shall clearly indicate (i) whether the order of release was issued after notice was issued on the respondents to move the Tribunal and (ii) whether it is contrary to the proposition of law laid down in Dr. Hari Pada Poddar (Supra). In the event it is found by the said respondent no. 3 that the order of transfer was passed after service of notice for moving the Tribunal and is contrary to the law laid down in Dr. Hari Pada Poddar (Supra), appropriate order shall be passed accordingly within the time frame as mentioned..”.

Pursuant to the said order, the Commissioner to the Government of West Bengal has passed an order, the relevant portion of which is as under :-

“.....And whereas, after verifying the records and after meticulously considering the law as laid down in the case of Dr. Hari Pada Poddar, it becomes evident that six applicants were released by the respondents before the issuance of notice by the applicants for moving before the Tribunal and the order of release in respect of rest five applicants was issued after issuance of notice upon the respondents by the applicants to move the Tribunal. It is pertinent to mention in this regard that no interim order was passed by the Hon’ble WBAT in

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connection with the aforesaid O.A. No. 558 of 2019....”.

It appears that though the six applicants were released before the issuance of the notice for moving the Tribunal, five others were released and transferred after issuance of notice upon the respondents by the applicants to move the Tribunal. As after receiving the notice the State authorities had transferred them, it is contrary to the law laid down in Dr. Hari Pada Poddar (supra), the relevant portion of which is as under :-

“.....In the instant case, the opposite party had knowledge of the fact from the notice demanding Justice served on him that the petitioner was about to move a Writ petition in this court, and yet he passed the order dated October 11, 1968 suspending the petitioner, and that also because of the very fact that he was informed of the intended proceeding...”.

In the instant case inspite of the notice the five applicants have been transferred. It reveals that the respondents being aware of the proceedings before the Tribunal had transferred the five applicants which demonstrates that the order of transferring the applicants is in colourable exercise of power and is thus set aside and quashed. The application is allowed. Accordingly, the Commissioner is directed to revert the applicants to their parent post, as they had enjoyed before 17th July, 2019, forthwith.

As prayed for orally, the applicants are at liberty to file separate applications for appointment to the post of Assistant Professor under West Bengal Dental Education before the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, - the respondent no. 1, within four weeks from the date of obtaining a

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copy of this order downloaded from the internet/website. If such representation is filed individually, the said respondent no.1 shall dispose of the same by passing a reasoned order within eight weeks after verifying the records after giving each of the applicants an opportunity of hearing.

(SOUMITRA PAL)
CHAIRMAN

Skg.