

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

Case No. - OA 305 of 2021

Dr. Anirban Dasgupta - **VERSUS** - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. S. Ghosh, Advocates.
<u>2</u> 06.08.2021	For the State respondents	: Mr. G.P. Banerjee, Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24th December, 2020 and 456-WBAT/2J-15/2016 dated 16th July, 2021 issued in exercise of the powers conferred under sub-section (6) of Section 5 of the Administrative Tribunals Act, 1985.

Affidavit of service filed be kept on record.

In this application, Dr. Anirban Dasgupta, – the applicant, has prayed for certain reliefs, the relevant portion of which is as under –

“(a) An order do issue thereby setting aside / quashing the reasoned order dated 12.02.2021 which was communicated vide No. ME/CC-18-2020/M/334 (4) dated 18.02.2021 upon your applicant, lien as well as resignation from service has been rejected on a flimsy ground by the Director of Medical Education, in the department of Health & Family Welfare, Government of West Bengal immediately.

“(b) An order do issue thereby directing the respondent authorities to issue “relieving order” in favour of the applicant within a stipulated time period after considering the representation dated 27.01.2021, as the applicant under changed circumstances has already completed 05 years of service.”

It appears that the applicant had joined the West Bengal Medical

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Education Service, Department of Health and Family Welfare as Tutor on 29th August, 2015 and was posted in the Department of Gynaecology and Obstetrics, Bankura Sammilani Medical College, Bankura. It appears that on 18th December, 2017 the applicant made a representation before the Director of Medical Education, West Bengal, the respondent no. 2 for discontinuation of his service. According to the applicant, later he came to know that his representation praying for discontinuation of service was not accepted by the authorities. Thereafter, pursuant to an advertisement, the applicant applied for the post of Assistant Professor in AIIMS, Kalyani. He got selected and appointment letter was issued by AIIMS, Kalyani on 15th September, 2020 requesting him to join within a month from the date of issuance of offer of appointment. According to the applicant, he could not join due to the lackadaisical attitude of the respondent authorities by not issuing the release order. Thereafter, on 28th September, 2020, the applicant made a representation for 'lien' from the present post to enable him to join AIIMS, Kalyani. As it was not considered, the applicant filed an application, being OA 359 of 2020, which on 5th October, 2020 was disposed of by passing an order directing the Secretary, Department of Health and Family Welfare, Government of West Bengal to dispose of the representation dated 28th September, 2020, by passing an order, to be communicated to applicant, after considering the order passed in WPST No. 58 of 2020, (Dr. S. Suba).

It is submitted by Mr. M.N. Roy, learned advocate for the applicant that pursuant to the said order, reasoned order dated 12th February, 2021 has been passed by the respondent no. 2 which is under challenge. According to the applicant since it is apparent from the impugned

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reasoned order that the applicant has not completed three years of continuous service and his service is not confirmed and as he is a temporary employee, the reasoned order is illegal and be quashed. In this regard, Mr. Roy has relied on the judgment passed by the Tribunal in OA 28 of 2021, delivered on 1st February, 2021, (Dr. Mukut Mani Adhikari – Versus - State of West Bengal & Others) upheld by the Hon’ble High Court in WPST No. 25 of 2021 (The State of West Bengal & Ors. –Versus - Dr. Mukut Mani Adhikari).

Mr. G.P. Banerjee, learned advocate appearing for the State respondents submits that the order dated 12th February, 2021 is just and proper.

In order to appreciate the issue, it is appropriate to refer to the relevant portion of the order impugned passed by the respondent no. 2 which is as under :

“With regard to his prayer for lien, the undersigned having considered his entire service record is not inclined to extend him such benefit as he failed to render three years of continuous service, in view of the embargo laid down in the Rules for lie as contained in WBSR Part 1. As he joined WBMES on 29/08/2015 and submitted his prayer for resignation on 18/10/2017, his service with WBMES is not a confirmed one, in order to extend relief of lien as prayed by him.” (Emphasis supplied).

Admittedly, as evident from the order under challenge, the service of the applicant is not confirmed. In this regard, it is appropriate to refer to

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the judgment passed in Dr. Mukut Mani Adhikari (supra), the relevant portion of which is as under :-

“In order to appreciate the issue, it is relevant to refer to the definition of temporary service appearing in the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979, which is as under :

“temporary service” means service beginning from the date of appointment under Government till the date of appointment on probation or on permanent basis”.

There is no dispute that the applicant was appointed “temporarily” as evident from the notification dated 3rd August, 2018 being annexure A to the application. The applicant had tendered resignation on 28th March, 2019. Since the applicant was appointed temporarily and was not on probation or was confirmed as permanent, the amended Rules do not apply. Therefore, the action of the respondent no. 4 in issuing the impugned order dated 2nd April, 2019, being annexure B to the application cannot be sustained and is thus set aside and quashed. The application is allowed.

Accordingly, the Principal Secretary, Department of Health & Family Welfare, Government of West Bengal, the respondent No. 1 is directed to issue release order to the applicant within a fortnight from the date of presentation of a copy of this order downloaded from the internet / website.”

Evidently the High Court has upheld the said judgment in WPST 25 of 2021, the relevant portion of which is as under :-

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“In view of the aforesaid, we are in agreement with the observation of the learned Tribunal that “since the applicant was appointed temporarily and was not on probation or was confirmed as permanent, the amended Rules do not apply.”

In view thereof, the action of the Commissioner to the Department of Health and Family Welfare in issuing the impugned order dated 2nd April, 2019 cannot be sustained. We uphold the order of the learned Tribunal.

The writ petition stands dismissed.”

Since the service of the applicant is “not a confirmed one”, the order dated 12th December, 2021 passed by the respondent no. 2 cannot be sustained and is thus set aside and quashed. The application is allowed. Accordingly, the Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent no. 1 is directed to issue release order to the applicant within a fortnight from the date of presentation of a copy of this order downloaded from website of the Tribunal.

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.

Rajib

(SOUMITRA PAL)
CHAIRMAN