WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present- **The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)**

Case No. – OA-384 of 2024

Dr. Manisankar Nath -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order		
	For the Applicant	: Mr. M.N. Roy, Mr. S. Ghosh, Mrs. S. Das, Ld. Advocates.
02 24.09.2024	For the State Respondent	: Mr. G.P. Banerjee, Ld. Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to the respondent authorities to issue him NOC to enable him to participate in the selection process for the post of Assistant Professor in the Department of Anesthesiology at All India Institute of Medical Sciences (AIIMS), Kalyani. Desirous of participating in the selection process the applicant, Dr. Manisankar Nath had furnished a prayer dated 12.07.2024 before the Director of Medical Education praying for issue of NOC to apply for such post at AIIMS, Kalyani. As of now, the respondent authority has not officially taken any decision and communicated the same to the applicant. However, Mr. Banerjee, learned counsel upon instructions has submitted that due to acute shortage of specialists including Anaesthesist, the Department is not in a position to issue such NOC to the applicant at this stage. A paper in tabular form presented by Mr. Banerjee shows a total vacancy of 181 against 457 sanctioned posts in the Department of Anesthesiology. Similarly, such vacancies are shown in other disciplines also. Mr. Banerjee also has submitted that the Department has taken concrete steps to fill up these vacant posts. One advertisement dated 06.03.2024 was published by the West Bengal Health Recruitment Board in which a total of 536 posts have been advertised for Assistant Professors in different disciplines. In the Department of Anesthesiology 47 posts have been duly notified in the same advertisement. Submission of Mr. Banerjee is that in the near future, most of these vacant posts including in the Department of Anesthesiology will be filled up by new incumbents.

Responding to Mr. Banerjee's submission, Mr. Roy submits that there

Form No.

Vs.

Case No**. OA-384 of 2024**   The State of West Bengal & Ors.

is no provision under any Rules by which the respondent authorities can decide not to issue such an NOC for an employee who wishes to apply for an employment in another organisation. Mr. Roy also relies in order of Hon'ble High Court in WPST 137 of 2023 in the matter of Dr. Gour Ranjan Chowdhury v. State of West Bengal & Others dated 29.09.2023. Submission of Mr. Roy is that in this similar case, the Hon'ble High Court had directed the respondent authorities to issue NOC without any strings provided he is eligible otherwise.

From the submissions of Mr. Banerjee, it has become clear that due to acute shortage of doctors in the Department of Microbiology, the Director of Medical Education has refused to issue the NOC to the applicant. It has also been made clear that the Department has initiated steps in filling up the vacancies in different disciplines. However, in the light of a direction of Hon'ble High Court in WPST 137 of 2023, it is clear that the State Authorities cannot indefinitely withhold its decision of issuing NOCs or even refuse to grant such NOCs to the employees who have applied in prescribed format. In the opinion of the Tribunal, it would be prudent and imperative that the Principal Secretary of the Department makes an assessment on the shortages and possibility in the near future of filling up such vacancies and take an informed and balanced decision within the shortest possible time, preferably by 31.10.2024.

Accordingly, this application is **disposed of..**

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS