

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. – OA 632 of 2019

DR PORTIA SAHA - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. S. K. Das, Mr. A. Ahmed, Advocates.
<u>12</u> 06.04.2022	For the state respondents	: Mr. G.P. Banerjee, Advocate.

The matter had appeared on 4th April, 2022 when Mr. Shibaji Kumar Das, learned advocate appearing for the applicant submitted that he is not pressing prayer (a) of the application. Submission was that the matter is covered by the judgment delivered on 1st February, 2021 in OA 28 of 2021 Dr. Mukut Mani Adhikari versus State of West Bengal & Ors which has been upheld by the Hon'ble High Court by an order passed on 27th July, 2021 passed in WPST No. 25 of 2021, the State of West Bengal & Ors versus Dr. Mukut Mani Adhikari. The matter has come up today as 'for orders'.

Learned advocate for the applicant reiterates that as the issue is covered by the judgment in Dr. Mukut Mani Adhikari (supra), orders as prayed for may be passed.

Heard Mr. G.P. Banerjee, learned advocate for the State respondents.

The applicant does not press prayer (a) of the application. Admittedly the issue is covered by the judgment in Dr. Mukut Mani Adhikari (supra) wherein it was, inter alia held, as under :

“Heard learned advocates for the parties. 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.”

In WPST 25 of 2021 the Hon’ble High Court while upholding the order inter alia, held as under :

“The appointment of the applicant to the said post is temporary. If at all any Rule can be made applicable to the applicant on the basis of which his service conditions are required to be governed, is the West Bengal Services (Appointment, Probation and Confirmation) Rule, 1979. The said Notification defined the “temporary services” to mean service beginning from the date of appointment under Government till the date of appointment on probation or on permanent basis. Even if the said Rule is reckoned from the date of his appointment and reliance is placed on the Notification of 3rd August, 2018, we are unable to accept the submission made on behalf of the Government in view of the fact that Rule 34A can be made applicable only to a Government employee holding a permanent post under the Government and not with regard to any

temporary employee. The same would be further clear from the Notification dated 26th August, 2016 in which it is clearly stated that the said Notification is applicable in respect of the officers in the cadre of the West Bengal Health Services. The present applicant does not belong to any cadre. The appointment was purely temporary and hence, neither the said Rule nor the Notification on the basis of such his resignation was not accepted, does not appear to be the correct application of the said Rule or the Notification.

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. However, there shall be no order as to costs.”

Since the issue is now settled, accordingly, the order dated 16th November, 2018 passed by the Additional Chief Secretary, Department of Health and Family Welfare appearing in page 63 of the application is set aside and quashed. The application is allowed by directing the Secretary, Department of Health & Family Welfare, the respondent no. 1 to issue release order to the applicant within a fortnight from the date of presentation of a copy of the order downloaded from the website of the Tribunal.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN

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