

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Mr. Sayeed Ahmed Baba, Member (Admn.)

Case No. –OA 678 of 2021

Dr. Arindam Roy - **VERSUS** - THE STATE OF WEST BENGAL & ORS.

Serial No.	For the Applicants	: Mr. M.N. Roy,
and		Mr. S. Ghosh,
Date of order		Mr. G. Halder,
<u>02</u>		Mr. B. Nandy,
01.10.2021		Advocates.
	For the State Respondent	: Mrs. S. Agarwal,
		Advocate.

Affidavit of service filed be kept on record.

In this application, Dr. Arindam Roy, the applicant, has prayed for several reliefs, the relevant portion of which is as under :

“(a) An order do issue directing the respondent authorities to allow the applicant the benefit of “Lien” as enshrined in West Bengal Service Rules, Part-I for a period of two years from the post of Tutor (putting the present post of “RMO-cum-Clinical Tutor” on suspended lien), by issuing relieving order enabling him to join the post of “Assistant Professor”, Department of Ophthalmology at AIIMS, Kalyani under the changed circumstances, wherein the respondent authorities themselves have admitted the fact that the applicant was confirmed in service with effect from 04.09.2020.

(b) An order do issue thereby directing the respondent authorities to issue “relieving order” in favour of the applicant within a stipulated time period enabling him to join the post of “Assistant Professor”, Department of Ophthalmology at AIIMS, Kalyani under the changed circumstances.

(c) An order do issue thereby directing the respondent authorities to dispose of the representation dated 25.08.2021 by passing a reasoned and speaking order in accordance with law after giving an opportunity of hearing and to communicate the decision so arrived at within a time frame.”

Form No.

Case No. **OA 678 of 2021**

Vs.

THE STATE OF WEST BENGAL & ORS.

The applicant had joined the West Bengal Medical Education Service on 4th September, 2017. Thereafter, the applicant pursuant to an advertisement for the post of Assistant Professor in the Department of Ophthalmology in AIIMS, Kalyani prayed before the respondents for the grant of no objection certificate to appear in the interview. The applicant was selected for the post of Assistant Professor and AIIMS, Kalyani issued an appointment letter which was received by the applicant on 3rd November, 2020. The applicant by an application being OA-434 of 2020 moved an application to grant lien for a period of two years and for relieving order which was disposed of by order dated 9th December, 2020 directing the Secretary, Department of Health and Family Welfare, Government of West Bengal to dispose of the representation furnished on 11th November, 2020 after giving an opportunity of hearing, after verifying the records and after considering the judgment passed in WPST 58 of 2020.

Aggrieved the applicant vide a writ petition, being WPST 107 of 2020, (Dr. Arindam Roy vs. State of West Bengal and Others) which was dismissed. Still aggrieved, the applicant filed a Special Leave Petition before the Supreme Court which was also dismissed by order dated 19th February, 2021.

Thereafter, it appears by order dated 18th March, 2021, the service of the applicant was confirmed with effect from 4th September, 2020 which appears at page 46 of the application. Subsequently, the applicant filed an application for review of the order dated 19th January, 2021 passed in WPST 107 of 2020 being RVW 75 of 2021 with CAN 2 of 2021 which by an order dated 24th August, 2021 was dismissed. Thereafter, the applicant had filed a representation dated 25th August, 2021 requesting the respondent authorities for grant of lien in terms of the relevant provisions of WBSR after considering the order and judgment dated

Form No.

Case No. **OA 678 of 2021**

Vs.

THE STATE OF WEST BENGAL & ORS.

19th January, 2021 passed by the High Court, Calcutta in WPST 107 of 2020.

Mr. M.N. Roy, learned advocate appearing on behalf of the applicant submits since the applicant has been confirmed by order dated 18th March, 2021 with effect from 4th September, 2020, as new cause of action has arisen, the respondent authorities may be directed to consider the matter afresh for grant of lien.

Mrs. S. Agarwal, learned advocate appearing on behalf of the State respondents referring to the order dated 19th January, 2021 passed in WPST 107 of 2020, particularly paragraph 26 thereof, submits that as the State is facing pandemic and as the application for review was rejected on 24th August, 2021 after the order dated 18th March, 2021 confirming the services of the applicant, no order may be passed.

In reply, Mr. Roy submits that the observations made by the High Court, Calcutta in paragraph 26 of the judgment dated 19th January, 2021 in WPST 107 of 2020 is an obiter, as ratio of the judgment has been laid in paragraph 22 of the said judgment. Submission is, in the facts and circumstances of the case, the respondents may be directed to consider the representation dated 25th August, 2021 along with the judgment of the High Court, Calcutta passed in WPST 107 of 2020.

Having heard learned advocates for the parties and considering the facts and circumstances of the case, the original application is disposed of by directing the Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent No. 2 to dispose of the representation dated 25th August, 2021 by passing a reasoned order to be communicated to the parties within four weeks from the date of presentation of copy of this order downloaded

ORDER SHEET

Dr. Arindam Roy

Form No.

Case No. **OA 678 of 2021**

Vs.

THE STATE OF WEST BENGAL & ORS.

from the website of the Tribunal after giving an opportunity of hearing, after verifying the records and after considering the judgment passed in WPST 107 of 2020. We make it clear that we have not gone into the merit of the matter and all points including the order of confirmation dated 18th March, 2021, to be dealt with by the respondent no. 2.

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.

(SAYEED AHMED BABA)
Member (A)

(SOUMITRA PAL)
CHAIRMAN

CSM/SS