

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 758 of 2021.

SUBHARATI BANERJEE CHAKRABORTY– VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G.P. Banerjee, Advocate.
<u>4</u> 6.4.2022	For the State Respondents	: Mr. M.N. Roy, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

In this application the applicant, Subharati Banerjee Chakraborty has prayed for several reliefs, the relevant portion of which is as under :-

“8.1....An order setting aside of the impugned decision which was communicated to the Applicant by way of an electronic mail on September 9, 2021 from the Respondent No. 4, that is the Superintendent, ESI Hospital, Kamarhati thereby forwarding to the applicant the letter being Memo No. ESIK/1536 dated 09.09.2021 issued by the Superintendent, ESI Hospital, Kamarhati addressed to the Director, E.S.I.(MD) Scheme, Government of West Bengal;

8.2 An order directing the Respondent authorities to allow the applicant to join and resume her service as the Assistant Superintendent (Non-Medical) of the ESI Hospital, Kamarhati at the earliest;

8.3 An order directing the Respondents not to treat the period of absence of the Applicant as break in service;

8.4. An order directing the Respondents to pay to the Applicant and continue to pay to her, her salaries and all other consequential benefits;

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8.5. An order directing the Respondents to pay to the Applicant her arrear salaries and all other consequential benefits....”.

It appears that the applicant had joined service on 3rd September, 2015 and was confirmed on 3rd September, 2018 as the Assistant Superintendent (Non-Medical) of the ESI Hospital, Kamarhati. It appears that the applicant had made an application for medical leave by letters dated 19th March, 2020, 23rd March, 2020 and 13th April, 2020 addressed to the Director, ESI (MB Scheme), Government of West Bengal, - the respondent no. 2 and the Superintendent, ESI Hospital, Kamarhati, - the respondent no. 4. On 17th April, 2020 the respondent no. 4 directed her to report for duty immediately due to outbreak of COVID 19. Thereafter, the applicant sent a letter dated 23rd April, 2020 to the respondent no. 4 enclosing all medical prescriptions and highlighting her ill health and the precautionary advice of her physician for complete bed rest at her home. It has been stated that the respondent no. 4 by memo dated 25th April, 2020 warned her and directed her to report immediately and to give satisfactory explanation of her absence from duty. The applicant by letter dated 29th April, 2020 addressed to the respondent no. 4 again highlighted her ill health and to have rest. It requires to be mentioned by letter dated 29th April, 2020 addressed to the hospital, the applicant had tendered her resignation and requested the authorities to accept it and release her from service with immediate effect. It appears that in the background of resignation, the Deputy Secretary to the Government of West Bengal by a letter addressed to the Director, Directorate of ESI(MB) Scheme, West Bengal to the Superintendent, ESI Hospital, Kamarhati, Kolkata had fixed hearing on 28th September, 2020 at the Labour Department. It appears that the hearing took place on the said date and in the midst of hearing, the applicant by a letter appearing at page 47 of the application addressed to

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the Additional Chief Secretary, Labour Department, Government of West Bengal, - the respondent no. 1 prayed for apology for tendering her resignation and requested the authorities to pardon as she desired to withdraw her resignation with immediate effect.

It appears that in the meantime, the Superintendent, ESI Hospital, Kamarhati, Kolkata by a memo dated 9th September, 2021 addressed to the Director, Directorate of ESI(MB) Scheme, Government of West Bengal suggested that the applicant “...*may be given fresh appointment in terms of provisions of Note-(ii) below rule-34 A(2) of WBSR Pt. -I keeping in view of her age in terms of provisions of Note-(iii) ibid it may further be mentioned that concurrence of F.D. is not necessary as per letter no. Labr./330/ESI(Estt.)/28016/1/2020 dated 25.06.2021...*”.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the applicant submits since no order has been passed pursuant to the hearing, the issuance of memorandum dated 9th September, 2021 is uncalled for and the respondents may be directed to allow the applicant to rejoin his post.

Mr. M.N. Roy, learned advocate for the State respondents submits that as under the rules an application for resignation stands automatically accepted after three months and as in the instant case, the applicant had tendered her resignation on 29th April, 2020 and as there has been deemed acceptance of the letter of resignation, the application may be dismissed in terms of memorandum dated 9th September, 2021. Reference has been made to letter dated 25th June, 2021 issued by the Joint Secretary, Department of Labour to the Director, Directorate of E.S.I.(MB) Scheme containing observation of the Finance Department wherein it has been stated that “*The concerned authority may give fresh appointment in terms of provisions of Note-(ii) below rule-34A(2) of*

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WBSR Pt.-I keeping in view her age in terms of provisions of Note-(iii) ibid for which concurrence of F.D. is not necessary... ”. Let a copy of the letter dated 25th June, 2021 be kept on record.

Mr. Banerjee submits that the letter dated 25th June, 2021 containing an order has not been communicated to the applicant and no opportunity of hearing was granted before passing the said order.

Having heard the learned advocates for the parties since it appears that no order has been passed pursuant to the hearing, which was held on 28th September, 2020, considering such fact the application is disposed of by directing the Additional Chief Secretary, now re-designated as Principal Secretary, Department of Labour, - the respondent no. 1, to hold hearing afresh regarding the acceptance of resignation of the applicant within eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal and shall pass a reasoned order within four weeks thereafter after giving an opportunity of hearing to the applicant, to the representatives of the other authorities, and after verifying the records and keeping in mind the circulars and notifications issued by the department. It is also made clear since the order dated 25th June, 2021 was not communicated to the applicant and was passed without giving an opportunity of hearing, the said letter stands quashed.

The application is allowed to the extent as indicated above.

(SOUMITRA PAL)
CHAIRMAN.

Skg.

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