

**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 76 OF 2022

**DR. SHARMISTHA CHAKRAVARTY - VERSUS - THE STATE OF WEST BENGAL & OTHERS**

Serial No. and Date of order	For the Applicant	:	Mr. Sankha Ghosh Mr. Arindam Mitra Mrs. Suborna Das Advocates
<u>05</u> 08.07.2022			
	For the State Respondents	:	Mr. Goutam Pathak Banerjee Advocate

In this application, Dr. Sharmistha Chakravarty, the applicant, who had joined West Bengal Medical Education Service on 1<sup>st</sup> March, 2014 as R.M.O.-cum-Clinical Tutor, Department of ENT and posted at ID & BG Hospital, Kolkata and subsequently transferred to College of Medicine & Sagore Dutta Hospital, Kamarhati as R.M.O.-cum-Clinical Tutor, 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 27.12.2019 passed by the respondent no. 3 herein (communicated vide No. ME/CC-116-2018/M/11/1(3) dated 03.01.2020), whereby the prayer for resignation has been rejected on the pretext of the amended provision of rules relating to resignation.*

*(b) An order do issue directing the concerned respondent authorities to forthwith issue release order in favour of the applicant within a stipulated time period, consequent to her resignation letter, so made by her on 30.07.2018 taking into account of the fact that the applicant's service is governed*

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*by West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 as her service is not confirmed under the respondent authorities.*

*(c) An order do issue directing the concerned respondent authorities to forthwith issue "Release Order" by accepting her resignation letter dated 30.07.2018 within a stipulated time period taking into account the order / judgement dated 01.02.2021 passed by this Hon'ble Tribunal as well as the order / judgement dated 27.07.2021 passed by the Hon'ble High Court at Calcutta in the matter of Dr. Mukut Mani Adhikari."*

It appears that earlier the applicant had moved an application being OA-842 of 2018 which was disposed of on 24<sup>th</sup> September, 2019 by passing an order, the relevant portion of which is as under:

*"Having heard Mr.Ghosh, Mr.Banerjee and Mr.Basu, learned advocates for the parties and considering the facts and circumstances of the case, the original application is disposed of by directing the Director of Medical Education & Ex-Officio Secretary, Department of Health & Family Welfare, Government of West Bengal, Kolkata, the respondent no. 3 to dispose of the letter of resignation dated 30<sup>th</sup> July, 2018, being Annexure-C to the application, and also after considering the fact that the applicant has in the meantime completed five years of service, by passing a reasoned order to be communicated to the parties within*

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*twelve weeks from the date of presentation of a copy of this order, after giving an opportunity of hearing, after verifying the records and after considering the judgements and orders which may be relied on by the applicant.”*

Thereafter, pursuant to the order dated 24<sup>th</sup> September, 2019, the Director of Medical Education, Government of West Bengal, the respondent no. 3 has passed an order, the relevant portion of which is as under:

*“Whereas, it is found that Dr. Chakraborty had only completed 4 years 5 month of continuous service. As per new sub-rule (1) of rule 34 A introduced vide notification no. No. 4499-F (P), dated 26.08.2016, officers of West Bengal Medical Education Service (WBMES) are not eligible to resign before completion of 5 years of continuous service. However, Dr. Chakraborty submitted an application dated 30.10.2019 with request to change date of the effect of resignation from 30.07.2018 to 31.03.2019 and the application has been examined and it is observe that even if the prayer of effect date of resignation is considered her continuous service period will be only 4 years 5 months. Therefore, sub-rule (1) of rule 34 A of WBSR Part I which bars the resignation of officers of the WBMES before a period of at least five years of service, will be applicable to her.”*

Mr.S.Ghosh, learned advocate for the applicant submits that the order under challenge is covered by the judgement passed by the Tribunal on

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1<sup>st</sup> February, 2021 in OA 28 of 2021 (Dr. Mukut Mani Adhikari Vs. State of West Bengal and Others). Moreover, against the said order dated 1<sup>st</sup> February, 2021 passed by the Tribunal, the State of West Bengal preferred a Writ petition, being WPST-25 of 2021, which was dismissed by order dated 27<sup>th</sup> July, 2021. According to him, since service of the applicant is yet to be confirmed and the provisions of law are covered by the order passed in WPST-25 of 2021 and as the directions passed in OA-842 of 2018 passed on 24<sup>th</sup> September, 2019 have not been complied with, the order under challenge may be set aside and the respondents may be directed to consider the matter afresh.

Mr.G.P.Banerjee, learned advocate for the State respondents submits that the applicant on her own had submitted the letter of resignation dated 30<sup>th</sup> July, 2018. Subsequently by an application dated 30<sup>th</sup> October, 2019 request was made to change the date of resignation from 30<sup>th</sup> July, 2018 to 31<sup>st</sup> March, 2019. Submission is if the date of giving effect to the letter of resignation is changed from 30<sup>th</sup> July, 2018 to 31<sup>st</sup> March, 2019 and as the applicant had entered service on 1<sup>st</sup> March, 2014, since the period of service will be more than 5 years, the question of applicability of amended sub-rule (1) of rule 34 A of WBSR Part I introduced by the notification no. 4499-F(P), dated 26<sup>th</sup> August, 2016, does not arise.

Heard learned advocates for the parties. We find from the impugned order that on the one hand, the Director of Medical Education & Ex-Officio Secretary, Department of Health and Family Welfare, the respondent no. 3 though has accepted the fact that the applicant has changed the date of effect of resignation from 31<sup>st</sup> July, 2018 to 31<sup>st</sup> March, 2019 on the other hand, he has noted that her period of continuous service would be 4 years 5 months.

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In our view, since the applicant had joined the service on 1<sup>st</sup> March, 2014 and if that date of the effect of resignation is to take effect from 31<sup>st</sup> March, 2019, in that event, the service period of the applicant would be 5 years. We find that the order under challenge has not gone into the issue of the resignation of the applicant as directed by the order dated 24<sup>th</sup> September, 2019. Therefore, the order under challenge cannot be sustained and is set aside and quashed. The application is allowed. Accordingly, the Director of Medical Education & Ex-Officio, Secretary, Department of Health and Family Welfare, Kolkata, the respondent no. 3 is directed to consider the matter afresh and shall dispose of the letter of the resignation dated 30<sup>th</sup> July, 2018 along with the application dated 30<sup>th</sup> October, 2019 whereby request was made to change the date of the effect of resignation from 30<sup>th</sup> July, 2018 to 31<sup>st</sup> March, 2019, by passing a reasoned order to be communicated to the parties within twelve weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal after verifying the records.

(SAYEED AHMED BABA)  
MEMBER(A)

(SOUMITRA PAL)  
CHAIRMAN

BLR