

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

**Case No. – OA-198 of 2021.**

**Dr. Brojen Choudhury. - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	: Mr. M. N. Roy, Mr. S. Ghosh, Mr. G. Halder, Advocates.
<u>4</u> 6.8.2021		
	For the State Respondent	: Mr. G. P. Banerjee, Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 and 456-WBAT/2J-15/2016 dated 16<sup>th</sup> July, 2021 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application, Dr. Brojen Choudhury – the applicant, has challenged the reasoned order dated 7<sup>th</sup> February, 2021 passed by the Secretary, Department of Health and Family Welfare, Government of West Bengal which was passed pursuant to the order dated 14<sup>th</sup> December, 2020 in OA-399 of 2020, on several grounds. Prayer has also been made to issue release order after accepting his resignation letter dated 24<sup>th</sup> April, 2020 along with 13 point declaration and to issue “Release Order”.

It is submitted by Mr. M. N. Roy, learned advocate appearing on behalf of the applicant that the respondent no. 2 while passing the order under challenge misread the order passed on 14<sup>th</sup> December, 2020 in OA-399 of 2020. Submission is though the said respondent no. 2 has rejected the application of the applicant for resignation on the ground of

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the pandemic situation, however, the issue is covered by the judgment dated 18<sup>th</sup> December, 2020 in WPST 86 of 2020 : Dr. Debangshu Ghosh-Vs-The State of West Bengal and Others.

Mr. G. P. Banerjee, learned advocate appearing on behalf of the State respondents submits that the order under challenge is just and proper.

It appears that the matter was admitted on 19<sup>th</sup> April, 2021 when direction was issued upon the respondents to file reply. However, till date, no reply has been filed. Hence, the statements made in this application are deemed to be correct. Evidently huge shortage of doctors in the State hospitals and the pandemic situation was one of the main reasons for rejection of the prayer of the applicant for resignation dated 24<sup>th</sup> April, 2020, as evident from the said order dated 7<sup>th</sup> February, 2021.

I find the issue is covered by the judgment of the High Court in Dr. Debangshu Ghosh (Supra), the relevant portion of which is as under :

*“As is elementary, since it is impossible to make an unwilling horse work, a suit or order in the nature of directing the performance of any work by an individual may not lie or be made. At the highest, the employer may obtain damages in lieu of what the employee was obliged to do. In any event, an employee always has the right to resign and walk out. The only notable exceptions being when there are departmental or disciplinary proceedings pending against the employee or there is a bond period that the employee has to serve or there is a claim that the*

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*employer has against the employee which has to be discharged only by performance. Even if an employer has a claim in money against the employee, the employee is not obliged to continue in service till the claim is discharged; since it is always open for the employer to enforce the claim in accordance with law.*

*It appears to be the fairly admitted position in this case that no departmental proceedings are pending against the petitioning doctor. The State cannot assert, far less demonstrate, that the petitioner executed any bond or the contract of employment between the parties requires the petitioner to serve out a certain tenure and the letter of resignation has been issued prior to the expiry of the term. Indeed, the State cannot even indicate that it has a money claim against the petitioner. In such circumstances, there can be little or no justification in the State refusing to accept the letter of resignation and issue the letter of release for the petitioner to take up any other work that the petitioner may be interested in.*

*In the light of the admitted position, the respondent authorities are directed to issue the letter of release to the petitioner as expeditiously as possible and, preferably, by December 22, 2020. In any event, the petitioner will be entitled to rely on this order as the deemed letter of release for the petitioner to apply for or take up any other post that the petitioner intends to.*

*WPST 86 of 2020 is disposed of. ”*

Therefore, in view of the above, the application is allowed. The

**ORDER SHEET**

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impugned order dated 7<sup>th</sup> February, 2021 passed by the Secretary, Department of Health and Family Welfare, Government of West Bengal, is set aside and quashed. The Principal Secretary now re-designated as Secretary, Department of Health and Family Welfare, Government of West Bengal, -the respondent no. 2, is directed to issue release order to the applicant within eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal and dues, if any, shall also be released within the said period.

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.

S.M.

(SOUMITRA PAL)  
CHAIRMAN