

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

**Case No. - OA 28 of 2021**

**Dr. Mukut Mani Adhikari - VERSUS - THE STATE OF WEST BENGAL & Ors**

Serial No. and Date of order	For the Applicant	: Mr. S. Ghosh, Mr. G. Halder, Advocates.
<u>02</u> 01.02.2021	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 24th December, 2020 issued in exercise of the powers conferred under sub-section (6) of Section 5 of the Administrative Tribunals Act, 1985.

Affidavit of service filed today be kept on record.

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

“(a) ..... An order do issue directing the concerned respondent authorities to forthwith issue release order in favour of the applicant after setting aside order dated 02.04.2019 issued by the Commissioner to the Department of Health & Family Welfare, West Bengal as the applicant does not want to further continue with his service under the Government of West Bengal consequent to his resignation letter, before the Director of Health Services, Department of Health & Family Welfare, Government of West Bengal, through proper channel, within a stipulated time period.

(b) An order do issue directing the concerned respondent authorities to forthwith issue “Release Order” in favour of the applicant without causing any further delay.”

The impugned order passed by the Commissioner to the Department of Health & Family Welfare, respondent no. 4 is as under :

“In view of the Amendment of sub-rule (1) of Rule 34 A of the WBSR Part-I vide Notification No.4499-F(P), dated 26/08/2016, the

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*prayer of Dr.Mukut Mani Adhikari, GDMO, Badkulla PHC, Nadia, for resignation from West Bengal Health Services cannot be accepted, since he has not completed the mandatory period of five years of continuous service since his date of joining the service.”*

It appears that the applicant had joined the services of West Bengal Health Service on 14th August, 2018 “temporarily” pursuant to the Notification dated 3rd August, 2018 and appointed as General Duty Medical Officer and was posted at Badkulla Primary Health Center, Bagula (Hanskhali) Rural Hospital, Nadia. The applicant had tendered resignation on 28th March, 2019 by submitting a letter, being annexure B to the application. Evidently, the respondent No. 4 did not accept the resignation in view of the amendment of sub-rule (1) of Rule 34A of WBSR Part-I, since according to him the applicant did not complete the mandatory period of five years of continuous service since his date of joining the service.

It is submitted by Mr. S. Ghosh, learned advocate for the applicant that as the applicant was appointed on temporary basis, amended rules do not apply. Referring to the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979, particularly with regard to the definition of “temporary” service, it is submitted that since the applicant was yet to be even on probation, the question of appointment on permanent basis does not arise. Submission is the impugned intimation dated 2nd April, 2019 declining to allow resignation is illegal.

Mr. G. P. Banerjee, learned advocate appearing on behalf of the State respondents submits that the action of the respondents in issuing the intimation dated 2nd April, 2019 is just and proper.

Heard learned advocates for the parties. In order to appreciate the

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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.

Since for circumstances beyond control the Registry is unable to furnish plain copy 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.

(SOUMITRA PAL)  
CHAIRMAN

Rajib