

J U D G E M E N T

1. The instant application has been filed praying for following reliefs:
 - a) A direction do issue upon the concerned respondent authorities to forthwith set aside/rescind/cancel/quash/withdraw the impugned memorandum dated 30.03.2017 and 09.10.2017 as issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare being Annexure J and L to this application and to command them to act strictly in accordance with law;
 - b) A direction upon the respondent authorities to forthwith set-aside the impugned notice dated 09.11.2017 as issued by the Inquiring Authority for personal hearing of the charges as illegally drawn against the applicant being Annexure N to this application.
 - c) A direction upon the respondents and their men and agents to produce the relevant records before the Learned Tribunal for conscionable justice in the matter.
 - d) A to pass such other order or order as the Learned Tribunal may deem fit and proper.
2. As per the applicant, he had initially joined in the service as a Dental Surgeon in the General Group of West Bengal (Basic Grade) Dental Service on 15.06.1982 and was subsequently confirmed on 15.06.1985. Thereafter, on the basis of his option, the applicant joined in the West Bengal Dental Education Services Cadre in the year 2010 and served the Government till the date of 22.09.2016 being the effective date of his voluntary retirement.
3. In the meantime, due to his past experience in the field of dentistry the Tamil Nadu Dr. MGR Medical University honoured him as Honorary Professor from 2011. Similarly Aligarh Muslim University, Jewaji University, Gwalior (MP) has also honoured him as Honorary Member of their Board of Studies since 2014 and 2015. Subsequently, he was also honoured as honorary visiting Professor of Teerthankar Mahaveer Dental College and Research Centre, Moradabad, Uttar Pradesh and Vananchal Dental College and Hospital under Nilamber Pitamber University, Palamou, Jharkhand. Further, the applicant was also selected as President, Dentist Council of India, New Delhi in 2015 and all such information regarding his Honorary Visiting Professor was already intimated to the Director of

Medical Education, Swasthya Bhawan on 27th January 2016 (Annexure –A). In the meantime, as no rejection order with regard to voluntary retirement was communicated to him, therefore, as per the application for voluntary retirement dated 22.06.2016, the applicant stopped attending the office after 22.09.2016. However, with regard to his stopping of pension and voluntary retirement related issue, the applicant had already filed one OA No.841 of 2017. In the meantime, the applicant was served with a show cause notice dated 2.8.16 (Annexure –H) asking for show-cause on the allegations that the applicant has accepted honorary teaching designation from Nilamber Pitamber University, Palamou, Jharkhand and as per Dentist Council of India u/s.3(d) of Dentist Act 1948, permission of the State Government before accepting teaching designation from any University is mandatory. The applicant being an employee of the State Government as well as regular faculty did not obtain this necessary prior permission

4. The applicant vide his reply to show-cause dated 8.8.16 had submitted that Section 3(d) of the Dentist Act 1948 is not relevant in the instant case but as per Rule 5 of the West Bengal Services (Duties, Rights & Obligation) Rules 1980, no previous sanction of Government/permission of Government is required for any honorary work for special and charitable in nature and since he has accepted the honorary teaching designation, thus the same is permissible under the relevant rules (Annexure I).
5. However, the Joint Secretary to the Government of West Bengal, Department of Health & Family Welfare vide Memo dated 30.03.2017 issued a Memorandum of Charges proposing to hold enquiry under Rule 10 of the West Bengal Services (CCA) Rules 1971 (Annexure J) (which was received by the applicant on 17.05.2017). In respect to the said charge sheet, the applicant filed his reply on 25.05.2017 requesting further to drop the charge sheet on the basis of the reply (Annexure K).
6. However, instead of dropping the said charge sheet, the applicant received another Memo dated 09.10.2017 by the Joint Secretary to the Government of West Bengal, Department of Health & Family Welfare whereby fresh Article of Charges was served upon the applicant alleging that the applicant while acting as Professor and Head of Department of Dentistry, Calcutta Medical College had accepted offer and was summarily appointed as Honorary Visiting Professor at Teerthankar Mahaveer Dental College and Research Centre, without

- obtaining permission from the Government of West Bengal (Annexure L).
7. In respect to that, the applicant submitted in his reply dated 06.11.2017 (Annexure M). Thereafter, the applicant was directed to appear before the Enquiry Officer at his chamber on 23.12.2017 at 12.30 for personal hearing along with other relevant documents vide Notice on 09.11.2017 (Annexure N). However, the authority proceeded with the disciplinary proceeding without any preliminary enquiry or considering the reply of the applicant. Being aggrieved with, the applicant has filed the instant application.
 8. The respondents have filed their written statements wherein it has been stated that the applicant had joined Teerthankar Mahaveer Dental College and Research Centre and Vananchal Dental College & Hospital under Nilamber Pitamber University, Palamou, Jharkhand as honorary visiting professor but in support of his claim he could not submit the documents as to prove that those posts are honorary. It has been further stated that the applicant did not take any permission for leave to impart teaching and training as honorary faculty at aforesaid institution, thus he has violated the service rules. Further, it has been submitted that as the applicant has accepted the TA, DA and expenses for visiting, therefore it is not a Honorary post.
 9. The applicant has filed his rejoinder wherein it has been stated that he has duly intimated to the state respondents with regard to his honorary teaching at Nilamber Pitamber University, Teerthankar Mahaveer Dental College and Research Centre, Moradabad. It has been further submitted that in the charge sheet, there was no charge that he had taken unauthorised leave in violation of service rules to impart training to the students of the other university and also to attend meeting frequently of Dental Council of India rather as and when he was intended to visit the other university as honorary professor, he had submitted applications for granting permission before the Principal, Calcutta Medical College, which would be found from the records, if called for. He was elected as Honorary President, Dental Council of India for the next term on 11th June 2015. It has been further submitted that he had never received any TA, DA and other allowances. Therefore, the applicant had submitted that the allegations are baseless as there is no violation of any service rules.
 10. Heard both the parties and perused the records. It is noted that the applicant has mainly challenged the charge sheets dated 30.03.2017 and 09.10.2017 whereby the applicant was alleged that without

obtaining prior permission from the Government of West Bengal, he had accepted the honorary teaching designation from Nilamber Pitamber University, Madhya Pradesh in violation of Rule 3 of West Bengal Service (Duties, Rights & Obligation of the Government employees) Rules 1980. It has further alleged that the applicant has violated Section 3(d) and 3(e). In view of the above, it is observed that the main contention of the respondent authority is that while accepting any honorary posts, the applicant did not take any prior permission from the authority under various rules.

However, as per the applicant, there is no need to take any prior permission from the authority and the applicant had already informed the authority as per the provision of the service rules.

11. In the above facts & circumstances, let us examine whether the rules provide any such provision for prior permission or not.

Section 3(d) and 3(e) of the Dentistry Act 1948 stipulates inter alia:-

“3(d) one member from each University established by law in the State which grants a recognised dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the court, from amongst the members of the Dental Faculty of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;
“(e) one member to represent (each State) nominated by the Government of each such State from among persons registered either in a medical register or a dental register of the State;”

From the perusal of the Dentist Act, 1948 along with the above provisions, it is observed that the aforesaid act made regulations for the provision of the Dentistry and for that purpose to constitute Dental Council and accordingly Section 3 of the Dentist Act 1948 deals with the Constitution of composition of the Dental Council of India, where certain provision were made as to how to elect the members of that council, which has no relevancy with the service condition of State Government employee

as the members of the council may be any dentists other than the State Government employee.

Section 3 of the West Bengal Services (Duties, Rights and Obligations of the Government employee) Rules 1980 deals with the provisions of duties, which is as follows:-

“Rule 3(5): When in the discharge of his duties a Government employee is called upon to decide a matter in which he or a relation of his financially or otherwise interested, every such Government employee shall, at the earliest opportunity, bring this fact in writing to the notice of the authority to whom he is subordinate;”

From the perusal of the Rule 3(5), it is noted that 3(5) deals with the duties of a Government employee to bring in writing to the notice of the authority with regard to any matter where the concern employees financially or otherwise interested, should inform the authority at the earliest opportunity but there is no such provisions for taking prior permission. Therefore, the allegation of for not taking prior permission does not arise. However, the applicant had intimated the authority about his joining of honorary post which has not been denied by the respondents.

In view of the above, in our opinion, the applicant has not violated any provision of Section 3 of the West Bengal Services (Duties, Rights and Obligations of the Government employee) as alleged. Therefore, we quash and set aside Memos dated 30.03.2017 & 09.10.2017 as well as Notice dated 09.11.2017 as per the above observation. Accordingly, OA is allowed with no order as to costs.

**P. RAMESH KUMAR
MEMBER(A)**

**URMITA DATTA (SEN)
MEMBER (J)**