

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal.
& The Hon'ble Dr. Subesh Kumar Das

Case No – OA 249 of 2018.

Dr. Nilay Biswas – Vs- State of W.B. & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>02 16.07.2018.</p>	<p>For the Applicant : Mr. S. Ghosh, Mr. R.K. Mondal, Advocates.</p> <p>For the State Respondents : None.</p> <p>The matter was taken up on 11th May, 2018 when, inspite of service of notice, none had appeared on behalf of the respondents. On that day, direction was issued to file reply within four weeks and rejoinder, if any, within two weeks thereafter. We find from record that no reply has been filed by the State. Today also none appears on behalf of the respondents.</p> <p>In this application, the petitioner has challenged the order dated 5th March, 2018 passed by the Director of Medical Education, West Bengal, the respondent no. 2 rejecting his letter of resignation dated 7th August, 2018 .</p> <p>It is submitted by the Ld. Advocate for the applicant that the issue stands covered by the Judgement of the High Court passed on 18th February, 2016 in W.P.S.T No. 22 of 2016 (Dr. Debarati Chattopadhyay –Vs- The State of W.B. & Ors) wherein it has been held that</p>	

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	<p>State cannot refuse to accept the letter of resignation. Submission is that the matter was heard by the Hon'ble Supreme Court and an order was passed on 23rd February, 2016 in favour of the applicant. It is submitted by the Ld. Advocate for the applicant that the petitioner is not entitled to get any superannuation benefit and if the application of the petitioner for voluntary resignation is accepted , he is only entitled to get provident fund dues.</p> <p>Heard the Ld. Advocate for the applicant. We find that the issue stands covered by the judgement of the High Court passed on 18th February, 2016 in W.P.S.T. No. 22 of 2016 wherein it was held as under:</p> <p style="text-align: center;">“.....It is evident from a bare perusal of the Rule that a person who tenders his/her resignation without giving notice can at best be liable for forfeiture of his/her salary for the period by which the notice falls short. The State can in no manner refuse to accept the letter of resignation. The submission of the learned counsel</p>	

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	<p>for the State that it is because of the lack of Doctors and Specialists in the state that the resignation has not been accepted, is unsustainable. The State cannot prevent a person from improving his/her prospects and career in some other organisation. There is no provision in the Rules by which a person is duty bound to continue in employment of the State Government endlessly and in perpetuity. Fortunately, we are not living in a regime where the State can decide the career for its citizens; nor can it bind a person to continue for ever in service without there being any law for that purpose. The State cannot dictate to its citizens the career opportunities that he/she will avail of.</p> <p>We are convinced that the action of the State in not</p>	

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	<p>releasing the petitioner is illegal, arbitrary, whimsical and capricious and without any foundation of law. We, therefore, set aside the impugned order of the Tribunal. The State is directed to accept the petitioner's resignation and issue a release order by the close of the working hours today so that the petitioner can join her new place of employment tomorrow, which is the date of joining....."</p> <p>In view of the submission made and in view of the judgement delivered by the Hon'ble High Court in WPST 22 of 2016, the impugned order dated 5th March, 2018 passed by the Director of Medical Education & Ex-Officio Secretary, Department of Health & Family Welfare, Government of West Bengal, the Respondent No. 2 is set aside and quashed. The application is allowed.</p> <p>The Principal Secretary, Department of Health & Family Welfare , Government of West Bengal, Respondent No. 1 is directed to accept the letter of resignation dated 7th August, 2017 praying for</p>	

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Skg.	<p>resignation within four weeks from the date of presentation of a copy of the certified copy of this order.</p> <p>No order as to cost.</p> <p>Urgent Photostat certified copy of this order, if applied for, be granted by the parties on priority basis.</p> <p>(Dr. Subesh Kumar Das) Member (A)</p> <p>(Soumitra Pal) Chairman.</p>	

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