

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

Hon'ble Justice Soumitra Pal, Hon'ble Chairman &
 Hon'ble Dr. Subesh Kumar Das, Administrative Member.

Case No. OA 254 of 2019.

DR. TARUN PAUL - VERSUS- THE STATE OF W.B. & OTHERS.

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>6</p> <hr/> <p>24.9.2019.</p>	<p>For the Applicant : Mr. M.N. Roy, Advocate.</p> <p>For the State Respondents : Mr. B.P. Roy, Advocate.</p> <p>In this application Dr. Tarun Paul, the applicant, who had joined service on 3rd June, 1993 under the West Bengal Health Services as Medical Officer and now posted as RMO-cum-clinical Tutor in the department of Surgery, North Bengal Medical College and Hospital, has prayed for several reliefs, the relevant portion of which is as under :-</p> <p><i>“(a) An order do issue thereby setting aside/quashing the Memo No. ME/CC-04-19/Part-I/M/570(4) dated 13.03.2019 issued by the Respondent no. 1 with immediate effect and after setting aside/quashing the memo dated 13.03.2019 direct the Respondent No. 1 to issue order of Voluntary Retirement from service in favour of the applicant within a stipulated time period.</i></p> <p><i>(b) An order do issue directing the concerned respondent authorities to forthwith issue “Release Order” in favour of your applicant without causing any further</i></p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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><i>delay.</i></p> <p><i>(c) An order to issue directing the respondent authorities to accept the prayer dated 10.08.2016 for Voluntary Retirement under Rule 75(aaa) of West Bengal Service Rules, Part-I read with Government Order vide Memorandum No. 6620-F Calcutta, the 20th August, 1981 within a stipulated time period and forthwith thereafter disburse all retiral benefits in accordance with law after issuance of specific order allowing your applicant to retire voluntarily from service, within a stipulated time period.</i></p> <p><i>(d).....</i></p> <p><i>(e).....</i></p> <p><i>(f) An order do issue thereby setting aside/quashing the reasoned order dated 10.05.2019 passed by the A.C.S. (Additional Chief Secretary), Department of Health & Family Welfare, Govt. of West Bengal , which has been communicated upon the applicant vide No. ME/CC-04-2019/Part-1/M/1106 dated 22.5.2019 with immediate effect, and after setting aside issue necessary orders thereby allowing your applicant to retire voluntarily from service with effect from 10.11.2016 within a stipulated time period...".</i></p> <p>It is submitted by Mr. M.N. Roy, learned advocate</p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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>for the applicant that since the issue is covered by the order of the Tribunal passed in OA 346 of 2015 (Dr.Ashok Kumar Maiti and Another –Vs- The State of West Bengal and Others) as well as the judgement of the High Court passed in WPST 26 of 2015 (State of West Bengal & Others –Vs- S.K. Ghosh) and as from the orders passed by the Tribunal, no order has been granted in favour of the State respondent by the High Court, appropriate order may be passed quashing the order under challenge and the respondents may be directed to accept the application for voluntary retirement. Submission is though the applicant has mentioned about the “ailments and others” being the reason for voluntary retirement, as rule 75(aaa) of the West Bengal Service Rules Part-I speaks of grant of voluntary retirement if the applicant completes fifty years of age and completes twenty years of service unless a Government employee is under suspension, appropriate order may be passed.</p> <p>Mr. B.P. Roy, learned advocate appearing on behalf of the State respondent submits that the impugned order dated 10th May, 2019 passed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of W.B. appearing at page 6</p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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>of the supplementary application is just and proper. According to him since from the judgement passed by the Tribunal on similar issue writ petition filed before the High Court is pending, no order may be passed. However, on a query, it is submitted that no interim order has been passed in the matter pending before the High Court.</p> <p>Heard Mr. M.N. Roy and Mr. B.P. Roy, learned advocates for the parties.</p> <p>The relevant portion of the impugned order passed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal – respondent no. 1 is as under :-</p> <p><i>“...And whereas, the State has preferred an appeal being W.P.S.T. No. 80 of 2017 before the Hon’ble High Court at Calcutta against the judgement and order dated 3rd January, 2017 passed in O.A. No. 346 of 2015 (Dr. Ashok Kumar Maiti and Others vs The State of West Bengal). At the same time, challenging the self same judgement, the petitioners namely Association of Health Services Doctors, West Bengal, have also preferred an appeal before the Hon’ble High Court at Calcutta being WPST 130 of 2017 (Association of Health Services Doctors West Bengal –Vs- The State of West Bengal). Besides that,</i></p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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><i>the State in another identical matter has also preferred another appeal, before the Hon'ble High Court at Calcutta vide WPST no. 37 of 2019 (The State of West Bengal & Ors-Vs- Dr. Mir Samser Zaman) arising out of the judgement dated 10.05.2018 passed by the Hon'ble WBAT in O.A. No. 487 of 2017 (Dr. Mir Samser Zaman-Vs- The State of West Bengal & Ors).</i></p> <p><i>Now, after careful consideration of the entire facts and circumstances of this case in the backdrop of the present situation, the applicant having deliberately failed to appear before the medical board on two successive occasions to substantiate his ground of illness which forms the basis for seeking voluntary retirement from service, his prayer for voluntary retirement from service dated 10.08.2016 is hereby considered and rejected..."</i></p> <p>It is clear from the impugned order that the respondent no. 1 has accepted the fact that on similar issue the State Government did not succeed before the Tribunal and writ petition has been filed challenging the order passed by the Tribunal and is pending. As evident from the submission of the learned advocates for the parties there is no stay with regard to the judgement</p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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>passed by the Tribunal. Hence the judgement passed in OA 346 of 2015 covers the field. It is an accepted position of law that a judgement passed by a judicial forum, not stayed by the higher forum, has to be accepted. It is to be borne in mind that though the applicant in his application for voluntary retirement has mentioned that "ailments and others" being the reasons for voluntary retirement, however, perusing rule 75(aaa), we find that permission for voluntary retirement of a Government employee who has completed fifty years of age and twenty years of service can be withheld only if he , who seeks to retire, is under suspension.</p> <p>Therefore, as the judgement passed by the Tribunal on a similar issue has not been stayed by the High Court and the issue is covered by the judgement passed in OA 346 of 2015 and keeping Rule 75(aaa) in mind, the impugned order dated 10th May, 2019, appearing at page 6 of the supplementary affidavit, is set aside and quashed. The application is allowed. Accordingly the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal – respondent no. 1 is directed to accept the application of the applicant for voluntary retirement</p>	

ORDER SHEET

Form No.

DR. TARUN PAUL.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 254 of 2019.**

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
Skg.	<p>dated 10th August, 2016 with effect from 1st December, 2016 within twelve weeks from the date of presentation of a copy of the certified copy of this order and shall disburse the pensionary benefits and other allowances, as admissible which have accrued under the law in favour of the applicant.</p> <p>(Subesh Kumar Das) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	