

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Dr.Subesh Kumar Das (Administrative Member)

Case No. OA-443 OF 2019

DR. GOUR PADA NAYEK Vs. STATE OF WEST BENGAL.

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 style="text-align: center;"><u>02</u> 30.07.19</p>	<p>For the Applicant : Mr.M.N.Roy Mr.G.Halder Advocate</p> <p>For the Respondent : Mr.S.Ghosh Advocate</p> <p>Affidavit of service filed today be kept on record. As prayed for leave granted to correct the prayer in page 12 of the application.</p> <p>In this application, the applicant, who had joined as a Medical Officer in the West Bengal Health Services cadre under the Department of Health and Family Welfare, Government of West Bengal on 12th January, 1991 and now posted at M.J.N.Hospital, Cooch Behar, has challenged the order dated 16th April, 2019 passed by the Additional Chief Secretary, Health and Family Welfare Department, Government of West Bengal, Kolkata, the Respondent no. 2, rejecting the prayer for voluntary retirement, appearing at pages 60 and 61 of the application, communicated by letter dated 2nd May, 2019 issued by the Assistant Director of Health Services (P&E), West</p>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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>Bengal. It is submitted by Mr.M.N.Roy, learned advocate for the applicant that since the issue is covered by the judgement of the Tribunal passed in OA-346 of 2015 (Dr.A.K.Maiti & Another Vs. State of West Bengal & 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 interim order has been granted by the High Court, appropriate order may be passed quashing the order under the challenge and to direct the respondents to accept the application for voluntary retirement. On a query, Mr.Roy, submits that the applicant has stopped attending duties from 1st December, 2016.</p> <p>Mr.S.Ghosh, learned advocate for the State respondents submits that the order dated 16th April, 2019 passed by the respondent No. 1 is just and proper. According to him from the judgements delivered by the Tribunal, writ petitions have been filed before the High Court which are pending. However, on a query, it is submitted that no interim order has been passed.</p>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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>Heard Mr.Roy and Mr.Ghosh. In this application, the applicant has prayed for certain reliefs, the relevant portion of which are as under:</p> <p>(a) <i>An order do issue thereby setting aside/quashing the rejection of prayer for Voluntary Retirement from service pertaining to the applicant herein vide Memo No. 1G-46-2016/Pt. I A2296 Dated Kolkata 02.05.2019 henceforth.</i></p> <p>(b) <i>An order do issue thereby setting aside/quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein vide memo No. 1G-46-2016/Pt. I A 2296 Dated Kolkata 02.05.2019 and after setting aside direct the concerned respondent authorities to allow your applicant to retire voluntarily from service after issuance of specific order to that effect within a stipulated time period taking into consideration the letter and spirit of Judgment Dated 03.01.2017 delivered in the matter of Dr.Ashok Kumar Maiti and Others – Versus- The State of West Bengal & Others in exercise of the relaxation clause stipulated in</i></p>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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>Rule 3A of the West Bengal Service Rules, Part-I, 1971 within a stipulated time period.</i></p> <p><i>(b1) An order do issue directing the concerned respondent authorities to forthwith issue "Release Order" in favour of your applicant without causing any further delay.</i></p> <p><i>(c) An order do issue directing the respondent authorities to accept the prayer dated 30.08.2016 for Voluntary Retirement under Rule 75 (aaa) of West Bengal Service Rules, Part-I within a stipulated time period.</i></p> <p><i>(d) An order do issue thereby setting aside/ quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein vide Memo No. 1G-46-2016/Pt. I A2296 Dated Kolkata 02.05.2019 and after setting aside direct the concerned respondent authorities to forthwith 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>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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>The relevant portion of the impugned order passed by the respondent no. 2 is as under:</p> <p style="text-align: center;"><i>“And whereas, all the above mentioned three appeals are pending before the Hon’ble High Court at Calcutta and the same may be taken up for hearing anytime as and when the business of the Hon’ble High Court permits.</i></p> <p style="text-align: center;"><i>Now therefore, after giving the incumbent patient hearing and after considering the entire gamut of the situation and in light of the Finance Department notification No. 695-F (P) dated 07.02.2014 inserting the Rule 75 (aaaa) WBSR Part-I, the prayer of the incumbent for Voluntary Retirement cannot be accepted since the incumbent has applied for Voluntary Retirement after coming into effect of the said notification.</i></p> <p style="text-align: center;"><i>Thus the above mentioned prayer of the concerned incumbent is 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 respondents did not succeed before the Tribunal and three writ petitions have been filed</p>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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>challenging the judgements passed by the Tribunal and are pending. As evident from the submission of the learned advocates for the parties there is no stay with regard to the three judgements 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. Therefore, as the judgement passed by the Tribunal on similar issue has not been stayed by the High Court and as the issue is covered by the said judgement in OA-346 of 2015, the impugned order dated 16th April, 2019, rejecting the prayer for voluntary retirement, appearing at pages 60 and 61 of the application, is therefore set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, Kolkata, the Respondent no. 1 is directed to accept the application of the applicant for voluntary retirement dated 30th August, 2016 with effect from 1st December, 2016 within eight weeks from the date of presentation of a copy of the certified copy of this order and disburse the</p>	

ORDER SHEET

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No.

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
BLR	<p>pensionary benefits and other allowances as admissible under the law which have accrued in favour of the applicant.</p> <p style="text-align: center;">(S.K.DAS) MEMBER (A)</p> <p style="text-align: center;">(SOUMITRA PAL) CHAIRMAN</p>	