

**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-454 OF 2019**

**DR. ASIM KUMAR MONDAL**

**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>03</u> 30.07.19</p>	<p>For the Applicant : Mr.S.N.Ray Advocate</p> <p>For the Respondent : Mr.S.Ghosh Advocate</p> <p>For the A.G.W.B. : Mr.B.Mitra (Departmental Representative)</p> <p>In this application, Dr.Asim Kumar Mondal, the applicant, who had joined as Medical Officer in the West Bengal Health Services cadre under the Department of Health and Family Welfare, Government of West Bengal on 12<sup>th</sup> February, 1988, has prayed for a direction upon the respondents to set aside the order dated 17<sup>th</sup> May, 2019 issued by the Director of Health Services, Government of West Bengal, Kolkata, the respondent No. 2, whereby his application dated 30<sup>th</sup> June, 2014 for voluntary retirement has been rejected.</p> <p>It is submitted by Mr.S.N.Ray, learned advocate for the applicant that since the issue is covered by the order of the Tribunal passed in OA-346</p>	

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	<p>of 2015 (Dr.A.K.Maiti &amp; Another Vs. State of West Bengal &amp; Others) as well as the judgement of the High Court passed in WPST-26 of 2015 (State of West Bengal &amp; 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 to quash the order under the challenge and to direct the respondents to accept the application for voluntary retirement. On a query, Mr.Ray submits that the applicant has stopped attending duties from 30<sup>th</sup> September, 2014.</p> <p>Mr.S.Ghosh, learned advocate for the State respondents submits that the order dated 17<sup>th</sup> May, 2019 passed by the respondent No. 2 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> <p>Heard Mr.Ray and Mr.Ghosh. In this application, the applicant has prayed for certain reliefs, the relevant portion of which are as under:</p>	

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	<p>(a) <i>An order do issue directing the Respondent Authorities to issue/ grant mandatory order for granting voluntary retirement to the applicant after quashing/ setting aside/ rescinding the reasoned order being No. 1A-219-2016/Pt. II A 2673, passed by the DHS pursuant to the direction of this Hon'ble Tribunal in OA No. 120 of 2019.</i></p> <p>(b) <i>An order do issue directing the concerned respondent authorities to forthwith release the due and admissible retiral benefits &amp; pension including arrears thereof.</i></p> <p>The relevant portion of the impugned order passed by the respondent no. 2 is as under:</p> <p><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><i>Now, therefore, after careful consideration of the facts &amp; circumstances of the instant case and in light of the</i></p>	

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	<p><i>Finance Department notification No. 695-F (P) dated 07.02.2014, which has been upheld by the Hon'ble West Bengal Administrative Tribunal, it is ordered that the prayer of Dr.Asim Kumar Mondal for Voluntary Retirement cannot be accepted since the incumbent has applied for Voluntary Retirement after coming into effect of the said notification by which the Rule 75 (aaaa) W.B.S.R. Part-I has been inserted.</i></p> <p><i>Thus, the case is disposed of with the aforesaid order".</i></p> <p>It is clear from the order under challenge that the respondent no. 2 has accepted the fact that on similar issue the State respondents could not succeed before the Tribunal and three writ petitions have been filed 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 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.</p>	

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BLR	<p>Therefore, as the judgement passed by the Tribunal on similar issue has not been stayed by the High Court and the issue is covered by the said judgement in OA-346 of 2015, the impugned order dated 17<sup>th</sup> May, 2019, appearing at pages 44 and 45 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, earlier designated as the Principal Secretary, Department of Health and Family Welfare Department, Government of West Bengal, the Respondent no. 1 is directed to accept the application of the applicant for voluntary retirement dated 30<sup>th</sup> June, 2014 with effect from 1<sup>st</sup> October, 2014 within eight 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 under the law which have accrued.</p> <p style="text-align: center;">(S.K.DAS) MEMBER (A)</p> <p style="text-align: center;">(SOUMITRA PAL) CHAIRMAN</p>	