

**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 499 of 2019.**

**DR. SUBIR KUMAR MUKHAPADHYAY – VERSUS- THE STATE OF WEST BENGAL & 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>3 30.7.2019.</p>	<p>For the Applicant : Mr. S.N. Ray, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Advocate.</p> <p>For the Principal Accountant General (A &amp; E) West Bengal: Mr. B. Mitra, Departmental representative.</p> <p>In this application Dr. Subir Kumar Mukhapadhyay, the applicant, who had joined as Medical Officer in the West Bengal Health Services on 18<sup>th</sup> February, 1986, has challenged the reasoned order dated 8<sup>th</sup> May, 2019 passed by the Additional Chief Secretary, Department of Health &amp; Family Welfare, Government of West Bengal rejecting his application for voluntary retirement.</p> <p>Mr. S. N. Ray, learned advocate for the applicant, submits that since the issue is covered by the order of the Tribunal passed in OA 458 of 2019 on 22<sup>nd</sup> July, 2019, Dr. Partha Sanyal –versus- State of West Bengal, appropriate order may be issued to the respondents to accept the application for voluntary retirement.</p>	

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THE STATE OF WEST BENGAL &amp; OTHERS.

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	<p>Mr. S. Ghosh, learned advocate for the State respondents, submits that the order dated 8<sup>th</sup> May, 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> <p>Heard Mr. Ray and Mr. Ghosh, learned advocates for the parties and Mr. Mitra, the departmental representative. In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under:-</p> <p>“.....(a) An order quashing the Reasoned order dated 15.05.2019 in pursuance of the Hon’ble Tribunal’s Order in O.A. No. 108 of 2019 passed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal.</p> <p>(b) An order do issue directing the Respondent Authorities to issue/grant necessary orders in respect of entitling your applicant to avail Voluntary Retirement with effect from the date as chosen by your applicant.....”.</p>	

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	<p>The relevant portion of the impugned order passed by the respondent no. 1 is as under :-</p> <p>“.....Now therefore, after careful consideration of the entire gamut of the case and in light of the Finance Department notification No. 695-F (P) dated 07.02.2014, it is ordered, that the prayer 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) WBSR Part-I, has been inserted....”.</p> <p>It is clear from the submission advanced by the learned advocate for the parties that on similar issue the State respondents did not succeed before the Tribunal and writ petitions have been filed challenging the orders 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 in similar matters. 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 the issue is</p>	

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Skg.	<p>covered by the judgement passed in OA-458 of 2019, the impugned order dated 8<sup>th</sup> May, 2019 appearing at page 43 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 14<sup>th</sup> September, 2018 with effect from 14<sup>th</sup> December, 2018 within twelve weeks from the date of presentation of a copy of the certified copy of this order and disburse the pensionary benefits and other allowances as admissible under the law which have accrued in favour of the applicant.</p> <p>(Subesh Kumar Das) Member (A).</p>	<p>(Soumitra Pal) Chairman.</p>