

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 654 of 2019.

DR. BHASKAR NARAYAN SARKAR - 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>2</p> <hr/> <p>17.9.2019.</p>	<p>For the Applicant : Mr. G.P. Banerjee, Mr. S. Roy Chowdhury, Advocates.</p> <p>For the State Respondent : Mrs. S. Agarwal, Advocate.</p> <p>Affidavit of service filed be kept on record. Since despite service of notice, none has appeared on behalf of the respondents, Mrs. S. Agarwal, learned advocate, who normally appears on behalf of the State respondents, is requested to appear in the matter. The Legal Remembrancer, West Bengal is directed to regularise her appointment. Let a copy of the application be served on Mrs. Agarwal, which is served and accepted.</p> <p>In this application, the applicant, who had joined as Medical Officer in the West Bengal Health Service cadre under the Department of Health and Family Welfare, Government of West Bengal on 27TH December, 1988 and now posted as Medical Officer, Blood Bank, MR Bangur Hospital, Tollygunge, Kolkata has challenged the order dated 12th April, 2019 passed by the Additional Chief Secretary, Health and Family Welfare Department, Government of West Bengal, Kolkata, – the respondent no. 1, communicated under letter dated 2nd May, 2019</p>	

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	<p>issued by the Assistant Director of Health Services (P & E) West Bengal appearing at pages 63 to 65 of the application. It is submitted by Mr. G.P. Banerjee, learned advocate for the applicant that since the issue is covered by the judgement of the Tribunal passed in OA 346 of 2015 (Dr. Ashok Kumar Maiti & Ors – versus- State of West Bengal & Others) as well as the judgement of the High Court passed in W.P.S.T. No. 26 of 2015 (State of West Bengal & Ors – vs- Dr. Sraban Kumar Ghosh) and as from the judgement passed by the Tribunal, no interim order has been granted by the High Court, appropriate order may be passed quashing the order under challenge and to direct the respondents to accept the prayer for voluntary retirement. It appears from the judgement of the High Court passed in W.P.S.T. 26 of 2015, SLP was filed which was dismissed by the Supreme Court on 26th October, 2015.</p> <p>Mrs. S. Agarwal, learned advocate for the State submits that the order dated 12th April, 2019 passed by the respondent no. 1 is just and proper. According to her from the judgement delivered by the Tribunal writ petitions have been filed before the High Court which are pending. However, on a query, it is</p>	

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	<p>submitted that no interim order has been passed by the High Court.</p> <p>Heard Mr. Banerjee and Mrs. Agarwal.</p> <p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>“.....A mandatory direction do issue upon the concerned respondent authorities, particularly upon the Additional Chief Secretary, Health & Family Welfare Department, Government of West Bengal, the respondent no. 1 herein, to forthwith grant sanction of the prayer of the applicant dated 02.05.2017 for voluntary retirement from service with effect from 01.08.2017 AN having been fulfilled all preconditions thereof under the strength and force of Sub-Rule (aaa) of Rule 75 of WBSR, Part-I and also so announced and pronounced in different judicial interventions after setting aside the impugned order of rejection dated 12.04.2019 of the authority concerned all being Annexure-‘A’,‘B’,‘C’,‘D’ and ‘E’ herein as well as to disburse all permissible retiring benefits in favour of the applicant and to command them to act strictly in accordance with law;...”</i></p> <p>The relevant portion of the order impugned</p>	

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	<p>passed by the respondent No. 1 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 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><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 respondent did not succeed before the Tribunal and three writ petitions have been filed challenging the order passed by the Tribunal are pending. As evident from the submission of the learned advocates for the parties that there is no stay with regard</p>	

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Skg.	<p>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 the 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 covered by the said judgement in OA 346 of 2015, the impugned order dated 12th April, 2019, appearing at pages 64 and 65 of the application , is therefore set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, 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 2nd May, 2017 with effect from 1st August, 2017 within ten weeks from the date of presentation of a copy of certified copy of this order and shall disburse 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>

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