

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-659 OF 2019

DR. ARDHENDU SEKHAR HAZRA Vs. THE STATE OF WEST BENGAL & 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 style="text-align: center;"><u>03</u> 30.09.19</p>	<p>For the Applicant : Mr.G.P.Banerjee Advocate</p> <p>For the Respondent : Mr.S.Ghosh Advocate</p> <p style="text-align: center;">Affidavit of service filed today be kept on record.</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 15th June, 1983 and now posted as Medical Officer, Jhargram District Hospital, Paschim Medinipore, has challenged the order dated 16th April, 2019 passed by the Additional Chief Secretary, Health and Family Welfare Department, Kolkata, the respondent no. 1, passed in the compliance with the directions contained in the order dated 11th January, 2019 in OA-1038 of 2018 appearing at page 61 of the application. Mr.G.P.Banerjee, learned advocate for the applicant submits that since the issue is covered by the judgement of the Tribunal passed in OA 346 of 2015 (Dr.Ashok Kumar Maiti & Ors. Vs. The State of West</p>	

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	<p>Bengal & Ors.) as well as the judgement of the High Court passed in WPST-26 of 2015 (The State of West Bengal & Ors. Vs. Dr.Sraban Kumar Ghosh) and as from the judgement passed by the Tribunal, no order has been passed in favour of the State 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 WPST-26 of 2015, SLP was filed which was dismissed by the Supreme Court on 26th October, 2015.</p> <p>Mr.S.Ghosh, learned advocate for the State submits that the order dated 16th April, 2019 passed by the Respondent no. 1 is just and proper. According to him 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 submitted that no interim order has been passed by the High Court.</p> <p>Heard Mr.Banerjee and Mr.Ghosh.</p>	

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	<p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“ a) 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 01.11.2017 for voluntary retirement from service with effect from 31.01.2018 A N 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 16.04.2019 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>	

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	<p>The relevant portion of the order impugned passed by the respondent no. 1 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) WBST 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>	

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	<p>It is an admitted position that the applicant who had completed 50 years of age on 11th February, 2005 and who had also completed 20 years service on 15th June, 2003 is covered under rule 75, sub-rule (aaa) and not under rule 75, sub-rule (aaaa) of WBSR Part-I. It is to be borne in mind that a right which has already accrued in favour of the applicant under rule 75 (aaa) cannot be divested. Hence, the judgement passed in OA-346 of 2015 covers the field. It is an accepted position of law that the judgement passed by the 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 16th April, 2019, appearing at page 65 and 66 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</p>	

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BLR	<p>1st January, 2017 with effect from 31st January, 2018 within twelve weeks from the date of presentation of a copy of the 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 style="text-align: center;">(S.K.DAS) MEMBER (A)</p> <p style="text-align: center;">(SOUMITRA PAL) CHAIRMAN</p>	