

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-770 OF 2019

DR SUJIT KUMAR SARKAR 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>02</u> 05.11.19</p>	<p>For the Applicant : Mr.M.N.Roy Mr.G.Halder Advocate</p> <p>For the Respondent : Mr.S.Ghosh Advocate</p> <p style="text-align: center;">Affidavit of service filed today be kept on record.</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 18th February, 1986 and now posted at M.J.N.Hospital, Cooch Behar, has challenged the order dated 18th July, 2019 passed by the Additional Chief Secretary, Health and Family Welfare Department, Government of West Bengal, Kolkata, the Respondent No. 2 appearing at pages 56 and 57, communicated under the letter dated 24th July, 2019 issued by the Assistant Director of Health Services (P&E), West Bengal appearing at page 55 of the application. It is submitted by Mr.M.N.Roy, learned advocate for the applicant that since the issue is covered by the order of the Tribunal passed in</p>	

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	<p>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 31st October, 2016.</p> <p>Mr.S.Ghosh, learned advocate for the State respondents submits that the order dated 18th July, 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.Roy and Mr.Ghosh. In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under:</p>	

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	<p>(a) An order do issue thereby setting aside/quashing the rejection of prayer relating to Voluntary Retirement from service of your applicant by a reasoned order dated 18.07.2019 which was communicated vide No. 1S-502-2016/Pt. I/A 3768 Dated Kolkata 24.07.2019 henceforth.</p> <p>(b) An order do issue thereby setting aside/quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein by a reasoned order dated 18.07.2019 which was communicated vide No. 1S-502-2016/Pt. I/A 3768 Dated Kolkata 24.07.2019 and after setting aside, direct the concerned respondent authorities to allow your applicant to retire voluntarily from service after issuance of specific order of Release and / or Release him from service 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 terms of Rule 75 (aaa) of the West Bengal Service</p>	

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	<p><i>Rules, Part-I, 1971 within a stipulated time period.</i></p> <p><i>(c) An order do issue thereby setting aside/ quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein by a reasoned order dated 18.07.2019 which was communicated vide No. 1S-502-2016/Pt. I/A 3768 Dated Kolkata 24.07.2019 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> <p>The relevant portion of the impugned order passed by the respondent No. 2 is as under:</p> <p><i>".....And whereas, the petitioners namely Association of Health Services Doctors, West Bengal, have also challenged the said judgement of the Hon'ble WBAT before the Hon'ble High Court at Calcutta vide WP.ST 130 of 2017</i></p>	

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	<p><i>(Association of Health Services Doctors, West Bengal – Vs- The State of West Bengal). Besides that, the State in another identical matter has also preferred another appeal, before the Hon'ble High Court at Calcutta vide WP.ST 37 of 2019 (The State of West Bengal & Ors. –Vs- Dr. Mir Samser Zaman) arising out of the judgement dated 10.05.2018 passed by the Hon'ble WBAT in O.A. No. 487 of 2017 (Dr.Mir Samser Zaman –Vs- The State of West Bengal & Ors.);</i></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 & circumstances of the instant case, in light of the Finance Department notification No. 695-F (P) dated 07.02.2014, which has been upheld by the Hon'ble West Bengal Administrative Tribunal, the prayer for Voluntary Retirement of Dr.Sarkar Cannot be</i></p>	

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	<p><i>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 above mentioned prayer of the applicant is considered and rejected....."</i></p> <p>It is clear from the impugned order that the respondent no. 2 has accepted the fact that on similar issue the State respondents did not succeed before the Tribunal and two 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 two 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, the issue is covered by the said judgement in OA-346 of 2015 and the</p>	

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BLR	<p>impugned order dated 18th July, 2019, appearing at pages 56 and 57 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. 2 now designated as the Secretary , Health & Family Welfare, Government of West Bengal, is directed to accept the application of the applicant for voluntary retirement dated 1st August, 2016 with effect from 31st October, 2016 within eight 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 style="text-align: center;"> (S.K.DAS) MEMBER (A) </p> <p style="text-align: center;"> (SOUMITRA PAL) CHAIRMAN </p>	