

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar
MEMBER(A)**

J U D G E M E N T

-of-

**Case No. OA-841/2017
Along with MA-74 of 2018**

Dr. Dibyendu Mazumder.Applicant .

-Versus-

State of West Bengal & others....Respondents

**For the Applicant :- Mr. Goutam Pathak Banerjee,
Ld. Advocate.**

**For the State Respondent :- Mr. Sankha Ghosh,
Ld. Advocate.**

Judgement delivered on: 5th December, 2018.

**The Judgement of the Tribunal was delivered by:-
Mrs. Urmita Datta (Sen), Member (J).**

J U D G E M E N T

1. The instant application has been filed praying for following reliefs:
 - a) A direction do issue upon the concerned respondent authorities to forthwith set aside/rescind/cancel/quash/withdraw the impugned letters dated 22.05.2017 and 07.08.2017 being Annexure-‘E’ herein of the concerned respondent authorizes causing stoppage of pension of the applicant as well as to forthwith allow regular pension on the strength of the PPO No.111680431/P/16/10/122988 dated 31.08.2016 issued in favour of the applicant by the competent authorities for such and to forthwith reimburse the pension amount in favour of the applicant already stopped with effect from 01.08.2017 and to command them to act strictly in accordance with law;
 - b) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced entire records relating to the applicant’s case and on such production being made, render conscionable justice upon perusing the same;
 - c) And/or to pass such other or further order or orders as to this Hon’ble Tribunal may deem fit and proper.
2. During the pendency of the instant OA, the applicant has filed one MA-74 of 2018, by which he has prayed for addition of one prayer as Prayer 10(d). We have heard both the OA and MA and the prayer in MA has been allowed to add one prayer as 10(d), which is as follows;

“10(d) A direction do issue upon the concerned respondent authorities to forthwith consider and allow the application of the applicant dated 22.06.2016 for voluntary retirement from service with effect from 23.09.2016, being Annexure-‘A’ to the instant Original Application as well as to re-initiate regular pension in favour of the applicant accordingly after proper adjustment of due-drawn account and to command them to act strictly in accordance with law.”
3. As per the applicant, he had initially joined in the service as a Dental Surgeon in the General Group of West Bengal (Basic Grade) Dental Services on 15.06.1982 and was subsequently confirmed on 15.06.1985. Thereafter, on the basis of his option, the applicant joined in the West Bengal Dental Education Services Cadre in the

year 2010 and served the government till the date of 22.09.2016 being the effective date of his voluntary retirement.

It has been submitted by the applicant that earlier he was due to retire on superannuation at the age of 62 years and on that basis his pension papers was sent to the appropriate authority on 2nd February, 2016. In the meantime, the Health & Family Welfare Department, Government of West Bengal had extended the retiring age from 62 years to 65 years vide Notification dated 25.02.2016. However, due to some personal difficulties, the applicant made an application on 22.06.2016 (Annexure A) before the authorities praying for voluntary retirement w.e.f. 22.09.2016 as per the service rules, which was duly forwarded by the Principal, Medical College, Calcutta on 14.07.2016 before the Director of Medical Education, Department of Health & Family Welfare, Swasthya Bhavan, Government of West Bengal. However, since he did not get any response from the authority even by way of rejection, the applicant made another representation dated 16.09.2016 (Annexure B) praying for stopping of payment of his salary and others from 22.09.2016 in view of his earlier representation of voluntary retirement from 22.09.2016.

4. Subsequently, the applicant relinquished his charge of office of the Head of Department of Dental, Medical College Calcutta, before the Director of Medical Education and Ex-Officio Secretary, Government of West Bengal on 22.09.16 after completion of his long service tenure of 34 years 3 months 7 days with a prayer for expeditious disposal of his retiring pension and other benefits (Annexure C). In the meantime, one PPO dated 31.08.2016 with Sanction No.420(i) dated 2.2.2016 was released fixing his pension of Rs.28,015/- (Annexure D). However, after relinquishment of charge on the ground of voluntary retirement w.e.f. 22.09.2016, the authorities concerned took no steps to consider the representation of the applicant. On the contrary, the applicant was served with a copy of letter issued by the Office of the Principal Accountant General(A&E), West Bengal addressed to the Assistant General Manager, United Bank of India dated 22.05.17, whereby the said authorities of the concerned bank was advised to write both the half of the said PPO of the applicant with a non-payment certificate thereon. However, surprisingly the concerned bank being neither the employer nor being the pension disbursement authority of the applicant vide their

letter dated 07.08.17 (Annexure E) passed an information to the applicant in respect of stopping payment of his pension w.e.f. 1.8.2017 with a request to return additional portion of the applicant PPO to their branch office.

Being aggrieved with both stoppage of pension as well as getting no response with regard to the voluntary retirement, the applicant has preferred this instant application.

As per the applicant since he had served the department more than 34 years and in his application for voluntary retirement dated 22.6.2016, he had clearly given the three months notice mentioning his date of voluntary retirement w.e.f. 22.09.2016. Thus, his voluntary retirement had automatically come into effect w.e.f. 22.09.2016 as the department never rejected his representation within this stipulated period. Therefore, the applicant has prayed for formal acceptance of voluntary retirement and issuance of pension and other retrial benefits as per law. During the course of hearing the counsel for the applicant has referred the judgement dated 03.01.2017 passed in OA 346 of 2015 Dr. Ashok Kumar Maity & Anrs -Vs- State of West Bengal & Others and has prayed for extension of benefit of the said judgement as the applicant is similarly circumstances to the said applicant.

Though the respondent was granted enough opportunity, the respondents have not filed any reply but the counsel for respondents has submitted one report on behalf of the said respondent wherein they have admitted the factual position and has further submitted that the department had already filed writ petition before the Hon'ble High Court, Calcutta against the order dated 03.01.2017 being WPST NO.80 of 2017 STATE OF WEST BENGAL & OTHERS -VS- DR. ASHOKE KR. MAITY & ANOTHER which is still pending before the Hon'ble High Court.

The counsel for the respondents has submitted that after insertion of Sub Rule 75 (aaaa) of WBSR Part I, 1971 w.e.f. 25.02.2016, the applicant is not entitled to get benefit under Sub Rule 75 (aaa) of WBSR Part I, 1971. Therefore, the applicant is not entitled to get the aforementioned benefit.

We have heard both the parties and perused the records as well as the judgements. It is noted that the main issue involved in the

instant case is whether after insertion of Sub Rule 75 (aaaa) of WBSR Part I, 1971 vide Notification dated 7.2.2014, the applicant is entitled to take voluntary retirement under Rule 75 (aaa) or not. The aforesaid issue was considered by this Tribunal in the judgement dated 03.01.2017 passed in OA 346 of 2017, holding inter alia :-

“Accordingly, we hold that for the incumbents who had fulfilled the preconditions laid down for the purpose in Sub-Rule 75 (aaa), the right to voluntarily retire from service has already accrued to them and, therefore, irrespective of whether or not they have submitted notice for voluntary retirement prior to the date of insertion of the new sub-rule, they shall have the right to voluntarily retire from service in accordance with Sub Rule 75(aaa) of W.B.S.R. Part I, 1971 and that the new Sub-Rule 75(aaaa) shall not be applicable to them.

In view of the above, having regard to the facts of the present case and on perusal of the materials on record, we are of the opinion that the instant application preferred by the applicants is without merit for the reasons discussed above. There is, in our view, no illegality, irregularity or irrationality in the impugned notification dated 7th February, 2014 of the Finance Deptt. Amending Rules 75 of the West Bengal Service Rules, Part-I by way of inserting a new Sub-Rule 75 (aaaa). The application, therefore, fails. Accordingly, we dismiss the application subject, however, to our directions in paragraph 30 and 36 above.”

In the instant case, the applicant had made application praying for acceptance of voluntary retirement w.e.f. 22.09.2016 as per Sub-Rule 75 (aaa) of W.B.S.R. Part I vide letter dated 22.06.2016. However, as the department neither rejected nor accepted his resignation in writing. Being aggrieved he has approached this Tribunal. As per the applicant, he is fulfilling the provision laid down in Sub-Rule 75 (aaa) of W.B.S.R. Part I, 1971, which was already considered by this Tribunal and subsequently by the Hon’ble High Court by judgement dated 22.08.13 passed in OA 724 of 2013 (Dr. Sravan Kr. Ghosh -vs- State of W.B. & Ors.). The said order was further affirmed by the Hon’ble High Court, Calcutta vide their judgement dated 02.02.2015 holding inter alia :-

“Let us now consider whether the authorities concerned are really entitled to refuse voluntary retirement of an employee in terms of the aforesaid provisions of the West Bengal Service Rules, Part-1.

Rule 75 (aaa) of the West Bengal Service Rules, Part-I as well as Note 3 appended below the aforesaid sub-rule are set out hereunder:

Rule 75. *** *** ***

(aaa) any Government employee may, by giving notice of not less than 3 months in writing to the appointing authority, retire from Government service after he has attained the age of 50 years, if he is in Group A or Group B (erstwhile gazetted) service or post, and had entered Government service before attaining the age of 35 years; and in all other cases, after he has attained the age of 55 years, provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this sub-rule.

Note 3 - The appointing authority should invariably keep on record that in his opinion it is necessary to retire the Government employee in pursuance of aforesaid rule in public interest.”

In terms of the aforesaid provisions, it is undisputedly, open to the appointing authority to withhold permission to a government employee under suspension who seeks to retire under the aforesaid sub-rule.

In the present case, the respondent employee concerned is not under suspension. Note 3 appended to the aforesaid sub-rules, however, casts obligation on the appointing authority to keep on record that it is necessary to retire the government employee in public interest which is also not applicable in the instant case.

The appointing authority is, however, not authorised and/or entitled to withhold permission to a government employee to retire in public interest in terms of Note 3. The said Note 3 only empowers the appointing authority to keep on record its opinion that it is necessary to retire the government employee in public interest and not withholding permission to a government employee who voluntarily wants to retire before attaining the age of superannuation. The

appointing authority can only withhold permission to a government employee to retire under the aforesaid sub-rule when the said government employee is under suspension....

In the present case, the authorities concerned namely, the petitioners herein are not entitled to refuse permission or withhold permission to the respondent-employee to retire in terms of the aforesaid Rule 75 (aaa) or even under Note 3 to the said sub-rule.

For the aforementioned reasons, we are not inclined to interfere with the impugned order passed by the learned Tribunal and dismiss this writ petition as we do not find any merit in the same.

The authorities concerned namely, the petitioners herein are directed to implement the directions passed by the learned Tribunal without any further delay and positively on or before 23rd February, 2015.”

The respondent authorities against this order of Hon’ble High Court, Calcutta had preferred SLP being No.15667 of 2015 before the Hon’ble Apex Court and the said SLP was rejected by order dated 26.10.2015.”

Therefore, both the issue relating to sub-rule 75(aaaa) and 75 (aaa) has already been considered by this Tribunal and was also subsequently followed by the co-ordinating bench of this Tribunal in OA-487 of 2017 dated 10.05.2018. From the perusal of the aforementioned judgement as well as the facts of the case, it is observed that the applicant has already fulfilled the conditions laid down in Sub-Rule (aaa) of Rule 75 of W.B.S.R. Part I well before the date of insertion of sub-rule 75(aaaa) i.e. amendment dated 07.02.2014. The applicant has completed 20 years of service as on 15.06.2002, which is much earlier than the date of notification. Therefore, the applicant had already accrued the right to take voluntary retirement as per the aforementioned judgement as admittedly no disciplinary proceeding / suspension is pending against him and he has completed 20 years of service and 50 years of age before the date of insertion of the new sub-rule 75 (aaaa).

Accordingly, the respondents are directed to accept the voluntary retirement and release the dues and admissible retirement benefit counting from the date as mentioned in the voluntary retirement application dated 22.06.2016 and communicate the same

within a period of six weeks from the date of receipt of this order. Accordingly, the OA is **disposed of** with the above observation and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER(A)

URMITA DATTA (SEN)
MEMBER (J)