

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal.  
& The Hon'ble Dr. Subesh Kumar Das

Case No – OA 931 of 2014.

Sibananda Dey @ Shibnanda Dey – Vs\_ State of W.B. & 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>15 13.07.2018.</p>	<p>For the Applicant : Mrs. Malabika Roy Dey, Ld. Adv.</p> <p>For the State Respondents : Mr. R.A. Chowdhury, Ld. Adv.</p> <p>In this application, the applicant , appointed provisionally as a cook on 21<sup>st</sup> November, 1981 and confirmed on 22<sup>nd</sup> December, 1984 subject to satisfactory report with regard to Police verification and Medical examination, has challenged the order of termination dated 18<sup>th</sup> July, 2014 issued by the Director of Health Services &amp; Office of Secretary to the Department of Health &amp; Family Welfare, Government of West Bengal, the respondent no. 2(ii).</p> <p>It appears that the service of the applicant was terminated, as evident from annexure "C", on the following ground :-</p> <p style="text-align: center;"><i>".....And whereas the said Shri Sibnanda Dey joined in service in the forenoon of 22-12-1981 at Bhat Kunda P.H.C. under</i></p>	

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	<p><i>Jamtara BPHC, Burdwan.</i></p> <p><i>And whereas the Dy. Inspector General of Police, Intelligence Branch, 13, Lord Sinha Road, Kolkata – 71 in his No. 7295/S/146/2013/SB-I/VR dated 05-08-2013 has informed that the Government under his No. 996-ISS dated 25-07-2013 of Home Department, Internal Security Branch, Secret Section, Government of West Bengal has declared Shri Sibananda Dey “Unsuitable” for employment to the post of “Cook”.</i></p> <p><i>And as such, on going through the relevant papers/documents in respect of the case of Shri Sibananda Dey, Cook, and after applying my full mind on to it, I, the Director of Health Services &amp; e.o. Secretary to the Department of Health &amp;</i></p>	

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	<p><i>F.W. , West Bengal, being the authority competent to draw disciplinary proceeding and imposition of penalty upon him, hold the view that the said Shri Sibananda Dey has failed to fulfil the criteria laid down in the order of appointment and accordingly order, in accordance with No. 996-ISS dated 25-07-2013 of Home Department, Internal Security Branch, Secret Section, Government of West Bengal that the services of Shri Sibananda Dey be terminated with immediate effect..."</i></p> <p>Challenging the said order, the applicant had moved before this Tribunal. The matter was admitted on 16<sup>th</sup> December, 2014 when directions were issued for filing of affidavits. However, the prayer for Interim order was declined by the Tribunal.</p> <p>Being aggrieved by the order dated 16<sup>th</sup> December, 2014 declining to grant ad-interim order, the</p>	

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	<p>petitioner filed a Writ Petition before the High Court, being WPST No. 30 of 2015 , which was disposed of on 3<sup>rd</sup> February, 2015 by passing an order, the relevant portion of which is as under :-</p> <p style="text-align: center;"><i>“.....Normally, a confirmed employee could not be terminated without initiating any disciplinary proceeding. In any event, the Tribunal has not yet decided the entire issue on merits and directed the parties to file affidavit in the matter.</i></p> <p style="text-align: center;"><i>However, if any interim order is passed to allow the petitioner to join his duties, the same cannot virtually dispose of the original application itself.</i></p> <p style="text-align: center;"><i>The petitioner herein approached the Learned Tribunal challenging the order of termination dated 18<sup>th</sup> July, 2014 and the learned Tribunal considering the balance of</i></p>	

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	<p><i>convenience and inconvenience should have passed an interim order protecting the interests of the said petitioner during the pendency of the original application.</i></p> <p><i>For the aforementioned reasons, we direct the learned Tribunal to decide the issues on merits as early as possible after filing of the affidavits by the parties and pending disposal of the said Original Application, the impugned order passed by the Director of Health Services, West Bengal dated 18<sup>th</sup> July, 2014 is stayed and the respondents are directed to allow the petitioner to resume his duties to the post of Cook immediately.</i></p> <p><i>With the aforesaid directions, we dispose of this writ petition without expressing any</i></p>	

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	<p><i>final opinion with regard to any issue raised by the petitioner herein before the learned Tribunal on merits and the learned Tribunal will be at liberty to decide all the issues on merits without being influenced of any observations made by us in this writ petition.</i></p> <p><i>Needless to mention that the respondent authorities herein will allow the petitioner herein to resume his duties forthwith and pay all admissible salary and allowances regularly.</i></p> <p><i>In the facts of the present case, there will, however, be no order as to costs.....”</i></p> <p>Thereafter, the matter came up for hearing on several occasions. Time to file reply was extended. However, till date no reply has been filed.</p> <p>Learned Advocate for the applicant submits that as the applicant had joined in the year 1981 in</p>	

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	<p>accordance with law and as his services were confirmed in the year 1984, as evident from page 31 of the application, it is surprising that after thirty years of service, he has been found unsuitable by the Director of Health Services on the basis of a police report and has thus been terminated stating no reasons whatsoever. Hence, it is prayed that the order of termination may be set aside and direction be issued for reinstatement. On query it is submitted that after the Hon'ble High Court had passed the order on 3<sup>rd</sup> February, 2015, his client had joined the service and had retired on 31<sup>st</sup> March, 2018 .</p> <p>Learned Advocate for the State submits that though no reply could be filed, the actions are in accordance with law.</p> <p>Heard Learned Advocates for the parties. Evidently, the petitioner had joined in the year 1981. His service was confirmed in the year 1984 which was subject to <i>"satisfactory report of police verification and medical examination"</i>. It appears that he was "Confirmed in the service w.e.f. 22.12.1984" pursuant to the order dated 10<sup>th</sup> November, 1999 passed by the CMOH, Burdwan. Evidently, the impugned order of termination was passed after thirty years from the date of confirmation.</p>	

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	<p>In our view, the contention of the applicant has to be sustained on two grounds. First, as in spite of repeated opportunities, the respondents have not filed any reply controverting the statements in the application, the entire issue is covered by the "Doctrine of Non traverse". Thus the statements made in the application are deemed to have been admitted by the respondents. That apart, it is surprising that after a gap of about thirty years the applicant has been found 'Unsuitable' for appointment and his service has been terminated. Unsuitability has not been spelt out. Hence such action is high handed, arbitrary and illegal. Therefore, for the reasons as stated hereinbefore, the order of termination is set aside and quashed. The application is allowed. Adverse entries, if any, in the service records of the applicant stand automatically deleted. The period of absence, if any, after the order of termination, which has been set aside by this order and subsequent rejoining in service by the applicant pursuant to the interim order passed by the Hon'ble High Court, shall be treated as on duty.</p> <p>Accordingly, the Respondents The Secretary, Department of Health &amp; Family Welfare, Swasthya</p>	



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Skg.	<p>Bhavan and the Director of Health Services, Department of Health &amp; Family Welfare, Swasthya Bhavan, Kolkata, are directed to disburse the salary and pensionary benefits of the applicant within eight weeks from the date of presentation of a copy of the certified copy of this order.</p> <p style="text-align: center;">Urgent Photostat certified copy of this order , if applied for, be furnished to the parties on priority basis.</p> <p>(Dr. Subesh Kumar Das) Member (A)</p> <p style="text-align: right;">(Soumitra Pal) Chairman.</p>	

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