

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 956 of 2014.

SACHCHIDANANDA DE – VS- THE STATE OF WEST BENGAL & 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>12 8.1.2019.</p>	<p>For the Applicant : Mr. S. Das, Ms. L. Maitra, Advocates.</p> <p>For the State Respondent : Mrs. M. Mallick, Advocate.</p> <p>The applicant was appointed as a part-time lecturer of Materia-Medica in the Midnapore Homoeopathic Medial College and Hospital on 25th September, 1972 and continued till 26th June, 1973. Thereafter from 27th June, 1973 became a permanent lecturer in the said college and superannuated on 1st March, 1991. After attaining the age of superannuation, the applicant was re-employed by the Department of Health and Family Welfare, Government of West Bengal and rendered service from 2nd March, 1991 to 29th February, 1996. The applicant has stated that since permanent lecturers similarly situated have been granted pension and gratuity, the applicant is also entitled to the same.</p> <p>It is evident from records that the matter was admitted and directions were issued to file reply and rejoinder. Subsequently leave was granted to the applicant to file supplementary affidavit to file some</p>	

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	<p>documents to show that Midnapore Homoeopathic Medial College and Hospital was taken over by the Government of West Bengal. During the pendency of the application, the original applicant Sachchidananda De, expired on 20th February, 2018. An application being MA 67 of 2018 arising in connection with the original application was filed praying for substituting the legal heirs and representatives of sole applicant. On 9th August, 2018 order was passed allowing the prayer of the applicants to substitute them in place of the sole applicant and Registry was directed to incorporate the names of the applicants in the cause title of the original application. It appears that the Registry had carried out the order dated 9th August, 2018 as evident of the cause title of the application.</p> <p>Ms. L.Maitra, learned advocate appearing on behalf of the applicant submits that since by order dated 10th April, 1985 in exercise of the power conferred by sub-section (1) of Section 3 of the Midnapore Homoeopathic Medical College and Hospital (Taking over of Management and subsequent Acquisition) Act, 1984 (for short the "1984 Act") as the State of West Bengal</p>	

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	<p>took over the management and control of the Institution and as subsequently notification was issued on 30th March, 1993 acquiring the said Medical College from 31st March, 1993 and as the applicant became a government servant, the applicant is entitled to the reliefs as prayed for. Submission is since persons similarly situated in other homoeopathic medical colleges and hospitals have been granted reliefs, the applicant is entitled to the reliefs as prayed for. In this context, our attention has been drawn to the order dated 28th August, 2000 passed by the Tribunal in OA 2133 of 1999 as well as the order dated 21st December, 2000 passed in a writ petition, being WPST 817 of 2000, challenging the order dated 28th August, 2000.</p> <p>Mrs. M. Mallick, learned advocate appearing on behalf of the State respondents nos. 1 and 2 relying on the reply to the original application submits that as the applicant had superannuated on 1st March, 1991 when the Institution was yet to be acquired by the Government, the applicant was not a Government employee under section 4(2) (iv) of the Act and therefore the question of payment of pension to the applicant does</p>	

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	<p>not arise.</p> <p>Heard Ms. Maitra and Mrs. Mallick, learned advocates for the parties.</p> <p>Question is whether the Institution was acquired by the State Government and if so when and whether the issue raised by the State respondents in the written reply, particularly in paragraph 4(ii) thereof, was properly answered in the written rejoinder filed by the applicant.</p> <p>In order to answer this question, it is appropriate to set out the relevant portion of 1984 Act which is as under :-</p> <p><i>“.....3. Taking over of management of the institution. – (1) The State Government shall, by order published in the Official Gazette, take over the management and control of the institution.</i></p> <p><i>(2) An order made under sub-section (1) shall remain in force for a period of five years from the date of its publication in the Official Gazette or, in the case of acquisition of the institution under section 4, till the date of such acquisition, whichever is earlier.</i></p> <p><i>4. Acquisition of the institution.- (1) The</i></p>	

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	<p><i>State Government may, if it so thinks fit , at any time within the period of five years referred to in sub-section (2) of section 3, acquire the institution by notification.</i></p> <p><i>(2) On and from the date of the notification referred to in sub- section (1) (hereinafter referred to as the date of vesting),-</i></p> <p><i>(i) the institution shall stand transferred to, and vest absec-lutely in, the State Government, free from all encumbrances:</i></p> <p><i>(ii) the institution shall be run by the State Government as a State institution;</i></p> <p><i>(iii) any contract, whether expressed or implied, or other arrangement, whether made under any statue or otherwise, in relation to the management of any property or other affairs of the institution, and in force immediately before the date of vesting shall be deemed to have terminated on and from the date of vesting;</i></p> <p><i>(iv) <u>every person (not being a part-time or over-aged employee) who has been an employee of the institution before the date of vesting shall, on and from the date of vesting become an employee of the State Government and shall hold office on the same terms and</u></i></p>	

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	<p><i><u>conditions as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the State Government is duly terminated or until the terms and conditions of his service are duly altered by the State Government by rules made in this behalf;</u></i></p> <p><i>Provided that the services of every person who expresses his unwillingness to continue in service in terms of the provisions of this clause shall stand terminated with effect from the date of vesting or from any other date to be notified by him.....;" (Emphasis supplied)</i></p> <p>Admittedly by order dated 10th April, 1985 under section 3(1) of the Act, the Government of West Bengal had taken over the management and control of the Institution . It is pertinent to note that the applicant had superannuated on 1st March, 1991. He was re-employed on 2nd March, 1991 and continued in service till 24th February, 1996. It is also evident that by notification dated 30th March, 1993 under the 1984 Act, the College was acquired with effect from 31st March, 1993. Let it be noted that "Taking over of management" of an Institution under section 3 of the Act is different from "Acquisition"</p>	

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	<p>of an Institution under section 4 of the Act. It is clear from 4(2)(iv) of the 1984 Act that not only from the date of notification the Institution shall stand transferred to and vest absolutely in the State Government free from all incumbrances and shall be run by the State Government and any contract whether express or implied in force immediately before the date of vesting shall be deemed to have terminated on and from the date of vesting, significantly every person not being a part-time or over aged employee, who has been an employee of the Institution before the date of vesting shall and on from the date of vesting shall become an employee of the State Government. Therefore, the date of vesting of the Institution in the State is crucial in deciding the issue. In the instant case the date of vesting pursuant to the acquisition under 1984 Act is 31st March, 1993 and “before the date of vesting” the applicant was not an employee of the Institution as he had superannuated on 1st March, 1991. In this context, it is appropriate to refer to paragraph 4(ii) of the written reply filed by the State, which is as under :-</p> <p style="text-align: center;"><i>“...It appears from record that the applicant</i></p>	

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Skg.	<p><i>retired on superannuation on 01.01.1991 when the Institution was yet to be acquired by the Government and as such the applicant was not a Government employee as per Section (4)(2) (iv) of the Act. So question of pension does not arise.....”.</i></p> <p>The said paragraph has not been dealt with effectively in paragraph 4 of the written rejoinder. In the judgement passed by the Tribunal in OA 2133 of 1999 relating to Mahesh Bhattacharyya Homoeopathic Medical College and Hospital this issue was not raised and is therefore the said judgement is not applicable. Accordingly the judgement dated 21st December, 2000 passed by the Calcutta High Court in WPST 817 of 2000 is also not applicable. As acquisition of the Institution under section 4 was made with effect from 31st March, 1993 and as the applicant had retired on 1st March, 1991, the applicant is not entitled to the orders as prayed for. Therefore, the application is disposed of.</p> <p>(Subesh Kumar Das) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	

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