

**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 Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

**J U D G M E N T
-of-**

Case No. O.A. - 74 of 2013

Dr. Debraj DasApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. M.N. Roy,
Mr. G. Halder,
Advocates.**

**For the State Respondent :- Mr. G.P. Banerjee,
Advocate.**

Judgment delivered on : 12th October, 2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(a) Direction upon the respondent to cancel quash and set-aside the order of dismissal dated 29.07.2011 as issued by the Joint Secretary, Government of West Bengal, Health and Family Welfare Department and served upon the applicant on 18.08.2011 at 2.40 P.M.

(b) Direction upon the respondents to dispose of the appeal pending before him since 12.09.2011 forthwith.

(c) Direction upon the respondents to pay all consequential retiral benefits to the applicant as provided by law after setting aside the order of dismissal issued by the Joint Secretary, Government of West Bengal, Department of Health and Family Welfare, G.A. (Vigilance Branch).

(d) Direction upon the respondents to produce the relevant records before the Learned Tribunal for conscionable justice in the matter.

(e) And to pass such other order / orders or further orders as the Learned Tribunal may deem fit and proper.”

2. The case of the applicant is as follows:

(i) As per the applicant, while he was working as Medical Officer, Surgical Department, Bankura, Sammilani Medical College, a departmental proceedings was initiated against

the applicant under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 vide Memo dated 10.07.2009 the allegation that as a non-practicing doctor under W.B.H.S., he conducted an operation on a patient of 17 years old in private hospital and subsequently the said patient died.

- (ii) As per the recommendation of the West Bengal Human Rights Commission, he was charge sheeted on the ground of gross misconduct for violation of Rule 3 of the West Bengal (Duties, Rights and Obligations of Government Employee) Rules, 1980 (Annexure A).
- (iii) In reply to the said charge sheet dated 10.07.2009, the applicant submitted his written statement of defence before the enquiry officer on 01.09.2009 (Annexure B). However, the enquiry officer has submitted his report holding him guilty of the charges vide his report dated 16.08.2010 (Annexure C).
- (iv) Subsequently the disciplinary authority issued a second Show-Cause Notice dated 05.01.2011 proposing the dismissal from the service (Annexure D).
- (v) Accordingly, the applicant submitted his representation on 25.01.2011 before the Joint Secretary, Govt. of West Bengal praying for exoneration from the charges (Annexure E).
- (vi) In the mean time, the applicant was released from his duty on and from 31.07.2011 due to attaining the age of superannuation vide Memo dated 29.07.2011 (Annexure F) and subsequently the successor of the applicant took charge of duty of the applicant on 31.07.2011 by way of communicating the same to the A.G., West Bengal (Annexure G).

(vii) However, after being superannuated from service, the applicant received a Memo dated 29.07.2011 and on 18.08.2011, whereby he was dismissed from the service in terms of Rule 8 (viii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 (Annexure H). Being aggrieved with, he preferred an appeal before the Principal Secretary, Health and Family Welfare Department on 12.09.2011, which is still pending. Being aggrieved with, he has filed the instant application.

As per the applicant, after superannuation the relationship between employer and employee does not exist. Therefore, order of dismissal, after superannuation is not sustainable and liable to be set aside. However, the applicant subsequently filed one supplementary application wherein he has enclosed Memo dated 19.09.2013 issued by the Medical Superintendent-cum-Vice Principal and Ex-officio Secretary to the Govt. of West Bengal, whereby Memo dated 20.07.2011 in connection with the superannuation of the applicant was rescinded (Annexure A) and therefore has prayed for quashing the same.

3. The respondents have filed their written statement wherein the department has submitted that the applicant operated the said deceased patient being a non-practicing doctor under WBHS, which has been proved subsequently during enquiry and an appropriate penalty was imposed upon him. However, Medical Superintendent-cum-Vice Principal of BSMC & H, Bankura erroneously issued Memo No. 4358(8) dated 29.07.2011 with regard to the superannuation from service with effect from 31.07.2011, which was subsequently rectified and rescinded as per the direction of the Director of Medical Education and Ex-officio Secretary to the Govt. of West Bengal dated 19.09.2013

as the original order of punishment was already issued on 29.07.2011 and for such action the Medical Superintendent-cum-Vice Principal was also show-caused vide Memo dated 29.08.2013. Therefore, as per the respondent as the order was already passed on 29.07.2011 i.e. before his retirement, therefore, the O.A. is liable to be dismissed.

4. The applicant filed his rejoinder and reiterated his submission and also denied the contention of the respondents.
5. We have heard the parties and perused the records. It is observed that the applicant admittedly conducted one operation in a private Nursing Home on a 17 years old patient who subsequently died, even being a non-practicing doctor under WBHS. Thereafter he was charge sheeted for the same charge and participated in disciplinary proceedings and in the entire disciplinary proceedings he was granted proper opportunity to defend his case and ultimately the disciplinary authority issued second show-cause notice dated 05.01.2011 proposing punishment of dismissal from service. The applicant has filed a representation on 25.01.2011 and subsequently with the approval of the Governor, the Joint Secretary to the Govt. of West Bengal had communicated the order of dismissal vide Memo dated 29.07.2011. However, according to the respondents, the immediate higher authority of the applicant i.e. the Medical Superintendent-cum-Vice Principal of BHMC and H, Bankura in place of serving the said punishment order to the applicant on the said date, erroneously issued notice of superannuation to the applicant by virtue of which the applicant superannuated on 31.07.2011 and subsequently thereafter he received the order dated 18.08.2011 i.e. after his superannuation. However, as per the respondent, the MSVP of BHMC & H erroneously issued the

order of superannuation which fact was not known to the higher authority and when they came to know about the said fact, the said Superintendent was served with a charge sheet for his gross negligence of duty and subsequently the said notice dated 29.07.2011 was cancelled and rescinded by the higher authority vide Memo dated 18.09.2013.

6. It is settled principle of law that an employee cannot be dismissed from service after his superannuation as the relationship between employer and employee ceases on the date of retirement. Therefore, service of order of dismissal after retirement is not valid. Since mere passing of the order and keeping it in file without serving / communicating the same, does not make the order effective. However, it is observed that there are provisions to take appropriate action under the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, if the employee is found guilty of grave misconduct or negligence during his service period.

7. In view of the above, we are constrained to quash and set aside the order of dismissal dated 29.07.2011, which was served upon the applicant on 18.08.2011. However, the respondents will be at liberty to take appropriate action as per the provisions of Service Rules as they have already cancelled and rescinded the Notice of Superannuation dated 29.07.2011, which has not been even challenged by the applicant. Further though the order of dismissal was passed before his superannuation but served after his retirement.

Accordingly, the O.A. is disposed of with the above observations with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

