

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

The Hon'ble Justice Soumitra Pal, Hon'ble Chairman
& The Hon'ble Dr. Subesh Kumar Das, Administrative Member.

Case No –OA-889 of 2019.

Sanjay Raychaudhuri. –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>4</u> 20.1.2020.</p>	<p>For the Applicant : Mr. A. Hati, Advocate.</p> <p>For the State Respondents : Mr. S. Ghosh, Advocate.</p> <p>In this application, the applicant, who had joined as Medical Officer on 6th August, 1988 in the West Bengal Health Services Cadre in the Department of Health and Family Welfare, Government of West Bengal and now posted at Ranaghat S. D. Hospital, Ranaghat, Nadia, has challenged the order passed by the Additional Chief Secretary, Department of Health & Family Welfare, Government of West Bengal, appearing at pages -52 and 53 of the application, on 30th September, 2019 in terms of the order passed in OA-473 of 2019 : (Dr. Sanjay Raychaudhuri -Vs- The State of West Bengal & Ors.).</p> <p>Mr. A. Hati, learned advocate for the applicant submits that as the issue is covered by the order passed by the Tribunal in OA-346 of 2015 : (Dr. Ashok Kumar Maity & 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</p>	

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	<p>by the Tribunal, no interim order has been granted by the High Court, appropriate order may be passed quashing the order under challenge and directing the respondents to accept the application for voluntary retirement. On a query, Mr. Hati, submits that the applicant has stopped attending duties from 1st November, 2018.</p> <p>Mr. S. Ghosh, learned advocate for the State respondents submits that the order under challenge passed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, is just and proper. According to him from the judgments 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. Hati and Mr. Ghosh.</p> <p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p style="text-align: center;"><i>“i) To set aside and/or quashed and/or rescind that order dated 30.09.2019 issued by the Additional</i></p>	

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	<p><i>Chief Secretary, Department of Health Family Welfare, Govt. of West Bengal.</i></p> <p><i>ii) An order do issue by directing the respondent authorities to allow the prayer of VR of the applicant made in the prayer dated 24.07.2018 and also consider the prayers/reminders dated 09.08.2018, 14.08.2018, 26.10.2018, 27.10.2018, 27.11.2018 and 27.05.2019.</i></p> <p><i>iii) An order do issue by directing the respondent authorities to set aside and quash the order dated 10.11.2018 & 27.11.2018 passed by the Superintendent, Ranaghat SD Hospital, Department of Health and Family Welfare, West Bengal.</i></p> <p><i>iv) An order issue by directing the respondent authority to release /disburse all retiral benefits in favour of the applicant after acceptance the prayer of the</i></p>	

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	<p><i>voluntary retirement.</i></p> <p><i>v) An order to issue by directing the respondent authorities i.e. Superintendent Ranaghat SD Hospital, Nadia to release the applicant from charges."</i></p> <p>The relevant portion of the impugned order is as under :-</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, it appears that, both the petitioners & the State of WB filed appeal challenging against the Hon'ble WBAT on the same issue and as, both cases are pending, so the contention of the petitioner Dr.</i></p>	

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	<p><i>Raychaudhuri cannot be accepted.</i></p> <p><i>Thus the above mentioned prayer of the applicant is considered and rejected.</i></p> <p><i>All concerned are hereby informed accordingly."</i></p> <p>It is clear from the impugned order that the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, - the respondent no. 1, has accepted the fact that on similar issue the State did not succeed before the Tribunal and three 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 three judgments passed by the Tribunal. Hence, the judgment passed in OA-346 of 2015 covers the field. It is an accepted position of law that a judgment passed by a judicial forum, not stayed by the higher forum, has to be accepted. Therefore, as the judgment passed by the Tribunal on similar issue has not been stayed by the High Court and as the issue is covered by the said judgment in OA-346 of 2015, the impugned order dated 30th September, 2019, appearing at pages-52 and</p>	

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Sourav	<p>53 of the application is set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, now re-designated as Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, - the respondent no. 1, is directed to accept the copy of the application of the applicant for voluntary retirement dated 2nd July, 2018 appearing at page-31 of the application with effect from 1st November, 2018, within eight weeks from the date of presentation of a copy of the certified copy of this order and shall disburse the pensionary benefits and other allowances as admissible under the law which have accrued in favour of the applicant.</p> <p>(DR. SUBESH KUMAR DAS) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	