

Item- 27-07-2021
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WP.ST 25 of 2021

The State of West Bengal & Ors.
Versus
Dr. Mukut Mani Adhikari

Ct. 16

sg

(Through Video Conference)

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddiqui, Adv.
Mr. N. Chatterjee, Adv.

...for the petitioners

Mr. Sudeep Sanyal, Adv.
Mr. Sukanta Das, Adv.

...for the respondent

The writ petition is directed against an order dated 1st February, 2021 passed by the learned West Bengal Administrative Tribunal in O.A. No. 28 of 2021.

The original applicant filed the said application before the learned Tribunal for setting aside an order dated 2nd April, 2019 issued by the Commissioner of the Department of Health and Family Welfare, West Bengal, thereby refusing to accept his resignation. The impugned order of the Commission is based on amendment of Sub-Rule (1) of Rule 34A of the West Bengal Service Rule, Part-I vide notification No. 4499-F(P) dated 26th August, 2016.

We have heard the learned Counsel for the parties.

The learned Government Pleader, in support of the writ petition, has submitted that the learned Tribunal has completely overlooked that the amendment to Rule 34A as mentioned above

covers all employees of the West Bengal Health Services. It is submitted that the appointment Notification dated 3rd August, 2018 makes it clear that the candidates shall be governed by the terms and conditions applicable to the officers of WBHS and they shall be required to perform all such duties as may be assigned to them from time to time besides the duties of the posts in which they are or may be appointed. The learned Government Pleader has further submitted that in view of the fact that his service conditions are governed by the aforesaid Rules, the learned Tribunal could not have disregarded the amendment to Rule 34A which explicitly debars the original applicant from resigning unless he served the institution at least five years with effect from the date of joining.

The learned Counsel for the original applicant, however, supports the order under challenge and submits that the reference to the aforesaid Rules, in the facts and circumstances of the instant case, is misplaced.

The appointment of the applicant to the said post is temporary. If at all any Rule can be made applicable to the applicant on the basis of which his service conditions are required to be governed, is the West Bengal Services (Appointment Probation and Confirmation) Rule, 1979. The said Notification defines the “temporary services” to mean service beginning from the date of appointment under Government till the date of appointment on probation or on permanent basis. Even if the said Rule is reckoned from the date of his appointment and reliance is placed on the Notification of 3rd August, 2018, we are unable to accept the submission made on

behalf of the Government in view of the fact that Rule 34A can be made applicable only to a Government employee holding a permanent post under the Government and not with regard to any temporary employee. The same would be further clear from the Notification dated 26th August, 2016 in which it is clearly stated that the said Notification is applicable in respect of the officers in the cadre of the West Bengal Health Services. The present applicant does not belong to any cadre. The appointment was purely temporary and hence, neither the said Rule nor the Notification on the basis of such his resignation was not accepted, does not appear to be the correct application of the said Rule or the Notification.

In view of the aforesaid, we are in agreement with the observation of the learned Tribunal that “since the applicant was appointed temporarily and was not on probation or was confirmed as permanent, the amended Rules do not apply”.

In view thereof, the action of the Commissioner to the Department of Health and Family Welfare in issuing the impugned order dated 2nd April, 2019 cannot be sustained. We uphold the order of the learned Tribunal.

The writ petition stands dismissed. However, there shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)