

01 20.12.21

Ct. No. 04

Akd

W.P.S.T. 106 of 2021
(Via Video Conference)

The State of West Bengal & Ors.
Vs.
Dr. Anirban Dasgupta

Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag.

... for the petitioner.

Mr. D. N. Ray,
Mr. S. Ghosh,
Mr. B. Nandy,
Mr. S. Halder.

... for the respondent.

The present writ petition arises from an order no. 2 dated 6th August, 2021 passed by the West Bengal Administrative Tribunal in OA 305 of 2021 directing the Secretary, Department of Health and Family Welfare, Government of West Bengal to issue release order to the respondent within a fortnight from the date upon presentation of a copy of the order downloaded from the official website of the Tribunal.

Indubitably, the respondent joined the West Bengal Medical Education Service, Department of Health and Family Welfare as Tutor on 29th August, 2015 and was posted in the Department of Gynaecology and Obstetrics, Bankura Sammilani Medical College, Bankura. Subsequently the respondent made a representation on 18th December, 2017 before the Director of Medical Education, West Bengal for discontinuance of his service.

However, the respondent found a better opportunity when he noticed that an advertisement is made for filling up the post of Assistant Professor in AIIMS, Kalyani and applied therein. The respondent was found eligible for the post and an appointment letter was issued on 15th September,

2020 with clear stipulation that he has to join that post within a month therefrom.

However, the dispute cropped up thereafter, as the applicants were not issuing the release order despite the letter of resignation submitted by the respondent taking shelter under the relevant Rules applicable thereto. By this time more than five years elapsed from the date of joining; the respondent made a representation that he may be released from the present post keeping a lien thereupon. Such representation was kept in abeyance, which prompted the respondent to move a tribunal application, being OA 359 of 2020. The said application was disposed of directing the respondent authorities to consider the said representation and dispose of the same by recording proper reasons and also to communicate the same to the respondent.

Pursuant to the said direction a decision was taken by the appellant no. 2 that the respondent is not entitled to any lien nor a release order could be passed. The said order was assailed before the Tribunal. A plea was taken that the respondent is not entitled to any lien to the post having not completed three years of continuous service under the relevant Rules. Apart from the same a point was raised that the respondent being a temporary employee is not entitled to such prayer.

The Tribunal while passing the impugned order took note of the other judgment rendered in Dr. Mukut Mani Adhikari vs. State of West Bengal & Ors. (OA 28 of 2021 decided on 1st February, 2021), wherein the relevant Rules of West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 was taken into consideration and ultimately held that since the applicant was appointed temporarily and not on probation or confirmed as to

permanent post, the Rules have no manner of application and, therefore, it was not proper on the part of the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal to withhold the release order.

It is not in dispute even before us that the respondent is not a confirmed employee to the substantive post and, therefore, the order passed by the Tribunal does not find fault in this regard. However, the applicant is raising a serious question about keeping a lien by the respondent, which has ramification and larger impact on the services which is required to be rendered in the Department, which cannot be brushed aside.

The applicant, on instruction, submits that there is no difficulty in issuing the release order, but the applicant has reservation on the lien to the said post, which is vital and important. Naturally the services which the respondent was rendering in the Covid time has a great importance and the State grappling with the dearth of medical experts needs the service to combat such situation. Equally an unwilling employee if kept in the said post may not give his service with full potential, which also cannot be overlooked.

Since the applicant has decided to issue the release order, we do not intend to make any comment except that no lien shall be allowed to him for the post, which he held now. Apart from the same, the Tribunal did not extend other benefits to the respondent and since the respondent did not challenge the said order and has accepted the said decision, there is no difficulty on our part to hold that the respondent is not entitled to lien.

However, a point is raised by the applicant that though the applicant would issue the release order

but there are other consequential steps which are required to be taken against the respondent and, therefore, such action must be immuned from the instant order. However, the applicant clarifies that the release order does not absolve the financial implication or something, which the applicant may not be under any obligation to adhere to and for such reason such immunity is asked for.

The respondent says that he has not received any salary since long, after such decision having been taken nor shall claim any amount under any head applicable to the present post.

In view of such stand taken by the respondent the apprehension shown by the applicant is sufficiently taken care of.

In view of the above, we do not find any infirmity in the impugned order.

The writ petition is thus disposed of with the above observations.

There will however be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

