

16.
02.3.2023
S.D.

W.P.A. 3215 of 2023

Bibekananda Bera
Vs.
The State of West Bengal & Ors.

Ms. Arunima Lala
Mr. Subhomoy Paira
... For the Petitioner

Mr. Tapan Kumar Mukherjee, Sr. Adv. & A.G.P.,
Ms. Tuli Sinha
...For the State

Pursuant to an order passed by this Court on September 15, 2022, the Block Medical Officer of Health (BMOH), Purba Medinipur passed a reasoned order dated October 19, 2022. Such order is impugned in the present writ petition.

Ms. Lala, learned counsel appearing on behalf of the petitioner submits that despite the directions passed by this Court, BMOH did not consider the petitioner's prayer for disbursement of death benefits for and on behalf of his aunt. The BMOH has held that the documents that were directed to be produced by the petitioner were not done and the application was also not made in the proper form. The BMOH forwarded the papers to the Chief Medical Officer of Health (CMOH), Purba Medinipur for processing of the

documents and necessary action. She placed reliance on a judgment of Division Bench of this Hon'ble Court passed in **A.S.T. 182 of 2015** in support of her contention that when a particular authority is directed to consider a recommendation by this Court, then the decision had to be taken by the selfsame authority and the consideration of the decision could not be relegated to any other authority by the authority directed to take the decision.

Mr. Mukherjee, learned Additional Government Pleader appearing on behalf of the State authorities submits that the writ petition is not maintainable since the petitioner is praying for death benefits of a Government employee and as such the prayer of the petitioner is covered by the Administrative Tribunals Act, 1985.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that by an order dated September 15, 2022, this Court directed the BMOH to consider the representation of the petitioner with regard to disbursement of the death cum retiral benefits of his aunt being a nominee.

The point with regard to maintainability was not urged by the State respondents on the said date.

Thereafter, the impugned order was passed on October 19, 2022 in pursuance to the order dated September 15, 2022. The BMOH instead of taking a decision as directed by this Court forwarded the application of the petitioner to CMOH which he was not permitted to do. The BMOH was required to act in strict compliance of the order passed by this Court.

In the light of the discussions above, this Court directs the BMOH to consider the representation of the petitioner within four weeks from date upon giving a personal hearing to the petitioner. The BMOH is required to pass a reasoned order and communicate the same to the petitioner within one week of passing thereof.

It is made clear that this order is passed without prejudice to the rights and contentions of the State respondents that the writ petitioner should not have approached this Court in the Writ Jurisdiction and the appropriate forum was before the Administrative Tribunal.

With the directions aforesaid, **W.P.A. 3215 of 2023** is **disposed of**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)