

DL-6 wt 7

24.08.2023  
Court No.5  
(AD)

**WP.ST 225 of 2009**

**Dr. Md. Hasem Ali  
Vs.  
State of West Bengal & Ors.**

**With  
WP.ST 226 of 2009**

**Dr. Md. Hasem Ali  
Vs.  
State of West Bengal & Ors.**

*Mr. Swapan Kumar Nandi  
Mr. Debjyoti Ghosh  
... for the petitioner in both the writ petitions.*

*Mr. Tapan Kumar Mukherjee,  
Ld. Sr. Advocate & Ld. AGP  
Mr. Somnath Naskar*

*...for the State-respondents in WP.ST 225 of 2009.*

*Mr. Arjun Roy Mukherjee  
Ms. Tuli Sinha  
... for the State-respondents in WP.ST 226 of 2009.*

The two writ petitions are taken up together for analogous hearing as they emanate out of the same judgment and order passed in two original proceedings.

The writ petitions are directed against an order dated September 19, 2008 passed in two original applications being OA-540 of 2002 and OA-542 of 2002 instituted by the writ petitioner.

By the impugned order, the Tribunal allowed the applications in part.

The Tribunal took into considerations the prayers made in the two applications. The Tribunal found that,

prayers 7(a) and 7(b) of OA-542 of 2002 cannot be granted since, the Tribunal found no ground to interfere with the impugned notification dated February 19, 2002.

In respect of prayers 7(c) of OA-542 of 2002, the Tribunal directed the State to consider the payment of arrear salary, if any, including leave salary as sanctioned if not already paid keeping into view the decision of the Tribunal.

The Tribunal thereafter considered prayer 7(a) of the OA-542 of 2002 and returned a finding that, such prayer does not make any sense as ROPA, 1998 was given effect from January 1, 1996 and thereafter question of fixation of pay under ROPA, 1998 from September, 1991 did not arise. The Tribunal held that, the matter of fixation under ROPA, 1998 may be considered by the authorities if admissible in terms of the applicable rules and procedures.

Learned Advocate appearing for the petitioner draws the attention of the Court to the facts of the case. He submits that, the writ petitioner was transferred to a post where he could not join due to his medical condition and conditions in his family. He made several representations. He approached the Tribunal. Tribunal directed disposal of the representation by a speaking order. He refers to the speaking order where relief was granted to the petitioner. He thereafter refers to the notifications issued by the Government for joining

including his joining the post. He also refers to the notification dated February 19, 2002.

The writ petitioner initially joined West Bengal Health Services on July 19, 1976. His service was regularized by the Public Service Commission with effect from July 1, 1977. He initially joined as a Medical Officer, Bakulia Public Health Centre, Hooghly. Since January 5, 1981, he was working as G.D.M.O. at Imambara Sadar Hospital, Hooghly. The writ petitioner made a representation dated December 30, 1989 informing the authorities that due to his family affairs he was unable to accept any administrative post. The applicant was transferred to Cooch Behar as A.C.M.O.H.-II by a notification dated May 10, 1991 and by an order dated August 7, 1991 of the D.H.S., the writ petitioner was deemed to be released from his existing post with effect from August 19, 1991. He was, however, actually released in the afternoon of September 10, 1991. Thereafter, the writ petitioner made several representations. The representation was ultimately directed to be considered by the Tribunal.

The speaking order dated August 27, 1999 was passed by the Director of Health Services where, Director of Health Services opined that the writ petitioner deserves sympathy due to his ailments and as he was suffering from medical condition.

State authorities thereafter issued a notification

dated December 15, 1999 posting the writ petitioner as M.O., Kalna Sub-Divisional Hospital, Burdwan with effect from the date on which he joins the post. Such notification cancelled the earlier notification dated May 10, 1991. Writ petitioner joined the post of M.O., Kalna by the memo dated January 27, 2000.

By a writing dated November 6, 2000, the writ petitioner made a representation with regard to the non-payment of nine years of arrear salary with benefit.

By a letter dated August 2, 2001 the Joint Director of Health Services (Admn-I) issued directions with regard to the payment of salary to the writ petitioner as per revised scale under ROPA, 1998.

State authorities issued a notification dated February 19, 2002 treating the period of absence of five years of the writ petitioner in the manner as stipulated therein.

The writ petitioner was unable to establish any ground for interference with the writing dated February 19, 2002. His period of absence from September 11, 1991 and till September 8, 1996 was required to be treated in a particular way which the authorities did by the writing dated February 19, 2002. The writ petitioner is unable to establish that such treatment was not in consonance with law. The Tribunal also arrived at such a finding in the impugned order. So far as the other representations are concerned, the Tribunal granted

such of them as was permissible in law.

In such circumstances, we find no reason to interfere with the impugned order.

**WP.ST 225 of 2009** and **WP.ST 226 of 2009** are dismissed without any order as to costs.

**(Debangsu Basak, J.)**

**(Md. Shabbar Rashidi, J.)**

