

DL-33

18.09.2023
Court No.5
(AD)

WP.ST 41 of 2023

**The State of West Bengal & Ors.
Vs.
Sanjoy Raychaudhuri**

*Md. T.M. Siddiqui, Ld. AGP
Mr. Avishek Prasad
... for the State-petitioners.*

*Mr. Asim Hati
Ms. Nondini Sharma
... for the respondent.*

The writ petition is at the behest of the State.

The writ petition is directed against an order dated January 20, 2020 passed by the West Bengal Administrative Tribunal in OA-889 of 2019.

By the impugned order, the Tribunal directed the State to accept the application for voluntary retirement made by the private respondent.

We enquired from the State as to whether that the State acted upon the order of the Tribunal.

Learned Additional Government Pleader appearing for the State submits, on instructions, that the application for voluntary retirement of the private respondent was not accepted. State did not act in terms of the impugned order of the Tribunal.

It appears from the records that, by an order dated March 27, 2023, the Coordinate Bench directed stay of operation of the impugned order of the Tribunal.

We are informed that, subsequent to the submission of the application for voluntary retirement, the private respondent is not working at his post.

Learned Advocate appearing for the private respondent submits that, the private respondent is governed by Rule 75(aaa) of the West Bengal Service Rules, Part-I. He submits that, private respondent satisfies all the criteria to apply for voluntary retirement. The private respondent, therefore, applied for voluntary retirement which was not granted. The private respondent approached the Tribunal against the order of rejection of the application for voluntary retirement. The Tribunal thereafter directed the State to accept the application for voluntary retirement.

Learned Advocate appearing for the private respondent submits that, the private respondent put in qualifying service to receive pensionary benefits. Moreover, the age of retirement of a doctor was increased from time to time. Since the private respondent worked under the government for a considerable period of time and it was not possible for the private respondent to continue any further, therefore, the application for voluntary retirement was made.

We perused the application for voluntary retirement made by the private respondent. The private respondent was attached with the Ranaghat Sub-Divisional Hospital. The private respondent joined the services on August 6, 1988. In his application, the private respondent cited

personal, familial and physical illness as his reasons not to continue with the health services. The application for voluntary retirement does not disclose the physical illness that the private respondent was suffering from. It does not speak about the personal and the familial reasons in any detail to understand the gravity of the reasons for applying for voluntary retirement. The application for voluntary retirement was rejected by a reasoned order which was assailed by the writ petitioner before the Tribunal giving rise to the impugned order.

In the reasoned order, the authorities found that, there were several writ petitions pending on such issue and that, the application of the private respondent was considered and rejected.

Learned Additional Government Pleader relies upon *(2019) 16 Supreme Court Cases 348 (State of West Bengal & Ors. Vs. Dr. Tonmoy Mondal)* and submits that, the impugned order of the Tribunal cannot be sustained.

Dr. Tonmoy Mondal (supra) considers Rule 75 of the West Bengal Service Rules, Part-I and is of the view that, an application for voluntary retirement of a doctor can be rejected on the ground of public interest.

In the facts of the present case, the private respondent belongs to the West Bengal Health Services. The State is yet to accept his application for voluntary retirement. The private respondent is not attending to his duties, we are informed, since the date of his submission of

the voluntary retirement.

This course of conduct of a doctor should not be countenanced. Public interest stands affected by such a conduct. Health services will be severely impaired in the event such conduct of a person governed by the West Bengal Health Services is countenanced.

In such circumstances, on the strength of *Dr. Tonmoy Mondal (supra)*, we set aside the impugned order of the Tribunal. The State will proceed as against the private respondent on the basis of his application for voluntary retirement not being accepted.

WP.ST 41 of 2023 is disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

