

03.03.2025

WPST 19 of 2025

**Sunit Moyra
Vs.
The State of West Bengal & Ors.**

Mr. Pradip Kumar Mondal
Mr. Arka Mondal

... ... for the petitioner
Mr. Tapan Kumar Mukherjee, Sr. Adv.
Mr. Somnath Naskar

... ... for the State

The petitioner was appointed as a Group-D employee at Naiyarat Rural Hospital, Mandir Bazar Block on 05.02.2019. The employer undertook an exercise of verification with respect to his application and eligibility, etc. During the course of such verification, in the process of police verification they discovered that he was accused in a criminal case which aspect was suppressed by the petitioner while submitting his police verification form. The Chief Medical Officer of Health, Diamond Harbour, thus, withheld the petitioner's pay with effect from 13th August, 2019. He was also prevented from attending his duties.

It is under such circumstances that he approached the State Administrative Tribunal complaining regarding the stoppage of his salary as well as the alleged illegitimate restrain imposed by the authorities

preventing the petitioner from discharging his official duties.

The tribunal allowed the authorities an opportunity to pass a reasoned order with respect to the petitioner's grievance. The order of the tribunal is dated 15.01.2020 passed in O.A. 784 of 2019.

Pursuant thereto a reasoned order has been issued by the Director of Health Services, Government of West Bengal. The order of the Director is dated 03.08.2020. Considering the entire conspectus, thus, a direction has been issued to the Chief Medical Officer of Health, Diamond Harbour to issue a termination order.

It is under such circumstances that the petitioner again approached the tribunal assailing the order of the Director. The tribunal has disposed of O.A. 824 of 2022 filed by the petitioner. The final order in O.A. is dated 19.11.2024. While passing the impugned order the tribunal has further taken note of the fact that in the interregnum the petitioner was acquitted in the criminal case.

It is under such circumstances that the learned counsel for the petitioner assailing the order of the tribunal has made submissions referring the decision of the Apex Court in the case of **Avtar Singh Vs. Union of India**, reported in **(2016) 8 SCC 471**. He submits that there are certain mitigate circumstance in favour of the petitioner. He has placed specific reliance on paragraph

38.2 and 38.4.1 in the case of Avtar Singh (supra). He further submits that since no termination order has been issued, till date the petitioner is entitled to be treated as being in service.

Learned counsel for the State however seriously opposes such submissions. He refers to the stipulation in the appointment order pointing that if suppression is discovered in course of police verification, the same may be sufficient ground for petitioner's termination.

We have considered the rival submissions and factual aspects of the case as recorded above. The petitioner does not deny such stipulation in the order of appointment. There is also no denial that criminal case was pending against him. We, however, take note of fact that the criminal case pending against the petitioner arises out of a dispute over the possession and title of the land between the petitioner's family and that of his neighbour. We also take notes of the facts that there is no termination order issued.

It is under such circumstances we reserve the right of the employer to pass a termination order. We, however, consider it appropriate that exercise of such right of the employer will have to be guided by the settled legal position as per decision of the Apex Court in the case of **Avtar Singh** (supra). Thus, we hold that while considering the issue for passing any termination order the authority would first take into consideration

the specific mandate of the Apex Court in paragraph 38.2 and 38.4.1 of decision in the case of Avtar Singh (supra).

Since there is no termination order passed against the petitioner till date, we hold that authorities are not justified in restraining him from discharging his duties. There is also no legal justification for withholding payment of salary to the petitioner.

The petitioner is thus entitled to discharge his duties any payment of salary illegally withheld and current salary, subject to the liberty of the respondents to proceed in the matter as per law and judgment of the Apex Court in the case of Avtar Singh (supra).

The writ petition being WPST 19 of 2025 is disposed of.

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

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)