

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – MA-14 of 2018 and OA 828 OF 2017

DR. KAUSIK REJ Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">6</p> <hr/> <p>03.12.2018</p>	<p>For the Applicant : Mr. M.N. Ray Mr. S. Ghosh Mr. B. Nandy Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee Advocate</p> <p style="text-align: center;">By consent of Mr. M.N. Ray, learned advocate for the applicant and Mr. G.P. Banerjee, learned advocate for the respondents, the Miscellaneous Application No. 14 of 2018 is taken up for hearing along with O.A. 828 of 2017 treating it to be of day's list.</p> <p style="text-align: center;">In this application, the applicant, has prayed for a direction upon the respondents to set aside the reasoned order dated 25th August, 2017 passed by the respondent no.2 and communicated by memo dated 28th August, 2017. Prayer is made for a direction upon the respondents to issue an order releasing the applicant by accepting his resignation letter dated 7th December, 2015. It appears that the applicant, a doctor under the West Bengal Health Services, had submitted his resignation letter on 7th December, 2015. It appears that the same was rejected by</p>	

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	<p>order dated 25th August, 2017 by the Director of Health Services, West Bengal on the ground that the applicant did not serve three months prior notice to his proposed date of resignation. Moreover, the said letter was issued during the period of unauthorised absence. The prayer was also declined because the respondents were contemplating for initiating disciplinary proceedings.</p> <p>Mr. M.N. Ray, learned advocate on behalf the applicant submits that the respondents have proceeded on a wrong notion that the letter of resignation dated 7th December, 2015 was served during his period of absence, which is not as evident from a certificate dated 22nd February, 2018 issued by the Superintendent, Tufangunj Mental Hospital, the respondent no.5 which certified that he had performed duties on and from 1st December, 2015 to 6th January, 2016. In this regard reliance has been placed on the judgements of the Tribunal passed in OA-171 of 2017 (Dr. Mausumi Sinha vs. State of West Bengal & Ors.) and OA-730 of 2017 (Dr. Pradyut Kumar Biswas vs. The State of West Bengal & Ors.) and the judgement of the High Court passed in W.P.S.T. No.22 of 2016 (Dr. Debarati Chattopadhyay vs. The State of West Bengal & Ors.) in support of his submission. Let a copy of the said certificate be kept on record.</p> <p>Mr. G.P. Banerjee, learned advocate for the</p>	

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	<p>respondents submits that since the applicant did not give clear three months' notice, the said judgements relied on by the applicant are not applicable. Therefore, appropriate order may be passed for continuation of the departmental proceedings and for allowing the respondents to take necessary steps in accordance with law.</p> <p>Heard learned advocates for the parties. Though it appears from the memorandum dated 12th May, 2016, annexure 'S-1' to the Miscellaneous Application No. 14 of 2018 that it has been stated that the applicant had discontinued his service on and from 1st December, 2015, it is evident from the certificate dated 22nd February, 2018 issued by the Superintendent, Tufangunj Mental Hospital, Cooch Behar that the applicant had performed his duties from 1st December, 2015 to 6th January, 2017.</p> <p>Since it appears that the applicant had performed his duties from 1st December, 2015 till 6th January, 2016 and as there was no departmental proceedings at the time of consideration of the letter of resignation, the reasoned order dated 25th August, 2017 passed by the Director of Health Services, Department of Health and Family Welfare, Government of West Bengal, the respondent No.2 is set aside and quashed. The Original Application is allowed. The Miscellaneous Application is disposed of. Considering the facts and circumstances of the case, The</p>	

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SCN.	<p>Principal Secretary Secretary, Department of Health and Family Welfare, Government of West Bengal, now re-designated as the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, shall dispose of the matters regarding the pendency of the disciplinary proceedings as well as the issue of voluntary resignation of the applicant by passing a reasoned order to be communicated to the applicant within ten weeks from the date of presentation of a copy of this order after giving an opportunity of hearing and after verifying the records, including the documents which may be submitted by the applicant at the time of hearing, and also relying on the judgements passed by the Tribunal in O.A. 171 of 2017 and O.A. 730 of 2017 as well as the judgement of the High Court passed in W.P.S.T. No. 22 of 2016.</p> <p style="text-align: center;">Urgent photostat copy of this order, if applied for, be given to the appearing parties.</p> <p>(S.K. Das) MEMBER (A)</p> <p style="text-align: right;">(Soumitra Pal) CHAIRMAN</p>	