44 **06.02. 2023**

Ct. No. 04

Ab

WP.ST 120 of 2022

The State of West Bengal and others.
Vs.
Madhab Sarkar.

Mr. Md. T. M. Siddiqui,
Mr. Avisek Prasad.
... for the petitioners.

Mr. Asim Hati,
Ms. Nandini Sharma.
... for the respondent.

The State has filed the instant writ petition challenging an order of the West Bengal Administrative Tribunal dated 25th November 2019 in OA 942 of 2018 whereby and whereunder the order of the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal was quashed and set aside and a direction was passed upon the authority to pass a necessary order granting voluntary retirement to the respondent.

The undisputed facts emerged from the pleading of the respective parties are that the respondent was born on 21st August 1959 and completed fifty years of age and rendered more than twenty years of his service in the year 2008. By virtue of the provisions contained in Rule 75(aa) and 75(aaa) of the West Bengal Service Rules, Part-1, an application was taken out for voluntary retirement. The Additional Chief Secretary, Department of Health and Family Welfare, rejected the said application on the premise that such prayer for voluntary retirement cannot be acceded to on the larger public interest.

Such being the salient fact involved in the instant matter, the Tribunal manifestly proceeded on the basis that once the conditions enshrined in the enabling

provision of Rule 75(aaa) have been fulfilled, there was no other option left to the Government to grant the prayer and allow the respondent a voluntary retirement.

It is no doubt true that Rule 75(aaa) of the said Service Rules confers a right on the Government employee to seek a voluntary retirement provided he gives a three months notice after attaining the age of fifty years and rendered service for a prescribed period. The Tribunal, in our opinion, overlooked the note appended to the aforesaid provision and hovered around the subsequent amended provision brought by way of an amendment with effect from 7th February 2014 by inserting Rule 75(aaaa). The said amended Rule starts with a non-obstante clause and excludes the applicability of the provisions contained in Rule 75(aa) and 75(aaa) of the said Service Rules to have any manner of application in relation to the holder of the service in West Bengal Health Services, the West Bengal Medical Education Services, the West Bengal Public Health-cum-Administrative Services, the West Bengal Dental Service and the West Bengal Dental Education Services.

Initially, it was contended by the State that such amended provision overrides the provisions contained in Rule 75(aa) and 75(aaa) of the said Service Rules, as the respondent is rendering the services in the prescribed department. The Tribunal appears to have been swayed by such argument and held that the aforesaid amended provision i.e. Rule 75(aaaa) of the said Service Rules is not applicable and the case of the respondent is to be guided and/or considered on the parameters of the provisions contained in Rule 75(aaa) of the said Service Rules.

There has been a drift in the stand of the State in the instant writ petition. It is contended that even if the observations of the Tribunal is correct yet it does not confer any right upon the respondent to seek voluntary retirement on a mere drop of the hat or on fulfillment of

the parameters enshrined therein, as the Tribunal overlooked and ignored the note appended thereto. In support of the aforesaid contention, reliance is placed on a three Judges Bench of the Supreme Court rendered in case of **State of West Bengal and others vs. Dr. Tonmoy Mondal**, reported in **(2019) 16 SCC 348**.

After perusal of the judgement and the ratio decidendi deduced therefrom we find that there is a parity not only on the facts but of the consequences to follow on the interpretation of the aforesaid provisions. In the said Report, the respondent therein joined the medical service in the year 1986 and sought voluntary retirement in the year 2013. The Government declined to grant such prayer on the ground of public interest. The order of the authority was challenged before the Tribunal solely on the ground that the concept of public interest is neither contemplated in Rule 75(aaa) nor can be used as a weapon in order to frustrate the legislative mandate. The Tribunal quashed and set aside the order of the authority and accepted the contention of the respondent therein, which was challenged before the Division Bench of this Court. The Division Bench initially opined that Rule 75(aaa) of the said Service Rules is abridged and/or controlled by Note-3 appended thereto and, therefore, cannot be applied in an abstract and/or isolated manner. The said order was sought to be reviewed subsequently and the review application was allowed as a consequence whereof, the order of the original authority stood quashed and set aside. The matter travelled to the Supreme Court and an argument was advanced in a similar fashion and the Apex Court after considering the provisions contained in Rule 75 of the said Service Rules held that though Note-1 of Rule 75(aaa) provides for the purpose of computation of three months, the date of service of the notice and the date of expiry shall be excluded, but Note-3, which is a most important and relevant part of the said Rules, is not contrived in

operation to sub-rule (aaa) of Rule 75 of the said Service Rules. Note-3 bestowed power upon the appointing authority to take a decision and form the opinion whether it is necessary to retire a Government employee in pursuance of the aforesaid Rule. The Bench also considered the earlier Supreme Court decision rendered in case of **State of U.P. vs. Achal Singh**, reported in **(2018) 17 SCC 578**, where it is held that the concept of the public interest can also be invoked by the Government when a voluntary retirement is sought by an employee and in the opinion it would be against the public interest, the said provision cannot be said to be violative of any of such rights and, therefore, the order of the Division Bench, more particularly, the order of review was set aside and the respondent therein was directed to immediately revert back to duty within the stipulated time.

The instant case is not falling under the service in the Administrative Department of the Government. The health sector being a most important sector in the administration of the system for not only rendition of the services to the society but to the humanity as well. The health of the citizenry plays a very pivotal role in the development of the society and the country. The people Doctor ratio in the country is abysmally low and there is a dearth and paucity of the Doctors at the Government Hospitals where the poorest of the poor got benefit of the treatment.

Seen from the above perspective as well, Note-3 appended to Rule 75(aaa) of the said Service Rules cannot be completely whittled down nor to be rendered otiose but is an integral part of the aforesaid statutory provision and its applicability can be envisioned therefrom. Note-3 postulates that the Government may decline to grant voluntary retirement on public interest and once such decision is taken unless it appears that the provision is so stringent that it cannot be brindled by

any incorporation, the fullest effect to such provision is required to be given.

In view of the ratio laid down in **Dr. Tonmoy Mondal (supra)**, there is no impediment on the part of the appointing authority to decline the prayer for voluntary retirement taking aid under Note-3 of Rule 75(aaa) of the said Service Rules and, therefore, we do not subscribe to the view expressed by the Tribunal on the nuances of the provisions of the law applicable in this regard.

The order of the Tribunal is, thus, set aside. The application filed by the respondent herein before the Tribunal stood dismissed and the order of the Additional Chief Secretary, Department of Health and Family Welfare shall not be deemed to have been interfered with.

In view of the fact that the order of the Tribunal has been set aside, the respondent is directed to resume his duty within fortnight from date.

Since the decision was taken by the concerned authority after a considerable period of time and the time consumed in the litigation, the authority shall see that the period of absence is regularized as permissible in law.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)