HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) No.824/2019

Dr. Tarun Kumar Roy

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Advocate.
Mr. Anujit Dey, Advocate.

For Respondent(s) : Mr. D. Bhattacharjee, GA.
Mr. P. Roy Barman, Advocate.
Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

09/01/2020.

Heard learned counsel for the parties for final disposal of the petition.

The petitioner has challenged a Notification dated 26.02.2019, issued by the Under Secretary to the Government of Tripura under which he has been absorbed in the post of Basic Teacher (Tutor) in the subject of Microbiology, to the extent of the date of absorption being 16.12.2016. The petitioner has grievance with the said date of absorption.

Brief facts are as under:

The petitioner was appointed as a Tutor in Microbiology in the Agartala Government Medical College under Notification dated 29.04.2006. The petitioner discharged his duties as a Tutor (Microbiology) at the said hospital till 07.05.2008 after which he was transferred to various other Government hospitals in the

State of Tripura. Intermittently, he was also brought back to AGMC, Tripura.

The Government of Tripura promulgated the Tripura Medical Education (Administrative & Faculty) Service Condition Rules, 2015 (hereinafter to be referred to as "the said Rules"). Rule 5 of the said Rules pertains to Method of Appointment and at the relevant time provided as under:

> "5. METHOD OF APPOINTMENT
>
> Appointment to different administrative and teaching posts of the service after commencement of these rules shall be made by the following methods:
>
> a. Appointment to different administrative and teaching posts of the Tripura Medical Education (Administrative & Faculty) Service shall be made as detailed in SCHEDULE-II.
> b. The basic teachers who have come from THS, within the period (2005-2010) and working under AGMC may be appointed as basic Teacher after getting approval from the appropriate authorities. At the time of appointment he/she will have to fill up an option form in Schedule-II and Annexure-I."

Sub-Rule b of Rule 5 was amended by the following substitution by virtue of Notification dated 19.09.2016:

> *"The teaching faculties engaged in AGMC from different grades of THS, within the period (2005 to September, 2015) and still working under AGMC may be appointed as Basic Teacher after getting approval from the competent authority. At the time of appointment he/she shall have to fill up an option form in Schedule-II (A) and Annexure-I".*

The petitioner was desirous of being absorbed in terms of Rule 5 of the said Rules. He had, therefore, exercised necessary option sometime in February, 2016. Under communication dated 21.02.2017, it was conveyed to the petitioner that such option is not accepted. The petitioner thereupon filed a writ petition before this Court being W.P. (C) No.1114 of 2018, which was decided on 05.12.2018 directing the respondents to consider the representation of the petitioner. The respondents thereupon issued the impugned Notification dated 26.02.2019 in which, as noted by absorbing the petitioner in the Medical Service, effect was given from 16.12.2016.

The case of the petitioner is that such date is arbitrarily chosen. The petitioner should have been absorbed from the inception of his entering the service. At any rate, counsel for the petitioner would point out that the respondent No.6, who was similarly situated but was inducted as a Tutor in the year 2009, has been absorbed with effect from 30.03.2016 and which date should have been accorded to the petitioner.

Having heard learned counsel for the parties and having perused documents on record, I do not find any justification for the Government to have chosen 16.12.2016 as the date to give effect to the petitioner's absorption in the Medical Service. It is not the case that the petitioner was placed in the service of AGMC, Agartala on such date and that therefore, the official respondents would be relying on the amended Rule 5 of the said Rules, which would require the concerned Medical Officer to be still working at the said hospital to claim absorption. Even otherwise, the question

of the petitioner's place of working, I wonder could have any bearing on his right of absorption. Firstly, being in a transferable post, the petitioner was bound to work at a place as directed by the Government. He was posted at various hospitals in the State from time to time where he discharged his duties. To be told that on a crucial date, he was not posted at AGMC, Agartala and that therefore, his chance for being absorbed would be forfeited, seems wholly un-reasonable. More importantly, the initially framed Rule 5 did not insist on this requirement and was introduced only by way of amendment, which was brought into effect prospectively. Upon framing of the Rules thus the petitioner had a right to be considered for absorption in terms of the rule as it stood at that relevant time.

Be that as it may, the official respondents not having shown any relevance to the said date of 16.12.2016, the same must be discarded as wholly arbitrary. Respondent No.6, who was appointed as a Tutor merely 3 years after the petitioner, having been absorbed with effect from 30.03.2016, the petitioner must receive similar treatment. In partial modification of the impugned Notification dated 26.02.2019 therefore, it is provided that the effective date of the petitioner's absorption in the said service would be with effect from 30.03.2016.

Petition is disposed of accordingly.

(AKIL KURESHI), CJ

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