

13.12.2021
Item No.37
Ct. No.5
Aloke

**W.P.A. 17671 of 2021
(Via Video Conference)
Srijani Roy
Vs.
The State of West Bengal & Ors.**

Mr. Anirban Bose
Mr. A. Mandal

...for the petitioner

Mr. Swapan Datta

...for the State

Mr. Indranil Roy

Mr. Sunit Kr. Roy

... for the National Medical Commission

Mr. D.N. Maiti

... for the WBUHS

Ms. Reni Bhattacharyya

... for the UOI

The maintainability argument to the writ petition has been made on behalf of the National Medical Commission. According to the learned counsel, the writ petitioner has prayed for a declaration in relation to a notification dated 8th October, 2021 as ultra vires of the Constitution whereas the said notification applies only to in-service quota and post-graduate medical and dental doctors in the State.

Learned counsel appearing for the petitioner submits that the petitioner has challenged the last paragraph of the said notification which makes a differentiation between in-service and open quota candidates of the said categories.

Upon hearing the learned counsel, it appears that only prayer of the writ petitioner is for a declaration that the notification dated 8th October, 2021 is ultra vires the Constitution and for a direction on the respondents to withdraw and rescind the said notification.

Upon perusal of the said notification dated 8th October, 2021, it is clear that the said notification applies only to the in-service quota in post-graduate medical and dental and post doctoral medical counselling for State quota seats in Government pursuant to a Five Judge Bench judgment of the Supreme Court dated 31st August, 2020. The last paragraph of the said notification provides that in case a particular post in rural/remote/district area of a particular discipline is saturated, the in-service candidates may be placed in over non-saturated areas as the Department of Health and Family Welfare of the State may deem fit and proper in the interest of public service.

This Court is unable to agree with the contentions made on behalf of the petitioner that by reason of the aforesaid paragraph, the petitioner has a right to approach the writ Court for challenging the notification. The notification which is relevant to open quota candidates is a notification of 10th June, 2014 which provides inter alia that open quota candidates would be required to work in certain kinds of hospitals in the State for a certain number of years

to serve the rural population. Therefore, if any plea of discrimination is at all be made, the writ petitioner should have included the notification of 10th June, 2014 within the prayer of the present writ petition for declaring the said notification ultra vires the Constitution upon a suitable case being made out in the writ petition. The present writ petition only covers the notification pertaining to in-service candidates dated 8th October, 2021. The plea of discrimination or unfair treatment must be in relation to the notification which covers open quota candidates which is 10th June, 2014.

Since the prayers in the writ petition do not cover the relevant notification, W.P.A. 17671 of 2021 is dismissed without any order as to costs.

(Moushumi Bhattacharya J.)