

6th December, 2021
(D/L No.39)
(SKB)

W.P.A. 17775 of 2021
(Via Video Conference)

Tania Mukherjee and others
Versus
The State of West Bengal & Ors.

Mr. Pratik Dhar,
Mr. Kartik Kumar Roy
... for the petitioners.

Mr. Indranil Roy,
Mr. Sunit Kumar Roy
... for the National Medical Commission.

Mr. Samrat Sen,
Mr. Suman Dey
... for the State.

Mr. Debu Chowdhury
... for respondent no.7.

The petitioners are 53 medical officers who are engaged in different government hospitals in the State of West Bengal. The petitioners seek the respondent to show cause as to why the impugned notification dated 8th October, 2021 should not be set aside in absence of sufficient cause in that respect.

The extent of challenge to the impugned notification is not to the entirety of the notification but limited to the 4th paragraph of that notification by which the Department of Health and Family Welfare, Government of West Bengal mandates that in order to avail “in-service” candidates of the said Department who are rendering service in government hospitals would have to serve in rural or remote areas for a minimum of

three years aggregate as on 30th April, of an academic year for being considered as eligible for such “in-service” quota.

It should be pointed out that the impugned notification dated 8th October, 2021 is in terms of a Judgment delivered by a five Judges Bench of Supreme Court in *Tamil Nadu Medical Officers Association and others Vs. Union of India and others: (2021)6 SCC 568*, paragraph 97 of which contains an expectation that the respective state governments providing for a separate channel of entry should make a minimum service in rural or remote or difficult areas mandatory for a specific period before a candidate can seek admission through such separate channel and also subsequent to obtaining the degree.

According to learned counsel appearing for the petitioners, the challenge is to the portion of the impugned notification which makes the three years service in remote/rural/difficult areas mandatory for being considered for the "in-service" quota. It is the position of the petitioners that the impugned notification was introduced in the face of an existing notification of 2nd June, 2015 as amended on 21st January, 2016 already providing for certain requirements for qualifying for the “in-service” quota in the form of candidates putting in three years in specialized units like Critical Care Unit, Intensive Cardiac Care Unit etc. Counsel submits that since the petitioners have already fulfilled

the required criteria under the notification of 2015-2016, the subsequent notification dated 8th October, 2021 would set petitioners back for a period of three years which the Supreme Court did not mean in the expectation expressed in paragraph 97 of *Tamil Nadu Medical Officers Association* (supra).

The above position is disputed by learned counsel appearing for the State and submits that the notifications relied upon do not apply to the petitioners and that the petitioners in any event not in a position challenge a policy decision of the government.

The National Medical Commission and the National Medical Board and Education are represented.

Since the arguments point to a contentious issue turning upon a consideration of a judgment of the Supreme Court of 31st August, 2020 and there are several representations made by the writ petitioners to the Health Secretary, Government of West Bengal, which have not been responded to by the latter till date, this court is of the view that before the petitioners are permitted to urge their case any further, W.P.A.17775 of 2021 can be disposed of with a direction to the respondent no.5 being the Special Secretary, Department of Health & Family Welfare, Government of West Bengal, to dispose of the last representations made by the petitioners dated 25th October, 2021 or any other representation which the petitioners may make by 9th December, 2021 by way of a reasoned order after giving

an opportunity of hearing to all concerned parties including the petitioners within 30th December, 2021. The petitioners shall be at liberty of placing any existing notification, which may assist the petitioners before the authority concerned (for the sake of completeness). A copy of the reasoned order shall be made available to the petitioners within 4th January, 2022. It is made clear that the time frames have been provided upon the suggestion made by learned counsel appearing on behalf of the parties and it is hence expected that the petitioners shall not be prejudiced by reason of such time is framed.

This order is made subject to court fees be put in by the petitioners by the end of this week.

W.P.A. 17775 of 2021 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J.)