

21.03.2022

Court : 04
Item : PB-04
Matter : MAT
Status : DISMISSED
Transcriber: nandy

CAN 1 of 2022
in
MAT 75 of 2022

Dr. Anupam Mitra
Vs.

The State of West Bengal & Ors.

Mr. Debabrata Roy, Advocate
Mr. Gazi Faruque Hossain, Advocate
Ms. Priyanka Mondal, Advocate
Mr. Soumik Mondal, Advocate
Ms. Sarbani Mukhopadhyay, Advocate
.....for the Petitioner

Mr. Indranil Roy, Advocate
Mr. Sunit Kumar Roy, Advocate
.....for the National Medical Council

Mr. D.N. Maity, Advocate
.....for the Respondent Nos. 3 & 5 (WBUHS)

Mr. Tapan Kumar Mukherjee, Senior Advocate
Mr. Somnath Naskar, Advocate
.....for the State

Mr. Saibalendu Bhowmick, Advocate
Mr. Biplab Guha, Advocate
Mr. Rajsekhar Basu, Advocate
.....for the Respondent No. 7 (WBMC)

The instant appeal has arisen from a judgment dated January 4, 2022 passed in WP 5592 (W) of 2020 whereby and whereunder the writ-petition was dismissed on contest.

The petitioner offered his candidature for the post of Post-Graduate Course in National Eligibility-cum-Entrance Test (NEET-PG) and secured the rank of 25,296 with a state-wise combined rank of 1145. The petitioner secured 597 marks out of 1200 and claimed 30% marks to be awarded as in-service Doctor as he had worked in Panchagram Rural Hospital, Diamond Harbour, Block-I since November

6, 2012. Reliance is placed upon Clause 9(2)(d) of the Postgraduate Medical Education Regulations, 2000 for the proposition that the said clause imbibe the candidature of the petitioner on the basis of the weightage in the marks by way of an incentive at the rate of 10% to be obtained for each year of service in remote/difficult area with a maximum cap of 30%.

Taking clue therefrom, it is submitted that the petitioner having worked for more than three years in a rural/remote/difficult area, is entitled to have a weightage of 30% above the marks so obtained which shall improve his State-wise combined rank to 215 and, therefore, entitled to be admitted.

However, It is submitted at the Bar that the petitioner never rendered services in rural/remote/difficult area so as to come within the purview of the definition assigned to 'rural area' in the relevant statutory documents and, therefore, is not eligible to be assigned any weightage or the marks in the aforesaid examination.

By notification dated February 26, 2020 the rural area as well as the remote/difficult areas are defined therein. The Explanation-I defining the 'rural areas' indicates the areas other than the areas within the jurisdiction of a Metropolitan Area, Municipal Corporation, Municipality, Cantonment Board, Notified Tour Area Committee or Industrial Township Authority and/or other urban local bodies of the like whereas the "Remote and/or Difficult Areas" are

defined in the Explanation-II appended thereto means and includes the hill areas (demarcated by the region as defined in Section 2(o) of the Gorkhaland Territorial Administration Act, 2011 and the areas of Sundarban under the Sundarban Unnayan Parshad, the areas under the jurisdiction of the Paschimanchal Unnayan Parshad and the areas under the Uttarbanga Unnayan Parshad under the Government of West Bengal.

It appears from the impugned order that the petitioner pleaded to have been running service in a remote area and there is no pleading to the effect that the petitioner was working in a rural area. The importance of pleadings in an adversarial system of adjudication is vital and important and something, which has not been pleaded, nor the foundation is laid therein, should not be allowed to be agitated at the Bar. Furthermore, whether the service rendered by the petitioner within the rural/remote/difficult area, is essentially a question of facts and depends upon the quality of the proof and, therefore, in absence of any pleading the Court should not embark its journey on mere rhetoric of the learned Counsel appearing for the petitioner and treat the same to have been a part of the pleading and decide the same.

The single Bench has found that there is no pleading nor any proof in respect of the claim that the petitioner worked in a rural area. Furthermore, the litigation concerning NEET-PG for the sessions 2020

has been set at rest by the Supreme Court in M.A. 1282 of 2020 in WP (C) 76 of 2015 wherein the deadline was fixed as August 31, 2020.

Be that as it may, one and half years has elapsed. The next session has commenced and it would not be proper to admit the petitioner in the midst of the session, which has also been deprecated time and again.

Solely on the aforesaid ground and without venturing to go into the other aspect whether the petitioner qualifies the conditions as in-service candidate, the instant appeal being **MAT 75 of 2022** and the connected application being **CAN 1 of 2022** are **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

