

10th February, 2022
(D/L No.04)
(SKB)

WPA 1648 of 2022
(Via video conference)

Satyabrata Gayen and others
Vs.
State of West Bengal and others

Mr. Bikash Ranjan Bhattacharya,
Mr. Suman Banerjee
... for the petitioners.

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

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

The 44 writ petitioners are NEET-PG, 2021 qualified candidates who seek to get admission to Medical Post-Graduate courses offered by colleges in the State of West Bengal. The petitioners have assailed a Corrigendum published by the State Department of Health and Family Welfare to an earlier Notification with regard to in-service quota dated 8th October, 2021.

The fulcrum of challenge is that the Department has introduced Covid-19 related duties as part of the requirement of service in “difficult areas” for availing the benefits of reservation.

According to learned counsel appearing for the petitioners, the Corrigendum extends the cut-off date

for assessing the eligibility criteria for those who serve in rural/remote/difficult areas from 30th April, 2021 to 31st December, 2021 without any intelligible reason. Counsel also submits that the rules of game cannot be changed after the petitioners entered into the zone of consideration for being considered for the in-service quota. The petitioners pray for setting aside of the Corrigendum dated 25th January, 2022 and for a fresh counselling process in terms of the Notification dated 8th October, 2021.

Learned counsel appearing for the State opposes the prayer on the ground that the Notification of 8th October, 2021 was justifiably amended and relies on relevant facts in support of the said contention. Counsel submits that the petitioners have not suffered any prejudice by reason of the impugned Corrigendum.

Learned counsel appearing for the National Medical Commission indicates the relevant dates in the schedule of counselling for NEET-PG, 2021, as published by the Directorate of Medical Education on 25th January, 2022. Counsel relies upon a decision of the Supreme Court in *Vidhi Himmat Katariya and others vs. The State of Gujarat and others* reported in (2019)10 SCC 20 with reference to the allegation that the rules of the game have been changed for the petitioners in the present case.

Upon hearing learned counsel appearing for the parties, the challenge in the writ petition appears to be essentially on two counts. First, whether the cut-off date for the eligibility criteria for in-service doctors serving in rural/remote/difficult areas could be extended from 30th April, 2021 to 31st December, 2021; and second, whether the Department could have brought Covid-19 related duty as part of the requirement for service in difficult areas.

The answer may be found in the Corrigendum itself with regard to the first ground of challenge,. The Corrigendum clearly states that the cut-off date is being extended to 31st December, 2021 for the academic session 2021-2022 by reason of the fact that the NEET-PG, 2021 Medical State quota counselling for 2021-2022 in West Bengal shall only begin in January, 2022. The Corrigendum further makes it clear that the extension is only for the 2021-2022 academic session and is being made as a one time relaxation without creating any precedent for the future in any manner whatsoever. The reason given in the Corrigendum explains the reason for extension of the cut-off date and the Court does not find any arbitrariness in such extension. The first challenge to the Corrigendum is accordingly found to be without basis.

With regard to the second challenge, namely inclusion of Covid-19 related duty within the zone of

eligibility for the in-service quota, several factors are relevant. The concept of “difficult area” has been defined in Explanation II of the Notification dated 26th February, 2020 to mean certain geographical areas which would clarify as remote or difficult. Factually, there is little doubt that serving as the frontline workers during the pandemic would satisfy the obvious meaning of “difficult”. There cannot be any other way of assessing the committed service rendered by doctors in the fight against Covid. The question is whether the State was empowered to add Covid-19 duties to the “difficult areas” definition. The answer can be found in the 5th paragraph of the Notification dated 8th October, 2021 which empowers the Department to modify the definition of rural/remote/difficult area from time to time as per the emergent situation. Since this Court finds that there can be no factual dispute as to the necessity of bringing in Covid-19 related duties within the definition as on 25th January, 2022 when the country was in throes of the third wave of the pandemic, the second challenge is also found to be without basis.

It is also curious that the petitioners have not challenged the Notification dated 8th October, 2021 which is the starting point of the requirement of service in rural/remote/difficult areas for three years pursuant to a judgment of the Supreme Court in *Tamil*

Nadu Medical Officers' Association Vs. Union of India and others reported in (2021)6 SCC 568. The probable reason may be that the 8th October, 2021 Notification curtailed the zone of consideration only to those in-service doctors who had rendered three years service in rural/remote/difficult areas while the Corrigendum extended the zone to bring in Covid-19 related duties. The petitioners hence thought it prudent not to challenge reducing of the pool-pie as on 8th October, 2021 but challenged the Corrigendum when the same pie added an extra slice to expand the zone of consideration on 25th January, 2022.

The question whether the Department changed the rules of the game to prejudice the petitioners would be evident from some relevant dates. The petitioners qualified in the NEET-PG, 2021 examination in September, 2021 for the academic year 2021-2022. The Schedule published by the Directorate of Medical Education indicates that the counselling process for NEET-PG, 2021 commenced on 25th January, 2022 followed by registration, verification and admission of the candidates in the allotted colleges. The verification process concluded on 8th February, 2022. Round 1 of the counselling ended on 9th February, 2022. Round 2 of the counselling process is scheduled to start from today i.e. 10th February, 2022. The logic against changing the rules of the game is an extension

of the duty of fair play so that candidates who have participated in a selection process on the basis of eligibility criteria existing as on the start-date are not faced with an unfair exclusion from the race midway to the selection or after the process is concluded. The reason is that candidates should not be at the receiving end caused by a change of policy without being given an opportunity to meet the changed criteria. In *Vidhi Himmat Katariya* (supra), the Supreme Court disagreed that the rules had been changed and held that the rule cannot be changed after the relevant time the candidate sought admission in the medical course under the Persons with Disability category. In accordance with *Vidhi Himmat Katariya*, in the present case, the rules of the game cannot be changed after 2nd February, 2022 when the in-service candidates were to get admission in the allotted colleges as per the schedule published by the concerned authority. In *K. Manjusree Vs. State of A.P.*: AIR 2008 SC 1470, the entire selection was completed and new names were added to the final list.

Hence, the facts in the present case do not show that the rules of the game were changed to the detriment of the petitioners at a stage when the petitioners' eligibility criteria had already been assessed. The petitioners have already participated in the first round of counselling and it is not the

petitioners case that they have been left out of the process by reason of the impugned Corrigendum dated 25th January, 2022. The petitioners would have had an arguable case if the 25th January, 2022 Notification excluded the petitioners from the zone of consideration altogether. Since no such case has been made out in the present writ petition, this Court is not inclined to grant the relief as prayed for.

W.P.A.1648 of 2022 is accordingly dismissed.

There will be no order as to costs.

(Moushumi Bhattacharya, J.)