

10.02.2022
KC(1)

M.A.T. 146 of 2022
Tania Mukherjee and Ors.
-versus-
The State of West Bengal and Ors.
With
CAN 1 of 2022

(Through Video Conference)

Mr. Pratik Dhar,
Mr. Kartik Kumar Roy.....For the appellants.

Mr. Samrat Sen,
Mr. Nilotpall Chatterjee.....For the State.

Mr. D.N. Maity.....For the respondent
no. 6.

Mr. Indranil Roy
Mr. Sunil Kumar Roy.....For the respondent
no. 9.

This issue concerns admission into post-graduate medical courses in West Bengal. The counseling process has started. The admission process is required to be completed by 10th March, 2022. In that view of the matter, we propose to hear out the appeal itself, dispensing with all formalities on the papers available before us in the stay application and the memorandum of appeal.

For post-graduate medical education in our country there is an examination called National Eligibility-cum-Entrance Test. This is an all India examination.

As far as allocation of seats in medical colleges is concerned, 50% seats is for state residents and the balance 50% is filled up at the all India level. By the notification dated 18th April, 2013 of the Department of Health and Family Welfare, Government of West Bengal out of this 50% reservation for state candidates, 40% of post-graduate medical and dental degree seats is reserved for 'in service' medical service/medical doctors and 50% for some other category of medical officers.

There is another notification of the government dated 3rd June, 2015 made in exercise of the power of the Government under Section 21 of the West Bengal State Health Services Act, 1990 where the eligibility criteria for placement of trainee reserve as Government sponsored candidates is specified. Rule 3(a)(i) states as under:

“3. Criteria for placement on trainee reserve- The following shall be the eligibility criteria for placement on trainee reserve as Government sponsored candidates:-

(a) for the officers of the West Bengal Medical Education Service, West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service-

(i) a minimum of three years qualifying service under the employment of the Government of West Bengal in the respective cadre as determined on the thirty-first day of March of the concerned year and for the officers who have been appointed in any of the three cadre service from any of the two other cadre services, they must have put in at least three years' service in the West Bengal Public health-cum-Administrative Service, the West Bengal health Service and in the West Bengal Medical Education Service, taken together;

provided that in case of the West Bengal health Service, the minimum period of qualifying service required shall have to be actually rendered in rural areas in Primary Health Centers, Block Primary health Centers and Rural Hospitals;

Explanation:- For the purposes of these rules, the term 'rural area' shall include all areas in this State other than areas under Municipal Corporations, Municipalities, Notified Area Authorities, Cantonment Boards and industrial township."

It was amended on 21st January, 2016 to the following effect:

"Provided also that the compulsory requirement of qualifying rural service may be relaxed or dispensed with in case of such Medical Officers who have been directly recruited through the Public Service Commission, West Bengal or West Bengal health Recruitment Board and appointed by the State Government in Specialized Units like Sick Newborn Care Unit (SNCU), High Dependency Unit (HDU), Critical Care Unit (CCU), Intensive Cardiac Care Unit (ICCU), and Intensive Therapy Unit (ITU), based on merit of each case, subject to the condition that the total qualifying service length must not be less than three years"

A five Judge Constitutional Bench of the Supreme Court pronounced a judgment in Tamilnadu Medical Officers Association –vs- Union of India and Ors., reported in (2021) 6 SCC 568. In paragraph 97 of that judgment the court laid down the following:

"97. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such are as, the State shall formulate a policy of making the in-

service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.”

On 8th October, 2021, the Department of Health and Family Welfare, Government of West Bengal, reciting this judgment published a notification, inter alia, stating that in order to avail “in service quota” candidates in the department rendering service would have to work in rural/remote/difficult area for a minimum period of three years taken together as on 30th April of the academic year before being considered as eligible. The definition of rural/remote/difficult area would be according to the Government notification dated 26th February, 2020.

Now, the notification dated 26th February, 2020 defined rural/remote/difficult area as follows:

“Explanation I: The term ‘rural areas’ means areas other than the areas under the jurisdiction of a Metropolitan Area, Municipal Corporation, Municipality, Cantonment Board, Notified Town Area Committee or Industrial Township Authority and/or other Urban Local Bodies of the like may be prescribed/notified by the appropriate Government from time to time;

Explanation II: The term ‘Remote and/or Difficult Areas’ means and includes (i) the hill areas (demarcated by the region as defined in Section 2(o) of the Gorkhaland Territorial Administration Act, 2011; (ii) the areas of the Sundarbans under the jurisdiction of the Sundarban Unnayan Parshad, (iii) the areas under the jurisdiction of the Paschimanchal Unnayan Parshad and (iv) the areas under the jurisdiction of the Uttarbanga Unnayan Parshad under the Government of West Bengal.”

Now, we come to the real issue in this appeal. The appellants before us are 53 doctors in the West Bengal health service. They wish to avail of the above 40% quota on the footing that they have been working as doctors in the state health service.

The government is not allowing them to do so. The reason advanced by it is that these candidates have not rendered three years' service in rural areas.

Mr. Pratik Dhar, learned senior advocate appearing for the appellants submitted that his clients had already been working in five specialised medical units in Government hospitals categorised as ICCU, HDU, SNCU, ITU and CCU for over three years. They were wrongly being denied availment of the 40% quota, by the government. He said that on a mis-interpretation of the Supreme Court judgment, the Government had made the notification dated 8th October, 2021 making 3 years service in a rural/remote/difficult area as a condition precedent to availing the quota. This resulted in discrimination of the class to which the appellants belonged. By the 2013 notification, there was no such classification.

Mr. Dhar also submitted that by the notification dated 21st January, 2016, a trainee reserve could be appointed by virtue of the said amendment by relaxing the compulsory requirement of working in rural/remote or difficult area for 3 years. Similarly,

the appellants/writ petitioners could be exempted, since they had been working for more than three years in the said five specialised medical units. Nonetheless by the notification dated 8th October, 2021, the State had insisted on rural/remote or difficult area service as a condition precedent to be eligible for admission in the said post-graduate medical course under the quota.

Mr. Samrat Sen, learned senior advocate, appearing for the State submits that under the notification dated 3rd June, 2015, a government doctor is allowed to pursue post-graduate course, treated as a trainee reserve, on rendering three years' service in rural areas. By the 2016 notification, there was relaxation in those requirements for a certain category of candidates appointed by the State government to work in five specialised units. He said that each and every candidate in the 40% quota upon selection was ought to be treated as a trainee reserve. The eligibility criterion for the 40% quota candidates had to be viewed separately from the norms for doctors to be treated as trainee reserve. The notification of 3rd June, 2015 read with the 21st January, 2016 notification could not be regarded as the terms and conditions for selection of candidates for the 40% quota. The present admission process was being conducted on the basis of the 8th October,

2021 notification made after the said Supreme Court pronouncement. It was an independent notification. The notification of 2015 and 2016 could not be incorporated into it.

Mr. Indranil Roy, learned advocate appearing for the National Medical Commission opposed any order being passed deferring the decision making process beyond the time line of 10th March, 2022.

In our opinion, we find nothing wrong in the notification dated 8th October, 2021 reciting the above paragraph of the above Supreme Court judgment and altering the notification based on such pronouncement.

However, we note that the notification dated 8th October, 2021 provided that the definition of rural/remote or difficult area was subject to modification from time to time.

On 25th January, 2022, a modification of this definition was considered by the Government. While interpreting “difficult area” it included the “Covid-19 related duty” which was “considered as rendering service in difficult area”.

Thus, such decision of the State makes it clear that the expression “ difficult area” is not restricted on the basis of geographical location but also flexible enough.

Now, it is quite undisputed that the appellants have been in those five specialised units.

It is contended by Mr. Dhar for the appellants that each of the appellants/writ petitioners had attended Covid patients while rendering service in those five specialised units during the difficult time of the pandemic. They have rendered duty in those units for more than three years out of which they did Covid duty for a little less than two years.

It is only because of this exception that the Government has made with regard to doctors who have rendered Covid duty that calls for reconsideration of the case of the appellants. If it is found that the appellants have rendered continuous service in those five specialised units for three years out of which a substantial period has been devoted to rendering service to Covid patients, the concept of equality of treatment of equals, fairness and reasonableness in a government decision process would emerge. It would demand that the Principal Secretary, Department of Health and Family Welfare, government of West Bengal should reconsider the case on merits based on the above notions of fair play by giving a short and meaningful hearing to the learned lawyer representing the appellants and by a reasoned order within seven days from date. We order accordingly.

In making his decision the Principal Secretary will take into account, inter alia, the following:

- (a) To obtain admission each of the candidates have to be placed as trainee reserve,
- (b) To qualify as a trainee reserve under the 21st January, 2016 amendment, a candidate is entitled to consideration of relaxation of three years' service in rural, remote or difficult areas if he has worked in one of the five specialised units. This amendment is specially applicable to the State of West Bengal.
- (c) By the notification of 21st January, 2016, the government extended this relaxation to those doctors who did Covid-19 related duty,
- (d) Whether on such consideration any of the appellants is entitled to such relaxation for doing Covid-19 related duty in addition to other duties in the said five specialised units?

Till this decision is made by the Principal Secretary, no permanent decision regarding allocation of seats in the said 40% reserved category shall be taken by any of the respondent authorities.

However, this order will not prevent allocation of seats in the open category.

The appeal (M.A.T. 146 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

