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Court : 04
Item : 02
Matter : **MAT**
Status : DISMISSED
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MAT 160 of 2022

with

CAN 1 of 2022

Satyabrata Gayen & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Senior Advocate

Mr. Suman Banerjee, Advocate

.....for the Appellants

Mr. Samrat Sen, Learned A.A.G.

Mr. Supriyo Chattopadhyay, Advocate

Mr. Suman Dey, Advocate

.....for the State

Mr. Indranil Roy, Advocate

Mr. Sunit Kumar Roy, Advocate

.....for the National Medical Commission

The present appeal arises from an judgment and order dated February 10, 2022 passed in WPA 1648 of 2022 by a single Bench dismissing the writ-petition wherein a challenge was thrown to a corrigendum dated January 25, 2022 in furtherance to the Notification dated October 8, 2021.

The basis of challenge in the instant appeal is founded upon the aforesaid corrigendum dated January 25, 2022 extending the cut-off date for service eligibility pertaining to a service in rural/difficult/remote area from April 30 to December 31, 2021 for the academic sessions 2021-22. The reason for such corrigendum can be seen from the opening paragraph where the Government have decided to extend the period of service in difficult areas because of Covid-19 having struck globally.

According to Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel, appearing for the appellants, such corrigendum, in fact, changed the rule of the game after the game is played and acted as deterrent to the appellants and prejudicial to the rights accrued as on the date when the Notification for examination was published.

Indubitably, the appellants joined the West Bengal Health Service on divulge dates and claimed to have served in rural/difficult/remote areas within the State of West Bengal. The appellants participated in the entrance examination namely NEET (PG) 2021 on 11.01.2021 which was conducted on all India basis by the National Board of Examination for post-graduate medical courses and the result was published on 28.09.2021. The appellants were found eligible in the said examination for admission to a post-graduate course. There has been a large number litigation in the different Courts of the country challenging the competence of the State in reserving the seats for in service quota and ultimately a writ-petition was filed before the Supreme Court in ***Tamil Nadu Medical Officers' Association & Anr. Vs. Union of India*** reported in ***(2018) 17 SCC 426***. The Apex Court held that the State is competent to legislate any regulation and rule pertaining to the education and ruled out the contention that the State cannot fix or reserve the seats for in-service quota in the following:

23.8. “.....that the State has the legislative competence and/or authority to provide for a separate source of entry for in-

service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned inservice doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper; and.....”

Because of the litigation having rolled in the docket of different Courts, the counseling for the academic year 2021-22 could not be commenced and, in fact, was fixed in the month of January 2022. However, in the meantime the notification was issued by the Government of West Bengal on October 8, 2021 in tune with the Constitution Bench decision of the Supreme Court ***[Tamil Nadu Medical Officers’ Association (supra)]*** defining the rural/difficult/remote area in terms of the earlier notification, subject to modification from time to time as per demanding situation. It was further indicated that in order to avail the in-service quota, the candidates applying thereunder shall have to serve, for a minimum period of three years as on 30th April of the academic year in rural/difficult/remote area before being considered as eligible thereunder.

The aforesaid notification though issued after the examination was conducted, has not been challenged by the appellants in the writ petition for the obvious reason that they were deriving benefits therefrom. However, the challenge is thrown when

the corrigendum was issued on January 25, 2022 extending the cut off date as service eligibility from April 30 of the academic year to December 31, 2021 for the academic session 2021-22.

According to the appellants, the said corrigendum expanded the horizon of the competition and the candidates have to compete with certain candidates, who are otherwise ineligible in terms of the notification dated October 8, 2021. Reliance is heavily placed upon the judgement of the Supreme Court in case of ***K. Manjusree vs. State of Andhra Pradesh*** reported in ***AIR 2008 SC 1470*** for the proposition that the Rule of the game should not be changed in the midst of a game or after the game was played. The aforesaid decision pertains to a selection to ten posts of the District and Sessions Judge in Andhra Pradesh State Higher Judicial Service. While the recruitment Rules applicable therein does not provide minimum marks to be obtained by a successful candidate in the interview, the administrative committee of the Court upheld the criterion of minimum marks for interview, which was the focal point of challenge before the Supreme Court.

In the backdrop of above, the Apex Court held that the introduction of requisite minimum marks in the interview after the entire selection process consisting of the written examination and interview was completed shall tantamount to changing the Rule of the game after the game is played in the

following:-

24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them P. K. Ramachandra Iyer v. Union of India 1984 (2) SCC 141, Umesh Chandra Shukla v. Union of India 1985 (3) SCC 721, and Durgacharan Misra v. State of Orissa 1987 (4) SCC 646.

It is further held that the selection committee cannot abrogate and expand and/or change the statutory rules in course of the recruitment process by prescribing a minimum marks to be obtained in the interview and ultimately struck down the decision of reserving a minimum marks in the interview in the following:-

29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is

impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not

done. The Full Court allowed the Administrative Committee to determine the method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee. Once the selection process was completed with reference to the criteria adopted by the Administrative Committee and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.

The aforesaid decision in our view is

inapplicable in the instant case for the reason that the aforesaid notification does not offend any statutory rules applicable in this regard. Furthermore, the eligibility criteria fixed at the time of inviting an application cannot be changed in course of a recruitment process depriving the eligible candidates to become ineligible. In such perspective, it has been held that the authorities cannot change the rule of the game after the same is played. The decision of a Court is what has been decided on the basis of the fact of a particular case. Any action which detracts or takes away the rights subsequent to the initiation of the recruitment process is beyond the competence of the authority. However, the position would be different when keeping the eligibility criteria, initially fixed, in tact, mere elongation of the cut-off date cannot be termed as a prejudicial action taking away the accrued right of the eligible candidates.

In the case of **K. Manjusree** (supra), the 27 candidates who were found eligible but by virtue of such changed rule of the game, some of them are thrown out of the zone of consideration which does not appear to be in the instant case. Furthermore, the Notification dated October 8, 2021, though issued after the examination was conducted benefitted the appellant and obviously the said Notification was not under challenge in the writ-petition. The eligibility criteria pertaining to serving in a rural/difficult/remote area though was fixed on April 30 of the academic year but mere extension of the same because of the

exigencies and unforeseen circumstances of Covid-19 cannot be said to be unreasonable and beyond the competence of the authority. Apart from the same, the Notification dated October 8, 2021 clearly stipulates that the definition of the rural/difficult/remote area as indicated in the earlier notification, shall be subject to the modification from time to time as per the demanding situation. The corrigendum neither abrogates nor diminishes nor curtails such eligibility criteria and if the notification dated October 8, 2021 has been accepted by the appellant, any action on the basis of the power of modification reserved therein, cannot be impinged.

The appeal being **MAT 160 of 2022** is **dismissed**. The connected application being **CAN 1 of 2022** also stands **dismissed**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

