

21.04.2022
Item No. 06
Crt.No.11
b.r.

MAT 283 of 2022
with
IA No. CAN 1 of 2022

Dr. Krishna Gopal Roy
-vs-
The State of West Bengal & Ors.

Mr. Debasish Kundu
Mr. Souma Subhra Roy
..... for the appellant.

Mr. Tapan Kumar Mukherjee, Ld. AGP.
Mr. Pranab Halder
..... for the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Mr. Kundu, Learned Counsel, appears with Mr. Souma Subhra Roy, Learned Advocate and, essentially takes two points.

The first point pertains to the difference in age and remuneration between MBBS candidates for the post in issue, which is the District Leprosy Consultant under the National Health Mission on the one hand and, BAMS/BHMS candidates on the other. It is submitted that while the first category of MBBS candidates are qualified allopathic doctors, the second category of BAMS and BHMS are qualified Ayurvedic and Homoeopathy doctors respectively.

Mr. Kundu points out that for the first category of MBBS doctors, the age of entry has been kept at 62

years whereas, for the second category of BAMS and BHMS the age of entry has been kept far below at 40 years.

It is therefore submitted that the wide difference in age between two categories amounts to hostile discrimination. Aspiring BAMS/BHMS candidates who intend to apply for the said post are faced with a cut-off age of entry at 40 years. The appellant presently aged around 45 years stands unfairly excluded from even applying for the post. It is submitted that the discrimination stares in the face of the records since the job responsibilities for the post for both MBBS and BAMS/BHMS categories is the same.

The second limb of submission placed by Mr. Kundu pertains to the reservation of posts for Scheduled Caste (SC), Scheduled Tribe (ST) and Persons with Disability (PWD) candidates in violation of the 100-Point Roster. It is particularly pointed out that the PWD vacancy could not have been advertised since such vacancy is neither 12th, nor the 42nd or the 72nd vacancy in terms of the 100-Point Roster. It is submitted that in the event the PWD vacancy could not have been declared, the post ought to have been treated as belonging to the unreserved category to which the appellant belongs.

Per contra, Mr. Halder, Learned State Counsel, submits that the appellant resigned from the said post of District Leprosy Consultant and, on his resignation, the posts available under the 100-Point Roster had to be advertised. It is submitted that the present writ petition is not in the nature of a Public Interest Litigation (PIL) by which the appellant can claim to be considered allegedly on the basis of a faulty conversion of the claimed earmarking of a PWD vacancy.

The State-Respondents maintain the stand that a plain look at the 100-Point Roster would disclose, even if the argument is accepted that the 12th vacancy could be allotted to an Unreserved PWD category, would not apply to the present appellant who is not a PWD candidate.

Having heard the parties and considering the materials placed up to this stage, this Court is of the view that the matter requires consideration upon affording the parties the opportunity to place their stand with all supporting papers on affidavit.

Accordingly, the State-Respondents shall file their Affidavit-in-Opposition within a period of four weeks from date; Reply, if any thereto, within two weeks thereafter.

The matter is remanded to the Hon'ble Single Bench with a request to hear out the same after the

period granted to exchange affidavits is complete, subject to its convenience.

Steps taken shall abide by the result of the writ petition.

MAT 283 of 2022 with **IA No. CAN 1 of 2022** are accordingly **disposed of**.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)