

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 335 of 2022
With**

CAN 1 of 2022

Tania Mukherjee & Ors.

Vs.

The State of West Bengal & Ors.

Appearance:

For the Appellant	:	Mr. Pratik Dhar, Sr. Adv. Mr. Kartik Kumar Ray, Adv.
For the Respondent no. 6	:	Mr. D.N. Maity, Adv.
For the Medical Council	:	Mr. Indranil Roy, Adv. Mr. Sunil Kumar Roy, Adv.
For the State	:	Mr. Swapan Kumar Dutta, Adv. Mr. Rajat Dutta, Adv.

Judgment On : 21.04.2022

Harish Tandon, J.:

The appellants have been subjected to several grounds of litigations before this Court asserting for their eligibility to in-service quota having served in the specialised units together with the COVID related duties.

The dispute pertains to an admission in post-graduate degree in the medical course relating to the year 2021. The genesis of the slew of litigations initiated before this court can be traced after the notification dated 18th April, 2013 was issued by the Government of West Bengal, Department of Health and Family Welfare keeping the reservation of 40% post doctor, post-graduate, medical and dental degree seats for in-service medical officers/medical teachers and 50% post-graduate medical diploma seats for in-service, medical officers under the department of Health and Family Welfare. Subsequently, by virtue of notification published in the Official Gazette on June 3, 2015, West Bengal Medical Education Service, The West Bengal Health Services and West Bengal Public Health cum Administrative Service (Placement on Trainee Reserve) Rules, 2015 was promulgated for all categories of medical teachers under the employment of West Bengal Medical Education Service, the Medical Officers of all ranks in the West Bengal Health Service and the Officers of the West Bengal Public Health cum Administrative Service. The eligibility criterion for the placement as trainee reserve has been elaborately incorporated therein mandating a minimum three years qualifying service under the employment of Government of West Bengal in respective cadre as determined on the 31st day of March of the concerned year in the respective three sources of the appointments under the said department. The proviso inserted to Rule 3 (a)

(i) postulate the minimum period of qualifying service actually rendered in the rural area either in the primary health centres, block health centres or the rural hospitals. The explanation appended thereto defines the rural area to mean and include all areas in the State other than the municipal corporation, municipalities, notified area authorities, cantonment boards and the industrial township.

Subsequently, an amendment was brought by a notification dated February 1, 2016 providing relaxation and/or dispensation with the compulsory requirement of qualifying rural service by extending to such medical officers who have been directly recruited through a Public Service Commission, West Bengal Health Recruitment Board and appointed by the State Government in specialised units like Sick Newborn Care Unit (SNCU), High Deficiency Unit (HDU), Intensive Care Unit (ICU), Intensive Cardiac Care Unit (ICCU), Critical Care Unit (CCU) and Intensive Therapy Unit (ITU) subject to the condition that the total qualifying service length must not be less than three years.

The said memo dated 18th April, 2013 reserving a 40 per cent quota for in-service medical officers/medical teachers in a post doctoral, post graduate medical and dental degree seats were subject matter of challenge in the several writ petitions before this court and decided in one way or another. Ultimately, the matter reached before the Supreme Court and the notification of like nature issued by the different State Governments were also the subject matter of challenge in different High Courts and ultimately reached to the Supreme Court. A writ petition was also filed under Article 32

of the Constitution of India and was placed before the Constitution Bench along with the aforesaid appeals. All the aforesaid appeals were taken up together by the Supreme Court and by a judgment rendered in Tamil Nadu Medical Officers Association & Ors. Vs Union of India & Ors., reported in (2021) 6 SCC 568 were decided.

One of the points involved in the aforesaid case was whether the State is competent to keep the quota for in-service doctors for such post-graduate degree and whether such notification issued by the State Governments offends the provisions contained in Medical Council of India Act or the Rules framed thereunder. In other words, the competency of the State to issue such notification or promulgate the rules in this regard is within the provision of the Constitution was also raised therein.

Ultimately, the Constitution Bench held that there is no fetter on the part of the State in reserving the quota for in-service doctors which is within the legislative competence as enshrined in the Constitution of India with the rider that the State must ensure that the doctors availing benefit under the said quota should serve in such area and if necessary shall execute the bond in this regard. The constitution Bench further held that the separate source of entry for in-service through a merit based list prepared for the State is a long standing practice and the rationality and the reasonability can be traced behind the same in these words:

90. We are of the opinion that the admission process stipulating a distinct source of entry for in-service candidates by itself would not constitute breach of the provisions of Regulation 9 of

the 2000 Regulations, provided that the minimum standards mandated by the said Regulations for being eligible to pursue postgraduate medical degree course are adhered to. A separate source of entry for in-service doctors through the State merit list in our view would come within the legislative power and competence of the State. We also take note of the fact that reservation for in-service doctors has been a long-standing practice and the rationale behind such reservation appears to be reasonable to us. But we refrain from dilating on the necessity of maintaining such practice as in this judgment, we are primarily concerned with the question of competence of State authority in making rules providing for such reservation.

The Constitution Bench further held that there is no bar created under the Regulation 9 of the Medical Council of India, Post-graduate Medical Education Regulations, 2000 as subsequently amended to keep a reservation of in-service doctors for admission in post-graduate degree courses and ultimately upheld the decision of the respective States in the following:

95. Because of these reasons, we hold that there is no bar in regulation of the MCI Postgraduate Medical Education Regulations, 2000 as it prevailed on 15.2.2012 and subsequently amended on 5.4.2018 on individual states in providing for reservation of in-service doctors for admission into Postgraduate medical degree courses. But to take benefit of

such separate entry channel, the aspiring in-service doctors must clear NEET Examination with the minimum prescribed marks as stipulated in the 2000 Regulations.

96. We respectfully differ from the views expressed by the Bench of Three Hon'ble Judges of this Court in State of U.P. v. Dinesh Singh Chauhan to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of the 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

The matter did not rest there even after upholding decision of the State Government in reserving the seats declared for the post-graduate degree courses to be filled through in-service doctors, the writ petition was taken out taking a plea that the medical officers who have been posted in specialised units should be included in the in-service quota to avail the benefit of the reservations under such category as notified by the State.

It is no doubt true that by virtue of an amendment having brought in the year 2016, the State Governments have relaxed and/or dispensed with the qualifying period of service in the rural areas to the medical officers who were posted in a specialised unit as indicated above. Subsequently, by a notification dated 26.2.2020 issued by the Health and Family Welfare Department, Government of West Bengal, the State Government decided to give incentive/weightage to the maximum limit of 30% of the marks obtained in the National Eligibility-cum-Entrance Test (hereinafter referred

to as “NEET”) by appending an explanation providing definition to rural areas as is stood at the time of promulgation of the said rules thereby getting away with the amendments subsequently made in relation with the dispensation and/or relaxation of the period of qualifying service in the rural area.

After the Constitution Bench decision rendered in Tamil Nadu (*supra*) further notification was made on 8th October, 2021 to the extent that giving incentive/weightage in the percentage of total marks is contrary to the said judgment and, therefore, the earlier notification dated 26.2.2020 is required to be modified and/or superseded to bring in tune with the spirit of the judgment of the Constitution Bench. However, it is important to note that though the said notification dated 26.2.2020 was partially modified but simultaneously the definition of a rural area given therein was retained and/or reinstated subject to the modification from time to time as per the demanding situation. The effect of such notification can be visualised from the above that the geographical limits of the rural area has been resurrected and resuscitated as initially incorporated in the said Rules and proviso to sub-section (2) have been impliedly done away with and/or superseded in view of the judgment of the Constitution Bench of the Supreme Court.

One of the important aspects of the Constitution Bench as may be deciphered is that the minimum period of service to be rendered in a remote/difficult/rural areas and any provisions which whittled down the said mandate of the Constitution Bench cannot be held to be legally sustainable. However, considering the unprecedented circumstances faced

globally because of the pandemic having struck, the Government decided to include the period of service rendered in difficult time to be included within the period enshrined for rendering services in remote/difficult/rural areas. It is no gainsaying that the policy decision of the Government is ordinarily immuned from a judicial interference nor stand to scrutiny provided it is based upon the realities and its reasonability and rationality can also be attributed thereto. The onerous duty of the medical officers is not only to serve the society but also in pursuit of the development both economical and physical section of the societies and augment the society to move on. The pandemic has been a daunting experience globally and the doctors who are the major stakeholders in combating such situation if extended a benefit we do not find any irrationality nor offending the principles of reasonableness. The trainee reserve and a doctor posted in remote/difficult/rural areas are distinct and separate concept and cannot be intermingled because of the nature of the services rendered by them. The medical officers posted in the specialised units set up in an urban area having all the facilities of the city life and resources at their disposal cannot by any stretch of imagination be equated with the difficulties and obstacles suffered by the medical officers posted at the remote/difficult/rural areas. The reliance upon the amendment having brought in 2016 is not acceptable to us having subsequently diluted and/or whittled down by a subsequent notification issued by the Government and restoring the original definition as it stood while promulgating the Rules in the year 2015.

We, thus, do not find any infirmity and/or irregularity in the impugned order. The appeal is, thus, dismissed.

There shall be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)