

03 08.12.22

WP.ST. 126 of 2022

Ct. No. 04

Akd

Dr. Ratan Sasmal

Vs.

The State of West Bengal & Ors.

Mr. Kishore Dutta,

Ms. Kabita Mukherjee,

Mr. Manas Dasgupta.

... for the petitioner.

Mr. Tapan Kumar Mukherjee,

Mr. Rajat Dutta.

... for the State.

Mr. D. N. Maiti,

Mr. S. Ghosal.

... for the respondent no. 6.

When the matter is taken up today, Mr. Mukherjee, learned Additional Government Pleader, hands over the notification dated 7th December, 2022 issued by the Department of Health & Family Welfare, Health Services (Medical Administration) Branch, Government of West Bengal indicating that the application filed by the petitioner for seeking 'study leave' had already been granted subject to the conditions mentioned therein. Let the said notification be kept with the record.

The dispute pertains to withholding of necessary permission for pursuing the higher degree course, i.e. Anesthesiology (MD) and the approach was made to the Tribunal. The interim order was sought for, as the time was ticking out and the allegation was made that due to apathetic attitude of the Department, although the petitioner has emerged successful in the competitive examination and secured a place in a reputed Institution, yet he will be deprived of such right. The claim pertains to declaration of the status of the petitioner as Trainee Reserve, as he offered his candidature as in-service Medical Officer, which has

certain benefits attributable thereto.

The State took a stand that there is a departmental proceeding contemplated against the petitioner and, in fact, the preliminary enquiry is continuing and, therefore, if the petitioner is permitted to pursue the higher degree course, it would impede the progress of the said enquiry. The State further took a stand that no in-service Medical Officer can claim an inchoate right to be declared as Trainee Reserve, as it depends upon various factors to be considered to take such decision and if the interim order is passed, it may tantamount to violation of the norms and regulations.

Be that as it may, the attention of this Court was drawn that if the study leave is granted, the same may sub-serve the purpose and the experience, which the in-service Medical Officer would achieve by pursuing the higher degree course, would benefit the Government and Public at large.

The petitioner was posted at Khatra, District of Bankura, in the Government Hospital and admitted for higher degree course in an Institution situated at Durgapur. Both the Counsels have uniformly submitted that the distance between Durgapur and Khatra is within the affordable distance and there would not be any impediment on the part of the petitioner to co-operate and participate in the enquiry proceeding, if so warranted.

In view of the fact that the study leave has been granted by issuing such notification, as indicated above, and the matter is pending before the Tribunal, we, therefore, pass an interim order directing the petitioner to comply the requisitions required for the purpose of getting admission and pursuing such higher degree course under the study leave subject to

the outcome of the application filed before the Tribunal.

The Tribunal shall be free to take a decision without being influenced by the aforesaid facts discerned during the course of hearing before us and all the points available to the respective parties are kept open and if taken shall be decided independently in accordance with law.

The State has also assured that whatever the other formalities required for pursuing such higher degree course, the prompt action would be taken in this regard so that it does not affect the petitioner in continuing with the higher degree course.

Since the instant writ petition is relatable to refusal to pass an interim order, the findings made hereinbefore are prima facie in nature and shall not have any persuasive effect over the tribunal application.

It is further made clear that subject to the observations made hereinbefore the conditions incorporated in the said notification shall remain operative upon the parties until the tribunal application is finally disposed of.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

