

DL-16

20.09.2023
Court No.5
(AD)

WP.ST 127 of 2014

**The State of West Bengal & Ors.
Vs.
Prof. (Dr.) Dulal Chandra Saha & Anr.**

*Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Pinaki Dhille
Mr. Somnath Naskar
... for the State-petitioners.*

The writ petition is directed against an order dated December 12, 2013 passed by the West Bengal Administrative Tribunal in OA 1449 of 2012.

By the impugned order, the Tribunal directed the Principal Secretary, Department of Health & Family Welfare to grant all financial benefits to the private respondent in the post of Principal from the date of his assuming charge of the Principal and pensionary benefit of the private respondent to be recalculated after granting such benefit.

The Writ petition is at the behest of the State.

None appears for the private respondents despite service.

Affidavit of service filed in Court be taken on record.

Learned Senior Advocate appearing for the State submits that, the writ petitioner applied for appointment to the post of Principal on December 19, 2011. By that time, the West Bengal Medical Education Service (Recruitment to the teaching-administrative posts of Principals in different

State Medical Teaching Institutions) Rules, 2011 came into being. He submits that, since the application of the private respondent was subsequent to the Rules of 2011 coming into being, his application is to be governed under such Rules. The Tribunal erred in directing consideration of the claim of the private respondent on the basis of the executive instructions subsisting prior to the Rules coming into being. He submits that, there were ten vacancies to the post of Principal and that all of them stood filled up prior to the Rules coming into force.

We find from the records that, the Government issued a notification dated December 13, 2011 promulgating the Rules of 2011. The notification dated December 13, 2011 stated that, the Rules of 2011 shall come into force from the date of publication in the Official Gazette. Since publication in the Official Gazette is dated December 13, 2011, the Rules of 2011 came into effect from such date.

The Rules of 2011 provides for a selection process to the post of Principals of various State Medical Teaching Institutions and other Institutions.

It prescribes the feeder post to the post of Principal and also more importantly prescribed that, the appointment should be through the Public Service Commission.

The private respondent herein applied for being appointed to the post of Principal on December 19, 2011. His application is, therefore, to be considered under the Rules of 2011. The private respondent did not undergo any

selection process undertaken by the Public Service Commission for the post of Principal.

In such circumstances, we set aside the impugned order of the Tribunal.

WP.ST 127 of 2014 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

