

04.09.2023
Item No.2
Ct. No.5
CHC
(disposed of)

WP.ST 126 of 2023

**Dr. Arup Ratan Saha
Vs.
The State of West Bengal & ors.**

Mr. D. N. Ray,
Mr. S. Ghosh,
Mr. M. N. Roy,
Mr. B. Nandy,
Mr. R. K. Shah

...for the writ petitioner

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Somnath Naskar

...for the State

The writ petition is directed against an order dated August 24, 2023 passed in O.A.455 of 2023 by the West Bengal Administrative Tribunal.

By the impugned order, the Tribunal disposed of the Original Application by directing the Secretary, Department of Health & Family Welfare to reconsider the application for study leave of the writ petitioner in the light of the Notification No.43015 dated December 7, 2022 within a period of four weeks from the date of communication of the order.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner is a Doctor. He is presently engaged in the post of Block Medical Officer of Health at Nanna, Barrackpore I Block, North 24 Parganas. The writ petitioner is qualified to pursue MD Degree Course in Community

Medicine at All India Institute of Hygiene and Public Health, Calcutta. The writ petitioner made representation on November 1, 2022 requesting for placement as trainee reserve to pursue the MD Degree Course. Such representation was not disposed of and therefore, the writ petitioner approached the Tribunal by way of an Original Application being O.A.143 of 2023. Such Original Application was disposed of by an order dated May 2, 2023 requiring the Director of Health Services to dispose of such representation. The Director of Health Services passed an order dated June 7, 2023 rejecting the representation. Another Original Application was filed before the Tribunal being O.A.455 of 2023 challenging the order dated June 7, 2023 in which the impugned order was passed.

Learned advocate appearing for the writ petitioner submits that the coordinate Bench, in similar circumstances, passed an order dated 8, 2022 in WP.ST.126 of 2022. WP.ST 126 of 2022 was ultimately disposed of on December 8, 2022. In such writ petition, the writ petitioner therein was granted study leave despite departmental proceeding being pending.

Learned advocate appearing for the writ petitioner submits on instructions that, the initial representation was for study leave. The writ petitioner

is seeking study leave. The writ petitioner will not draw any salary. The writ petitioner is ready and willing to comply with all formalities including filing of an affidavit with the appropriate authorities, that, the writ petitioner will not seek salary for the study leave.

Learned Senior Advocate appearing for the State draws the attention of the Court to the contents of the order of the department dated June 7, 2023 rejecting the application for study leave. He submits that there is a vigilance proceeding pending as against the writ petitioner. In the event, the writ petitioner is punished in such departmental proceedings, then, the State will not be in a position to recover the financial benefits extended to the writ petitioner in the meantime.

The writ petitioner is a Doctor. He joined government service on July 17, 2006. He later joined West Bengal Public Health Administrative Service and was posted as Block Medical Officer of Health at Nanna Rural Hospital, Barrackpore I Block, North 24 Parganas on November 2, 2010 and is still serving in such post.

The writ petitioner made a representation dated February 23, 2023 praying for study leave for higher studies under the West Bengal Health Service Cadre. The writ petitioner claimed in such

representation that he qualified NEET PG 2022 and that his NEET PG 2022 rank was 98322 (SC).

It is contended on behalf of the writ petitioner that the writ petitioner got an admission in the course after obtaining no objection and deposited the requisite fees.

Initially, the representation was directed to be considered by the Tribunal in O.A.143 of 2023 on May 2, 2023. Thereafter, the reasoned order dated June 7, 2023 was passed rejecting the representation.

The primary ground for rejection is pendency of a departmental proceeding.

In addition to that ground for rejection, it is the contention of the State that the State will not be in a position to recover financial outlay so far as writ petitioner is concerned in the event he is allowed to join the course, and in the event, he is found guilty in the departmental proceeding.

The apprehension in his recovery of salary during the period when he joins the course is put to rest by the submission made on behalf of the writ petitioner.

The writ petitioner gives up and is ready not to receive any financial benefit including salary for undergoing the course. The writ petitioner undertake to file an affidavit to such effect with the appropriate

authority and to comply with other formalities required.

The coordinate Bench in WPST 126 of 2022 allowed a Doctor similarly situated and circumstanced as against whom there was also a departmental proceeding pending, to undertake the study.

In such circumstances, we permit the writ petitioner to pursue M.D. Course in the discipline of Community Medicine at All India Institute of Hygiene and Public Health, Calcutta subject to him complying with all formalities required for such purpose and filing an affidavit with the authorities that he will not seek any monetary benefit including salary for the period he undertakes such course. The writ petitioner will participate and cooperate in the departmental proceeding.

WP.ST 126 of 2023 is disposed of accordingly without any order as to costs.

The entire process for joining the MD Course be concluded within a fortnight from date.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)