

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 384 of 2012

Dr. Rajendra Prasad Singh

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Biswanath Chakraborty
Mr. Krishnendu Bera

For the State-respondents : Mr. S.N. Mookherjee, Ld. Advocate General
Mr. Jyotiprakash Chatterjee
Ms. Nilanjana Banerjee Pal

Heard & Judgment on : September 25, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated September 7, 2012 passed by the West Bengal Administrative Tribunal in OA-712 of 2011.

2. By the impugned order, the Tribunal rejected the request of the writ petitioner for permission to revert from practicing to non-practicing status.
3. The writ petition was heard on August 29, 2023 when an order was passed. Thereafter, it was placed in the list since the Court felt that, certain clarifications were required from the parties. Consequently, orders dated August 31, 2023, September 6, 2023 and September 19, 2023 were passed. Assistance of the learned Advocate General was requested.
4. The writ petitioner is a doctor in the employment of State. The service conditions of the writ petitioner are governed by the West Bengal State Health Service Act, 1990. The writ petitioner was engaged in private practice with effect from November 1, 2007 by virtue of memo dated June 9, 2008. The writ petitioner wanted to revert to non-practicing status pursuant to the notification of the department dated August 28, 2007. The writ petitioner applied for such purpose on November 12, 2009. The writ petitioner was to superannuate on January 31, 2013. The authorities, however, rejected the

application for reverting from practicing to non-practicing status by an order dated May 16, 2011.

5. The application dated November 12, 2009 was not considered by the authorities and, therefore, the writ petitioner approached the West Bengal Administrative Tribunal by way of O.A.570 of 2010. Such original application was disposed of by an order dated July 19, 2010 requiring the authorities to consider and dispose of the application dated November 12, 2009.
6. By an order dated May 16, 2011, the Additional Chief Secretary, Health & Family Welfare Department after hearing the writ petitioner, negated the claim of the writ petitioner on the basis of the notification of the department dated October 7, 2009.
7. Aggrieved by the decision dated May 16, 2011, the writ petitioner approached the Tribunal by way of O.A. 712 of 2011 which was disposed of by the impugned order dated September 7, 2012.
8. The rejection of the application of the writ petitioner was based on the notification dated October 7, 2009.

9. The notification dated October 7, 2009, purports to modify the second proviso of Clause 8(h) of the notification of the department dated August 29, 2007 published in the Calcutta Gazette relating to the amendment of the West Bengal Health Service Rules, 1993.
10. West Bengal Health Service Rules, 1993 was promulgated in exercise of powers under the West Bengal Health Service Act. The notification dated August 29, 2007 was published in the Calcutta Gazette.
11. Notification under the West Bengal State Health Service Act, 1990 is defined in Section 2(c).

The definition is as follows:

“2.

.....

(c) “notification” means a notification published in the Official Gazette;

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.....”

12. It is also relevant to refer to Section 21 of the Act of 1990 which is as follows:

“21. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

13. Sub-Section (1) of Section 21 permits the State Government by a notification to make rules for carrying out the purposes of the Act. In terms of definition of notification as provided in the Act of 1990, it is required to be published in the

Official Gazette. The notification dated October 7, 2009 was not published in the Official Gazette. Therefore, the notification dated October 7, 2009 cannot be read to amend the existing provisions of the Health Service Rules, 1993.

14. Therefore, in our view, there was a foundational error on the part of the authorities and the Tribunal in reading October 7, 2009 notification to be one within the meaning of the Act of 1990 amending the West Bengal Health Service Rules, 1993 since the notification dated October 7, 2009 was never published in the Official Gazette. It does not come within the definition of a notification as contemplated under the Act of 1990. It is trite law that, a law framed under an Act can be amended through the mechanism provided under such Act.
15. In the present case, the notification dated October 7, 2009 did not utilise the mechanism provided under the Act of 1990 for framing a rule or the amendment thereof. Therefore, it cannot be held that the notification dated October 7, 2009 modified the Health Service Rules, 1993 in any manner whatsoever. Consequently, the decision of the authorities and of the Tribunal impugned herein, rejecting

the application of the writ petitioner dated November 12, 2009 are set aside.

16. The Secretary, Health & Family Welfare Department is requested to consider and decide the application of the writ petitioner dated November 12, 2009 within a period of six weeks from the date of communication of this order to him. He will afford a reasonable opportunity of hearing to the writ petitioner. He is at liberty to hear such other parties and consult such other documents as he deems appropriate.
17. **WP.ST 384 of 2012** is disposed of without any order as to costs.

(Debangsu Basak,J.)

18. I Agree.

(Md. Shabbar Rashidi, J.)