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13.12.2023

Ct-08

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MAT 2100 of 2023
with
I.A No. CAN 1 of 2023

Supriya Mallick & Ors.
Vs.
Dr. Nabendu Roy & Ors.
with

MAT 2377 of 2023
with
I.A No. CAN 1 of 2023

The State of West Bengal & Ors.
Vs.
Dr. Nabendu Roy & Ors.

Mr. Kallol Basu
Mr. Suman Banerjee
... For the Appellants
in MAT 2100 of 2023

Mr. Biswabrata Basu Mallick, Ld. AGP
Mr. Shamim-ul-Bari
... For the State
in MAT 2100 of 2023
&
For the Appellants
in MAT 2377 of 2023

Mr. K.M. Hossain
Mr. Kartik Kumary Ray
Kazi Ardan Ali
... For the Petitioners/Respondents
in MAT 2100 of 2023 and
in MAT 2377 of 2023

Mr. Indranil Roy
Mr. Sunit Kumar Roy
... For the Petitioners/Respondents
in MAT 2100 of 2023 and
in MAT 2377 of 2023

1. Both the appeals involved common question of law and facts are taken up together by consent of the parties and disposed of by this common order along with the applications.

2. We have heard the learned counsel appearing for the parties.

3. The Notification of the State dated 9th August, 2023 to give special benefit to in-service candidates during COVID-19 period in difficult area for the purpose of availing in-service quota for NEET-PG & NEET MDS 2023 counseling was the subject matter of challenge in WPA 21439 of 2023. Learned Single Judge has stayed the operation of the Notification on a prima facie view that it is essential for reservation quota, which is sought to be introduced in Post-Graduate medical course for the Doctors, who have discharged COVID-19 duty upto March 31, 2023. The term is too vague and it cannot be introduced without defining and explaining the term COVID-19 related duty. Learned Single Judge was also of the view that the impugned memo confers an uncanalised power to provide the benefit of reservation to any Doctor by way of an arbitrary exercise of power.

4. Thereafter, in the said proceeding an application was filed by few Doctors for addition of party on the ground that they are eligible to be considered under in-service quota and they have discharged their duties during COVID-19 in difficult area. The applicants have stated that the

writ petitioners have specifically prayed for cancellation of their candidature who have already got benefit by taking the COVID-19 certificate by rendering their duty after 1st April, 2023. Their service in difficult area during COVID-19 period was considered for NEET-PG 2023 counseling.

5. In view of Prayer c and d of the writ petition, we feel that they are required to be heard as in the event the Notification is held to be ultra vires and ultimately their candidature would be cancelled. On such consideration, we allow the application for addition of party. The applicants shall added as party respondents in the writ petition within a week from date. The department shall carry out the necessary amendment in the writ petition. The added respondents shall be entitled to file affidavit-in-opposition and the same shall be filed by 22nd December, 2023. Affidavit-in-reply, if any, be filed on or before 6th January, 2024. However, we make it clear that we have not interfered with the prima facie view taken by the learned Single Judge with regard to the stay of operation of the Notification dated 9th August, 2023. Moreover, WPA 21439 of 2023 is otherwise ready for hearing.

6. The matter may be placed before the learned Single Judge after the affidavits are exchanged.

7. In view of the above, the appeal being MAT 2100 of 2023 and MAT 2377 of 2023 stand disposed of.

8. In view of disposal of the appeal, nothing remains to be decided in the application being CAN 1 of 2023 in connection with MAT 2100 of 2023 and CAN 1 of 2023 in connection with MAT 2377 of 2023 and the same are accordingly disposed of.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar,J.)

(Soumen Sen, J.)

