

19.02.2024
Item No.06
Court No.11
Avijit Mitra

WPST 19 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Md. Sirajul Islam
- Versus -
The State of West Bengal & ors.

Mr. Partha Sarathi Bhattacharya, Sr. Adv.,
Mr. Sujit Sankar Koley,
Mr. Subhanil Roy Chowdhury
...for the petitioner
Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,
Ms. Ashmita Chakraborty
...for the State respondents

Affidavit of service filed by the petitioner be kept on record.

This writ petition is directed against the order dated 17th January, 2024 passed by the learned Tribunal in O.A. No.412 of 2023 whereby rejection of the petitioner's prayer for his placement on Trainee Reserve as Government sponsored candidate to pursue the MS, (General Surgery) Course has been upheld.

Shorn of unnecessary details, the facts required to be stated for effective adjudication of the writ petition are that the petitioner was appointed as General Duty Medical Officer (in short, GDMO) in Pundibari Block Primary Health Centre, Cooch Behar by a notification dated 7th January, 2015 issued by the Joint Secretary, Medical Administration, Government of West Bengal.

Subsequent thereto, the petitioner joined as Medical Officer, CCU, District Hospital i.e. Maharaja Jitendra Narayan Medical College and Hospital, Cooch Behar (commonly known as MJN Hospital, Coochbehar) on 28th May, 2016. To prosecute the course of MS, General surgery, the petitioner took admission in the Institute of Post Graduate Medical Education and Research, Kolkata on 14th October, 2022. Immediately thereafter, by sending a letter through proper channel, the petitioner approached the Director of Health Services, West Bengal with a request to place him on Trainee Reserve as Government sponsored candidate under West Bengal Health Service Cadre to pursue the course but despite being so approached, no decision was taken by the Director of Health Service on such letter.

Aggrieved thereby, the petitioner preferred an original application being O.A. No.31 of 2023 which was disposed of by an order dated February 21, 2023 directing the Director of Health Services, West Bengal to consider the petitioner's representation within the time specified therein. Pursuant thereto, the Director of Health Services by passing an order dated 24th March, 2023 turned down the petitioner's prayer for being placed on 'Trainee Reserve', *inter alia*, on the ground that the petitioner was not directly recruited and/or posted in specialised unit i.e. CCU Unit at MJN Hospital, Cooch Behar. The petitioner assailed the said order dated 24th

May, 2023 by preferring another original application being O.A. 412 of 2023 which has been rejected by the order impugned in the writ petition.

Mr. Bhattacharya, learned senior advocate appearing for the petitioner contends that the petitioner fulfilled all criteria for being placed on Trainee Reserve but the authority concerned has illegally negated the petitioner's claim on the ground that the petitioner was not recruited and posted in specialised unit i.e. in CCU at MJN Hospital, Coochbehar.

Per contra, Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents denies and disputes the contention canvassed by Mr. Bhattacharya stating that the petitioner has no eligibility for being placed on Trainee Reserve.

Heard the learned advocates appearing for the respective parties and perused the materials placed before us.

From Rule 3(a)(i) of the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (placement on Trainee Reserve) Rules, 2015 (in short, the 2015 Rules), it is explicit that for the officers of the West Bengal Medical Education Service, West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service one of the eligibility criteria for

being placed on Trainee Reserve as Government sponsored candidates is as follows :

‘a minimum of three years qualifying services under the employment of Government of West Bengal in the respective cadre as determined on the thirty-first day of March of the concerned year and for the officers who have been appointed in any of the three cadre service from any of the two other cadre services, they must be put in at least three years’ service in West Bengal Bengal Public health-cum-Administrative Service, the West Bengal Health Service and in the West Bengal Medical Education Service, taken together.

As per the first proviso of Rule 3(a)(i) of the 2015 Rules, the minimum period of qualifying service required shall have to be actually rendered in rural areas in Primary Health Centres, Block Primary Health Centres and Rural Hospitals.

By a notification dated 21st January, 2016, an amendment was introduced in the 2015 Rules to substitute the words ‘qualifying services’ used in second proviso of Rule 3(a)(i) with the words ‘qualifying rural services’ and from the provisos inserted after second proviso of Rule 3(a)(i) of 2015 Rules, it transpires that the period being the three years incorporated in Rule 3(a)(i) may be relaxed and/or dispensed with in two cases i.e. i) in case of the Specialist Medical Officers who have been

directly recruited through the West Bengal Health Recruitment Board or the Public Service Commission, West Bengal and appointed by the State Government in State General Hospitals, Sub-divisional Hospitals and District Hospitals, based on merit of each case, subject to the condition that the total qualifying service length must be not less than three years and ii) in case of the Medical Officer who have been directly recruited through Public Service Commission, West Bengal, West Bengal Recruitment Board and appointed by the State Government in any specialised unit like CCU etc., based on merit of each case, subject to the condition that the total qualifying service length must be not less than three years.

From the letter of appointment issued in favour of the petitioner, it appears that the petitioner was appointed as General Medical Duty Officer in Pundibari, Block Primary Health Centre, Cooch Behar by a notification dated 7th January, 2015. Subsequently, by an order dated 27th May, 2016, the petitioner was transferred to CCU in MJN Hospital, Cooch Behar as Medical Officer. The petitioner has been rendering his service in MJN Hospital i.e. Distirct Hospital at Cooch Behar since 2016. From the records placed before us it is explicit that the petitioner has not been recruited as Special Medical Officer nor has he been appointed in any Special Unit and even no document has been placed before us to infer that

the petitioner has completed three years qualifying service in any rural area.

In such conspectus, we are of the considered view that irrespective of the observations made either in the order of the Director of Health Services, West Bengal or in the order impugned in this writ petition, the fact remains that the petitioner has not fulfilled any of the eligibility criteria as prescribed in 2015 Rules and its amendment introduced in 2016 for being placed on Trainee Reserve as Government sponsored candidate to pursue post graduate course being MS, General Surgery.

With the above observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)