

07.03.2024
Item No. 10
Court No.11
Avijit Mitra

**MAT 463 of 2024
with
CAN 1 of 2024
with
CAN 2 of 2024
with
CAN 3 of 2024**

**Md. Safikul Mistry & ors.
-Versus-
Dr. Nabendu Roy & ors.**

Mr. Bikash Ranjan Bhattacharya, Sr. Adv,
Mr. Bibekananda Basu,
...for the applicants/appellants
Mr. Biswabrata Basu Mallick,
Mr. Shamim Ul Bari
....for the State respondents
Mr. K.M. Hossain,
Mr. Kartik Kumar Ray,
Mr. Kazi Ardan Ali,
...for the writ petitioners/ respondents
Mr. Indranil Roy,
Mr. Sunit Kumar Roy
...for the National Medical Commission
Mr. Kallol Basu,
Mr. Suman Banerjee
....for the respondent nos. 12 to 18

Records reveal that the writ petition being WPA 21439 of 2023 was preferred challenging a memo dated 9th August, 2023 by which it was *inter alia* directed that Covid-19 related duty shall be considered as rendering service ‘*in difficult area*’ in order to avail in service quota for in-service candidates of Department of Health and Family Welfare, Government of West Bengal till the cutoff date of 31st March,

2023. By an order dated 14th September, 2023 the operation of the said memo dated 9th August, 2023 was stayed. In view of the said *interim* order, the applicants herein have been prejudiced since they are the beneficiaries of the said memo dated 9th August, 2023. We are also satisfied with the explanation given towards the delay in preferring the application.

In view thereof, we condone the delay and grant leave to the applicants to prefer appeal against the impugned order.

Accordingly, the applications being IA No. CAN 1 of 2024 and IA No. CAN 2 of 2024 are disposed of.

Records further reveal that the *interim* order initially passed on 14th September, 2023 was extended by an order dated 4th October, 2023 until further orders. By the said order dated 4th October, 2023 an application for addition of party preferred by the respondent nos. 12 to 18 herein was refused and the application for addition of party was dismissed. Aggrieved by the said order, the said respondent nos. 12 to 18 preferred an appeal. The State also challenged the order dated 14th September, 2023 by preferring an independent appeal. Both the appeals were taken up by a coordinate Bench of this Court and disposed of by an order dated 13th December, 2023 allowing the application for addition of party and observing *inter alia* that:

‘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.

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

Mr. Bhattacharya, learned senior advocate appearing for the applicants/appellants submits that the appellants qualified in NEET-PG, 2023 Examination and participated in the counseling process under State quota. They were also successfully verified by the appropriate authority to avail in-service quota according to the memo dated 9th August, 2023. They took admission in various post-graduation courses and applied for Trainee Reserve (in short, TR) within the time stipulated. In view of the order impugned they have been seriously prejudiced and their applications for TR have been kept in abeyance and in the midst thereof, by a notification dated 6th December, 2023 issued by the West Bengal University of Health Sciences, the last date for registration has been fixed on 8th March, 2024. In the said conspectus, he prays for setting aside the *interim* order passed by the learned single Judge in the writ petition.

Mr. Basu Mallick, learned advocate appears for the State respondents and Mr. Indranil Ray, learned advocate enters appearance on behalf of the National Medical Commission.

Mr. Kallol Basu, learned advocate assisted by Mr. Banerjee, learned advocate appearing for the respondent nos. 12 to 18 submits that even after the earlier appeals were disposed of, the writ petition could not be listed for final hearing though they have filed their affidavit-in-opposition.

Mr. Kartik Kumar Ray, learned advocate appearing for the respondent nos. 1 to 5/writ petitioners submits that there is no infirmity in the order impugned inasmuch as the memo dated 9th August, 2023 was brought into effect in the midst of the counseling process and as such the learned Single Judge rightly interfered and passed the *interim* order.

Upon hearing the learned advocates appearing for the respective parties, we are of the view that no useful purpose will be served to continue the hearing of the appeal as the learned single Judge did not hear the arguments which had been advanced before us on behalf of the applicants/appellants since they were not made parties to the writ petition.

Accordingly, this Court directs that the appellants shall be added as party respondents to the writ petition being WPA 21439 of 2023. The department shall carry out the necessary amendment in the writ petition.

We remand the writ petition for final disposal before the learned single Judge.

The West Bengal University of Health Sciences has stipulated dates for *online* registration. It appears that the writ petitioners have already got the benefits of TR. As the appellants were not parties, the learned single Judge could not be apprised of the appellants' grievances. However, a coordinate Bench of this Court did not interfere with the *prima facie* view taken by the learned single Judge in the order impugned.

Mr. Kartik Kumar Ray submits that the affidavits have already been exchanged in the main writ petition and

the writ petitioners have no objection if the same is taken up for final hearing by the appropriate Hon'ble Bench on any specific date, subject to the convenience of the Court.

In view thereof, the parties would be at liberty to jointly mention the matter before the appropriate Hon'ble Court so that the same may be listed and disposed of as expeditiously as possible without granting any unnecessary adjournments to either of the parties. In the meantime, the appellants herein and the respondents would be at liberty to exchange their affidavits in the writ petition immediately.

It is made clear that the issue of entitlement of the appellants and the respondent nos. 12 to 18 towards TR benefits would abide by the result of the main writ petition.

With the above observations and directions, the appeal being MAT 463 of 2024 and the stay application being IA No. CAN 3 of 2024 are disposed of.

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

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)