

11.09.2024
Item No.03
Court No.11
Avijit Mitra

WP.ST 42 of 2024

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

And

Dr. Radharani Dasgupta
- versus -
State of West Bengal & ors.

Mr. M.N. Ray,
Mr. Biswarup Nandy,
Mr. R.K. Shaw

....for the petitioner

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,
Ms. Sangeeta Ray

...for the State respondents

Records reveal that aggrieved by an order of transfer dated 8th September, 2023, the petitioner initially filed an original application (in short, OA), being OA 670 of 2023 and upon hearing the parties, the OA was disposed of directing the respondent no. 3 herein to consider the petitioner's representation. Pursuant thereto, the said respondent no. 3 considered the petitioner's claim and passed an order dated 1st December, 2023. Aggrieved by the said order, the petitioner again preferred OA 850 of 2023 which was admitted and the matter was fixed as 'For Orders' on 29th July, 2024. However, the petitioner's prayer for stay of the order of transfer dated 8th September, 2023 and the release order dated 26th February, 2023 was refused.

Aggrieved thereby, the petitioner filed the present writ petition.

Noting the observations made by the respondent no. 3 in his order dated 1st December, 2023 and upon hearing the learned advocates appearing for the respective parties, we initially granted an *interim* order directing the respondents not to take any coercive steps against the petitioner. During pendency of the present writ petition, the petitioner submitted an application under the Right to Information Act, 2005 seeking information as regards the available vacancies. Pursuant thereto, a memo dated 25th June, 2024 was issued informing as follows:

*‘Vacancies of Medical Officers, Barasat Govt. MCH
in the discipline of
Radiotherapist : 01
Radiologist : Nil
Oncologist : 01’*

Let the said written instruction dated 25th June, 2024, as placed, be kept on record.

After the said memo was placed before us we requested Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents to avail necessary instruction as to whether the petitioner can be accommodated in the vacancy of (Medical Officer) Radiotherapist at Barasat Govt. MCH.

Today, Mr. Mukherjee has placed before us a written instruction wherein it has *inter alia* been stated as follows:

‘That, the vacancies, as indicated in the said memo, pertains to the West Bengal Medical Education Services. There is no sanctioned post as well as vacancy in the post of Specialist Medical Officer in the discipline of Radiotherapy, Radiology & Oncology under the West Bengal Health Services at Barasat Government Medical College & Hospital, North 24 Parganas.

That, there are 05 (five) vacancies against the post of Medical Faculty in the discipline of Radiotherapy under the West Bengal Medical Education Services at the said institution.

That, as the petitioner, Dr. Radharani Dasgupta, belongs to the West Bengal Health Services and thus, she is not entitled against the vacancies of Medical Faculty under the West Bengal Medical Education Services at Barasat Government Medical College & Hospital, North 24 Parganas.’

Let the said written instruction dated 6th September, 2024, as placed, be kept on record.

In view thereof and as the petitioner is a Medical Officer under the West Bengal Health Services, she cannot be placed in any of the vacancies as indicated in the memo dated 25th June, 2024. In the order dated 1st December, 2023 upon considering the health condition of the petitioner’s mother it was categorically observed as follows :

‘Thus the prayer of Dr Radharani Dasgupta, on the ground stated herein, cannot be considered, at the instant point of time, as has been prayed by her but the prayer of Dr Radharani Dasgupta for a suitable posting in terms of her prayer/representation, will be considered on humanitarian ground in due time by the authority as and when the situation arises in interest of public service.’

While arriving at such decision, the concerned respondent also observed as follows :

‘However, the grounds of her petition on the basis of her self illness and mother’s illness

have been duly noted and will be considered with due sympathy as and when the situation permits.'

From the contents of the said order it thus appears that the respondents have appreciated that the petitioner would be suffering unsurmountable inconvenience if she joins the transferred post since her mother is suffering from severe ailments, however, due to lack of vacancies, the respondents could not take appropriate steps.

Mr. Mukherjee, in his usual fairness, has also submitted that the petitioner's claim for transfer to an available vacancy in the vicinity of Kolkata will certainly be considered by the respondents after the petitioner joins the transferred post and when a suitable vacancy arises.

In the said conspectus, we direct the petitioner to join the post of Medical Officer (Radiotherapy), Kalimpong DH, Kalimpong within a period of 10 days from date.

The transfer order was issued on 8th September, 2023, the reasoned order was passed by the respondent no. 3 on 1st February, 2023 and we also granted an *interim order* on 27th March, 2024 which has been extended from time to time.

Mr. Mukherjee also assures this Court that in the event the petitioner joins the transferred post within the time specified, the respondents would regularize the period of absence of the petitioner and

would disburse the salary pertaining to the said period, in accordance with law and subject to filing of an appropriate application by the petitioner to the competent authority immediately after she joins the transferred post.

In view of such submissions, the present writ petition is disposed of directing that the respondents shall take appropriate steps towards regularization of the period of absence of the petitioner and disbursement of her salaries after the petitioner joins the transferred post and submits an appropriate application. The respondents shall also consider the prayer for transfer of the petitioner once a vacancy arises in any hospital in the vicinity of Kolkata.

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.)