

07.02.2024

Mithun
List – D/L
Sl. No. 133.
Ct. No. 238.

W.P.A. 27132 of 2023

DR. MEHBUB ALAM
-VERSUS-
STATE OF WEST BENGAL AND OTHERS

Mr. Soumya Majumder, Adv.,

Ms. Sanjukta Dutta, Adv.

.....for the petitioner.

Mr. Indranil Ray, Adv.,

Mr. Sunit Kumar Ray, Adv.

.....for National Medical Commission.

Mr. Arindam Ghosh, Adv.

.....for respondent no.1

Mr. Sirsanya Bandopadhyay, Adv.,

Mr. Arka Kumar Nag, Adv.,

Ms. Deboleena Ghosh, Adv.

...for W.B.M.C.C.

In this writ petition, the petitioner has prayed,
inter alia, as follows:

“A writ of or in the nature of Certiorari commanding the respondents and each one of them, their men, agents, assigns and subordinates to certify and transmit to this Hon’ble Court the records of the case including any decision that might have been taken by the respondent authorities in not permitting admission of your petitioner to Post Graduate Degree Medical Course of Post Graduate Diploma Medical Course as an in-service candidate eligible for Trainee Reserve or otherwise, so that

conscionable justice may be administered by quashing the same;”

It is the case of the petitioner that he joined Medical Education Service of the State on December 19, 2012, in Murshidabad College and Hospital. He qualified the National Eligibility cum Entrance Test (NEET-PG 2023, in short) conducted by the National Board of Examination in Medical Sciences as an OBC candidate. In the special stray-round of counselling, he was allotted a seat for a post-graduate degree medical course in a private college under the management quota. During the continuation of the aforesaid special stray-round of counselling, the petitioner made an application by E-mail for allotment of a diploma course seat in a Government medical college. The same was not entertained.

Initially, the petitioner argued that his service at Murshidabad Medical College and Hospital should have been considered as a service in rural/remote/difficult area. In course of the hearing of this case, the claim against the degree seat was not pressed. The petitioner restricted his prayer to a diploma seat by adopting a different stance.

Mr. Soumya Majumder, learned advocate appearing for the petitioner submits that the relevant authority has declined the admission of the petitioner to a diploma course on the purported ground that the

petitioner did not serve in a rural/remote/difficult area for a minimum period of three years to avail the in-service quota. It has been argued that no in-service quota exists in the State for diploma courses; the in-service quota is applicable only for degree courses. The petitioner should have been allotted a seat in the diploma course since there were a number of vacant seats in the diploma course. The petitioner also prayed for providing him with the status of a “trainee reserve” to pursue the diploma course.

The State asserts that reservation for in-service candidates applies to post-graduate courses as well as to diploma courses. It has been argued that the service of the petitioner at Murshidabad College could not be treated as a service in rural/remote/difficult areas and, therefore, the petitioner has rightly not been treated as an in-service candidate.

It appears that the petitioner initially, in his application before the West Bengal Medical Council Committee, applied as an in-service candidate. He was, however, allotted no seat in the counselling as his service at Murshidabad College and Hospital was not considered as a service in rural/remote/difficult area. The petitioner, thereafter, again was allowed to participate in the special stray-round of counselling. This time the petitioner did not describe himself as

an in-service candidate. On the basis of the option given by him, this time, he was allotted a seat for a post-graduate degree course under the management quota. Thereafter, on November 27, 2023, he made a request before the authority for allotment of a seat in diploma course under the State Quota.

To decide the entitlement of the petitioner to a diploma course, it is necessary to take note of the relevant notification regarding in-service quota dated October 8, 2021. The notification reads:

**“Government of West Bengal
Department of Health and Family Welfare
Swasthya Bhawan, GN-29, Sector-V,
Salt Lake Kolkata-700091**

No.HF/O/MERT/959/HFW-23099/321/2021 Dated; Kolkata, the 8th

October, 2021

Notification regarding provision of in-service quota in post graduate medical and dental and post doctoral medical counseling for State Quota Seats in Government/Private Colleges, for such courses, in West Bengal.

In terms of the judgement & Order dated 31st August 2020, passed by the Hon'ble Supreme Court of India in Writ Petition (Civil) no.- 196 of 2018 (Tamil Nadu Medical Officers Association and Ors. -Vs.- Union of India and Ors.), upholding the 40% State Quota for the in- service medical/dental officers and teachers and 50% of post graduate medical diploma seats for in-service medical officers, under the Dept. of Health and Family Welfare, Govt. of West Bengal issued vide memorandum number HF/O/MERT/433/W-43/13, dated 18th April 2013, the aforestated practice and procedure will henceforth continue until further order.

Provision is also hereby made that, all vacant seats of any post graduate degree / diploma course, arising out of the open quota, if any, may also be filled up by in-service candidates, in case open category candidates are unavailable and vice versa, on the basis of overall merit position obtained in open quota through open counseling process.

The earlier notifications No. HFW-23099/29/2019/373, dated 26th February 2020 and No. HFW-23099/29/2019/27 dated 26th February 2020 and No. HF/O/MERT/296/HFW-23099/29/2019 dated 4th March 2020, of the Dept. of Health and Family Welfare, Govt. of West Bengal, stand modified to the extent that, henceforth, the earlier introduced marks incentive, for rendering service in rural/remote/difficult area, will be done away with.

However, in pursuance of the observations of the Hon'ble Supreme Court of India, in the aforesaid judgment, in order to avail in-service quota, the in-service candidates of this Department rendering service in WBHS/WBMES/WBPH&AS/WBDS/WBDES, shall have to serve in rural/remote/difficult area for a minimum period of 3 years (taken together) as on 30th April of the academic year, before being considered as eligible, for such in-service quota.

The definition of rural/remote/difficult area, shall be the same, as per the earlier departmental notification No. HFW-23099/29/2019/373 dated 26th February, 2020 and No. HFW-23099/29/2019/27 dated 26th February, 2020 subject to modification from time to time, as per the demanding situation.

After completion of the course by the in-service doctors, who have earlier completed the specified minimum duration of rural/remote/difficult service, before availing the in-service quota, shall have to render such compensatory duration of rural/remote/difficult service, for additional three years, which has been categorically stated in the foregoing paragraphs.

The penalty of the indemnity bond shall be @ Rs 10 lakh, per year, for non rendering service, after completion of such course, for in- service candidates, as stated above.

In case of saturation of a particular post in rural/remote/difficult area, of a particular discipline, such in-service candidates on bond posting may be placed in other non saturated area, in any position, as the Dept of Health and Family Welfare, Govt. of West Bengal, may deem fit and proper in the interest of public service.

Sd/- (illegible)

**Special Secretary
Dept of Health and Family Welfare
Govt. of West Bengal**

Mr. Majumder, learned advocate appearing for the petitioner, has strenuously argued that the aforesaid notification prescribed provision for 40% “State Quota” and 50% of post graduate medical diploma “seats” for in-service medical officers. Therefore, there is no “quota” in diploma courses as opposed to the degree courses for the in-service candidates. In other words, Mr. Majumder suggests that there is no provision for reservation in diploma courses for in-service candidates.

I am unable to accept the submission of Mr. Majumder. The relevant part of the Supreme Court judgment reported at **(2021) 6 SCC 568 (T.N. Medical Officers Assn. v. Union of India)** is quoted below:

“23.8. That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under List III Entry 25. However, it is observed that the policy must provide that subsequent to obtaining the postgraduate degree by the in-service doctors concerned obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper.”

I am of the view that by the notification dated October 8, 2021, the State has decided to reserve 40% seats for the in-service candidates in post-graduate course, likewise, 50% seats have been reserved for the in-service candidates in diploma course in the line of the directives of the Hon’ble Supreme Court. The different words “quota” and “seat” as deployed in the aforesaid notification do not convey a different meaning. In substance, the notification introduces reservation for 40% seats in degree course and reservation of 50% seats for diploma course in medical colleges under the State.

It must also be held that the petitioner cannot otherwise claim for a seat in diploma course.

In the initial round of counselling, he applied for a degree course claiming himself to be an in-service candidate. In the stray-round of counselling also he

applied for a degree course. Though this time he did not claim the benefit of an in-service candidate. Before the start of every round of counselling, a candidate is required to give his preference by exercising the option. A candidate cannot expect a seat to be allotted beyond option exercised by him by filling up of the online prescribed form. A candidate cannot exercise his option by sending an E-mail before the counselling committee.

Therefore, I am of the view that the petitioner was given a seat in post-graduate medical course based on the option exercised by him. He never applied for a diploma course before the counselling committee and, therefore, he cannot claim for a seat in diploma course at this juncture.

The question of giving him trainee reserve quota for the said course also does not arise at all. The “trainee reserve” is a facility given to a candidate post his admission at the discretion of the authority. Since the petitioner has not been given admission for a diploma course, the question of granting him the status of trainee reserve for the said course does not arise at all.

W.P.A. No.27132 of 2023 is accordingly dismissed.

Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)