

Court No. 2  
**08.4.2025**  
(Item No. ML-23)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**  
**W.P.A. 5905 of 2025**

Swarup Dutta  
VS  
State of West Bengal & Ors.

Mr. Samim Ahammed  
Mr. Arka Maiti  
Mr. D. Abbasi  
.... For the petitioner  
Mr. Sakya Sen  
Mr. Sunil Gupta  
.... For respondent no. 3  
Ms. Parna Roy Chowdhury  
.... For the State

Mr. Shamim Ahammed, learned advocate  
appears for the petitioner.

Mr. Sakya Sen, learned senior advocate  
appears for the respondent no. 8.

Ms. Parna Roy Chowdhury, learned advocate  
appears for the State.

Petitioner is an aspirant for the post of  
**Registrar, West Bengal Medical Council (for short,  
the Council)**. Petitioner at present is working as  
Assistant Registrar of the Council. Drawing attention  
to **paragraph 3** from writ petition, Mr. Ahammed,  
learned counsel for the petitioner submits that, the  
post of Registrar of the Council is a promotional post  
and as such he claims such promotion from his  
present post. However, on the repeated asking from  
the Court, learned counsel for the petitioner has not

produced any Rules and Regulations in support of such contention. He then refers to a recruitment notice, **annexure P-5** at **page 33** to the writ petition and submits that this was the first notice issued inviting applications for the recruitment for the post of Registrar. The petitioner has applied thereunder. Keeping this application pending submitted by the petitioner, the Council has issued the second recruitment notice dated **February 25, 2025**, **annexure P-14** at **page 77** to the writ petition. Petitioner applied thereunder.

Mr. Samim Ahammed, learned counsel for the petitioner submits that, without recalling or canceling the said first recruitment notice at **page 33** to the writ petition the said second recruitment notice at **page 77** to the writ petition could not have been and ought not to have been issued. The application submitted by the petitioner under the said first recruitment notice is still lying with the council without any consideration. Specific averments are made in **paragraph 3** to the writ petition wherefrom it appears that at least two candidatures were there, previously who were the Registrars of the council and at the relevant point of time the procedure followed for their selection has not been followed presently either under the said first recruitment notice or under the said second recruitment notice. Learned counsel alleges

the arbitrariness and discrimination on the part of the Medical Council. Referring to the letter dated **December 12, 2024, annexure P-6** at **page 36** to the writ petition, Mr. Ahammed submits that objection was duly recorded in writing but the same has not be disposed of. Referring to the qualification mentioned under the said second recruitment notice at **page 77** to the writ petition in comparing with the first recruitment notice, learned counsel submits the qualifying criterion were changed which affect the right of the petitioner. Referring to an order dated **January 30, 2025** passed by the Hon'ble Division Bench in **WPA(P)/511/2024, annexure P-13** at **page 73** to the writ petition, learned counsel submits that the first recruitment notice at **page 33** to the writ petition was recognized by the Hon'ble Division Bench and therefore without recalling or withdrawing the same the second recruitment notice dated **February 25, 2025** ought not to have been issued.

Mr. Sakya Sen, learned senior counsel appearing with Mr. Sunil Gupta, learned advocate for the respondent no. 3, submits that even under the said second recruitment notice, at **page 77** to the writ petition, the petitioner has submitted its application prior to the filing of this writ petition dated **March 5, 2025**, a copy where of is placed before this Court and the same is taken on record. The writ petition was

affirmed on **March 10, 2025**. Mr. Sen submits that this is a vital and material fact which has deliberately been suppressed while applying through this writ petition before this Court.

Referring to a State Government communication dated **January 3, 2025, annexure P-9** at **page 50** to the writ petition, Mr. Sakya Sen, learned counsel submits that since a defect was pointed out by the State Government on the basis of the representation submitted by the petitioner under the said first recruitment notice, at **page 36** to the writ petition, a defect was detected with regard to the age limit and accordingly the same was corrected in the said second recruitment notice. A further desirable qualification was also inserted to the effect that the applicant should be a registered medical practitioner in the said second recruitment notice. Mr. Sen then submits that, the petitioner does not qualify the age bar under the said second recruitment notice. As such, the petitioner does not come within the zone of consideration at the threshold.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceed to examine what right the petitioner has to file the instant writ petition. **Firstly**, the moment petitioner has submitted his applications both under the first recruitment notice and the said

second recruitment notice, the petitioner has accepted those two recruitment notices and agreed to participate in the selection process. After due participation in the selection process the petitioner cannot challenge the said two recruitment notices. The challenge of the petitioner is, thus, barred under the principles of waiver, estopped and acquiescence. **Secondly**, the age bar mentioned under the said second recruitment notice, admittedly shows, that the petitioner's application thereunder is barred under the said age bar stipulation. So, primarily petitioner does not fall within the zone of consideration in terms of the said second recruitment notice. **Thirdly**, mere participation in the selection process shall not vest any right in favour of a participating candidate. Even empanelment does not create any right in favour of an aspirant. Fixing the qualification and criteria for promotional selection is the prerogative of the employer.

The order of the Hon'ble Division Bench, as referred to above, was passed in a Public Interest Litigation and the first paragraph of the order at the, threshold, shows that the issue involved in that Public Interest Litigation is wholly different by nature and character from the issue involved in this writ petition. Therefore, the ratio decided by the Hon'ble Division

Bench has not application in the fact situation in the instant case.

The law is well settled that an applicant when applies under Article 226 of the Constitution of India, it should first establish its locus that any right of such an applicant has been infringed. In the facts of this case, the admitted position is that the petitioner has participated in the two selection processes under the said two recruitment notices. The final result of recruitment has not been published yet, so it is not the time that the petitioner can question the result of the recruitment being bad in law or bad for any arbitrary action on the part of the council.

In view of the foregoing reasons and discussions, this Court is of the firm and considered view that the petitioner has no right to maintain this writ petition and this writ petition is also devoid of any merit.

Accordingly, this writ petition **W.P.A. 5905 of 2025** stands dismissed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Aniruddha Roy, J.)**