

06.08.2025
Item Nos.
25 - 27
Court No.11
KCP

MAT 1224 of 2025
with
IA No. CAN 1 of 2025
(The State of West Bengal & Ors. Vs. Dr. Debashis Halder & Ors.)

With
MAT 1225 of 2025
with
IA No. CAN 1 of 2025
(The State of West Bengal & Ors. Vs. Dr. Aniket Mahata & Ors.)

With
MAT 1226 of 2025
with
IA No. CAN 1 of 2025
(The State of West Bengal & Ors. Vs. Dr. Asfakulla Naiya & Ors.)

Mr. Kalyan Banerjee, Sr. Adv.,
Mr. Sirsanya Bandyopadhyay,
Sr. Standing Counsel

Ms. Pramiti Banerjee,
Mr. Arka Nag,
Mr. Sandip Dasgupta,
Mr. Debayan Sen,
Mr. Niket OJha

...for the appellants
in MAT 1224 of 2025

Mr. Kishore Datta, Ld. Advocate General,
Ms. Sumita Shaw,
Mr. Debayan Sen,
Mr. Niket OJha

...for the appellants
in MAT 1225 of 2025 & MAT 1226 of 2025

Mr. Samim Ahmed,
Mr. Arka Maiti,
Ms. Gulsanwara Pervin

....for the respondent no.1
in MAT 1224 of 2025 & MAT 1226 of 2025

Mr. Pratik Dhar, Sr. Adv.,
Mr. Kartik Kumar Roy,
Mr. Snehal Sinha

....for the respondent no.1 in MAT
1225 of 2025

Mr. Pratik Dhar, Sr. Adv.,
Mr. Kartik Kumar Roy,
Mr. Debashis Banerjee,
Mr. Rakesh Jana

....for the respondents in MAT
1224 of 2025

1. The present appeals have been preferred by the State of West Bengal and its functionaries challenging a judgment dated 30th July, 2025 passed by the learned single Judge in three writ petitions which were heard analogously. The subject matter of challenge in the said writ petitions were notifications issued by the Special Secretary to the Government of West Bengal, Department of Health and Family Welfare by which the respective writ petitioners were deployed to different places of posting as Senior Residents. At the inception, the appellants urged an issue of maintainability of the said writ petitions and upon exchange of affidavits such maintainability issue was decided against the State.

2. Mr. Dutta, learned Advocate General appearing for the appellants submits that the writ petitioners/respondents herein pursued their MD courses in the academic sessions 2021-2024/2022-2023 as non-sponsored candidates upon execution of compulsory service bonds in terms of a notification dated 31st July, 2013 read with a notification dated 10th June, 2014 undertaking *inter alia* that they would serve the State for a period of three years in rural areas failing which they would have to recompense the State a penal amount of Rs.10 lakh per year for the defaulting period. In terms of such service bond the writ petitioners were contractually engaged in the posts of Senior Resident on a consolidated monthly remuneration, as would be

explicit from the notification dated 26th July, 2016. Such post carries a scale of pay and the incumbents are also entitled to leave, as would be explicit from the notification dated 9th July, 2021 and the standard operative procedure framed *vide* notification dated 16th February, 2023. From the said notifications it is thus explicit that they are rendering public service and were appointed in civil posts in connection with the affairs of the State.

3. Drawing our attention to the provisions of Article 323A of the Constitution of India and Section 15 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 1985 Act), Mr. Dutta argues that as the writ petitioners are appointed to discharge public services and are holding civil posts in connection with the affairs of the State, they have the right to approach the learned State Administrative Tribunal as the Court of first instance instead of the Hon'ble High Court directly. The provisions of Article 323A conceptualizes two categories – one being persons appointed to public service and the other being persons appointed to posts in connection with the affairs of the Union or the State or any other local authority. Any other meaning given would render the word '*public service*' to be a surplusage.

4. Mr. Dutta contends that the terms and conditions of the service bonds framed by the State in consonance with the notifications dated 13th July, 2013 and 10th

June, 2014 were challenged in a writ petition and the order passed in the same was assailed by the appellants before a co-ordinate Bench of this Court in the case of *State of West Bengal & Ors. –vs- Dr. Rahul Bansal & Ors.*, reported in 2018 SCC OnLine Cal 8022. In the same the Court was considering the concept of ‘*execution of medical service bonds for a definite period as a quid pro quo for providing post graduate medical education to the students at subsidized rates and as a sequel thereto, the candidates are paid stipends*’. In paragraph 23 of the said judgment, the Court categorically observed that ‘*whether a person is a servant of the State or not, is a question of fact which is to be decided in each case depending on the circumstances of that case*’. The said judgment was delivered on the rudiments of the facts and circumstances involved in the same and it is not directly on the question involved in the present *lis*. Judgment is a precedent for the issue of law that is raised and decided and not the observations made in the facts of a particular case.

5. He further argues that the learned Judge while deciding the issue of maintainability failed to properly deal with the subsequent judgment delivered by the Hon’ble Supreme Court in the case of *Association of Medical Superspeciality Aspirants and Residents and Others –vs- Union of India and Others*, reported in (2019)

8 SCC 607 in which the Court upheld that the compulsory bond entered into by the candidate to serve the government cannot be described as one in restraint of trade. The persons were engaged by the State and they executed the compulsory bonds framed by the State and thus their services are inextricably bound with the affairs of the State. The proposition of law laid down in the said judgment is squarely applicable to the facts of this case and the writ petitioners are contractual appointees having a right to agitate their grievances pertaining to service before the Court of first instance being the learned Tribunal.

6. Mr. Dutta strenuously argues that the learned Judge erroneously observed that in the backdrop of similar factual matrix, the Hon'ble Division Bench in the case of *Rahul Bansal (supra)* had overruled the identical objection of the State. Such a finding was arrived at without properly appreciating the proposition of law laid down in the case of *Association of Medical Superspeciality Aspirants and Residents and Others (supra)*.

7. Mr. Pratik Dhar, learned senior advocate appearing for the writ petitioner, namely, Dr. Aniket Mahata in MAT 1225 of 2025 denies and disputes the contention of Mr. Dutta and submits that reliance has been placed upon the judgment delivered in the case of *Association of Medical Superspeciality Aspirants and*

Residents and Others (supra), however, the same was delivered considering a judgment passed by a co-ordinate Bench of this Court on the issue that ‘*imposition of condition of compulsory service*’ infringes the fundamental rights under Articles 14, 19 and 21 of the Constitution of India and the issue of jurisdiction was not an issue for consideration in the said case. As such, the said judgment does not in any manner overrule the findings of the Court in the case of *Rahul Bansal (supra)*. The State had neither filed any review application nor any appeal against the judgment delivered in the case of *Rahul Bansal (supra)*.

8. He further submits that the writ petitioners have been deployed and not appointed or recruited to the posts of Senior Resident. It had been categorically decided in the case of *Rahul Bansal (supra)* that the word ‘*deploy*’ has been used consciously instead of the word ‘*appoint*’ so as not to make available to the pass-out, non-service, post-Doctoral students from the West Bengal University of Health Sciences, the protection that is normally available to a government servant under Article 311 of the Constitution.

9. He contends that the post of Senior Resident is filled up through two distinct channels - one being the appointment of Senior Residents (non-bonded) and the other being deployment to the post of Senior Residents (bonded). In respect of the former, the candidates are

government employees and for redressal of their grievances pertaining to such service, the Court of first instance would be the learned Tribunal set up under the 1985 Act but for the writ petitioners, who have been deployed to the posts of Senior Resident upon execution of a bond, the forum would be the Hon'ble High Court.

10. Drawing our attention to the notifications upon which reliance has been placed by Mr. Dutta and the provisions of Section 15 of the 1985 Act, he submits that the said provisions would be applicable in relation to recruitment and appointment to any civil under the State and to service in connection with the affairs of the State. However, the writ petitioners do not come under the purview of such services since they have been deployed on contractual basis and they do not enjoy any protection that is normally available to a government servant under Article 311 of the Constitution.

11. Mr. Ahmed, learned advocate appearing for the writ petitioners, namely, Dr. Debashis Halder in MAT 1224 of 2025 and Dr. Asfakulla Naiya in MAT 1226 of 2025 respectively adopts the submissions of Mr. Dhar and submits that the writ petitioners have not been appointed in terms of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 and their services had also not been confirmed. They are not in substantive appointment and they do not come within the definition of Government employee, as

defined in the West Bengal Services (Duties, Rights and Obligations of the Government employees) Rules, 1980.

12. In reply, Mr. Dutta submits that there are differences between the terms '*recruitment*' and '*appointment*'. Recruitment would include all the stages including advertisement, acceptance of application and selection test whereas appointment is nothing but a placement to a post. The terms recruitment, engagement, appointment and deployment, as referred to in the notifications need to be considered together and not in isolation. A particular word cannot be picked up and highlighted. A composite reading of the notifications would, thus, lead to the conclusion that the writ petitioners' services are public services and services in posts in connection with the affairs of the State.

13. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

14. The subject matter of challenge in the case of *Association of Medical Superspeciality Aspirants and Residents and Others (supra)* was an order passed by a co-ordinate Bench of this Court pertaining to two notifications dated 31st July, 2013 and 10th July, 2014 imposing a condition of compulsory service in the State of West Bengal for admission to post graduate/superspeciality courses in Government

Medical Collages in the State. The Court was considering as to whether the conditions incorporated in the bonds were violative of the rights guaranteed under Articles 14, 19 and 21 of the Constitution. The co-ordinate Bench arrived at a finding that the contract entered into cannot be described as one in restraint of trade. The said judgment was upheld by the Hon'ble Apex Court in the case of *Association of Medical Superspeciality Aspirants and Residents and Others (supra)*. We thus find substance in the argument of Mr. Dhar that the question of jurisdiction or maintainability of the writ petitions was not an issue in the said proceeding.

15. A perusal of the provisions of Section 15 of the 1985 Act reveals that the Administrative Tribunals for a State shall have jurisdiction in relation to recruitment and matters pertaining to appointment to any civil service of the State or to any civil post under the State. Thus, the jurisdiction conferred upon the learned Tribunal is appointment and recruitment specific and cannot travel into a territory of deployment. In view thereof, we are of the opinion the learned single Judge had rightly discounted the issue of maintainability of the writ petition as urged on behalf of the appellants.

16. There is no dispute that the writ petitioners have been deployed in connection with the affairs of the State. Such deployment is subject to the conditions

incorporated in the bond executed and is bereft of the protection that is normally available to a government servant under Article 311 of the Constitution. Furthermore, the State consciously had provided for two distinct channels for filling up the posts of Senior Resident - one for appointment of Senior Resident (non-bonded) and the other for Senior Resident (bonded). In our opinion the jurisdiction issue is no longer *res-integra* and has been decided in the judgment delivered in the case of *Rahul Bansal (supra)*.

17. Doctrine of precedent and stare decisis are the core values of legal system. When substantial judicial time and resources are spent on references, the same should not be made in a casual manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench or it is shown that the proposition laid down has become unworkable or contrary to any well-established principle or when there is an irreconcilable conflict, the matter may be referred to a larger Bench. We do not find any compelling or strong reasons to depart from the judgment delivered by the co-ordinate Bench of this Court in the case of *Rahul Bansal (supra)*.

18. The above appeals and the connected applications are, accordingly, dismissed.

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

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

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)