

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T.193 of 2025

DR. SANTANU DAS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. D. N. Ray, Sr. Adv.,
Mr. S. Ghosh, Adv.,
Mr. B. Nandy, Adv.,

For the State. : Mr. Amal Kumar Sen, Id. AAG,
Mr. Arkadipta Sengupta, Adv.,

For the respondent no.7.: Mr. D. N. Maiti, Adv.,
Mr. A. Santra, Adv.,

Pronounced On : 22.12.2025

MADHURESH PRASAD. J:

1. The writ petitioner was the applicant before the West Bengal State Administrative Tribunal (hereinafter in short referred to as the "Tribunal"). He is Doctor employed as a Professor and HOD of Radiology, thus a Senior Faculty Member in the College of Medicine and Sagar Dutta Hospital, Kamarhati, Kolkata-700 058.

2. The claim of the petitioner before the Tribunal was for grant of facility under the **West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public-Health-cum-Administrative Service (Placement of Trainee Reserve Rules, 2015)** (hereinafter in short referred to as the “2015 Rules”). He is claiming leave to pursue a Post-Doctoral Certificate Course (hereinafter in short referred to as “PDCC”) in Neuroradiology at the IPGME & R at Kolkata during the session of 2024-25. The application for grant of leave was not being considered favourably to the petitioner by the Director of Medical Education, West Bengal vide Memo No. ME/CC--34-2025/M/2392 dated 04.09.2025 and he, thus, approached the Tribunal for grant of such benefit.
3. The Tribunal as of date is non-functional for want of any quorum. Under such circumstance, having failed to avail consideration of prayer for interim order to join the course, he has approached this Court for appropriate direction in this regard.
4. The Apex Court in the case of **L. Chandra Kumar v. Union of India reported in (1997) 3 SCC 261** laid down the law that the Administrative Tribunal shall continue to be the Court of first instance; such a view has been reiterated in the case of **Rajeev Kumar & Anr. Vs Hemraj Singh Chauhan & Ors. reported in (2010) 4 SCC 554**. Viewed thus this Court is normally not expected to take up matters for consideration directly. Judicial review in respect of the Tribunal matters is to be exercised once the Tribunal has decided the issue, to review the decision of the Tribunal.

5. The Apex Court, in judgment in the case of **L. Chandra Kumar** (*supra*) however held the right of judicial review is a part of the basic structure of the Constitution of India. In such circumstances the litigant/petitioner cannot be left remediless since the Tribunal is non-functional in the State of West Bengal; and the matter regarding grant of leave to the petitioner to pursue higher qualification needs to be decided expeditiously. Therefore, we proceeded to take up the matter for consideration.
6. The petitioner had earlier approached the Tribunal in O.A. No. 344 of 2025 for grant of the same benefit. In terms of the order passed in OA 344 of 2025; and the order passed in WPST 140 of 2025 arising therefrom, his claim was considered, and the petitioner's request was rejected by the Director of Medical Education, West Bengal by Order dated 04.09.2025.
7. The petitioner also sought study leave under the West Bengal Service Rules (hereinafter referred to as the "WBSR" in short). The Director rejected the petitioner's request in larger public interest of patient care and services, keeping in view the scarcity of Senior Faculty in the Radiology Department at the petitioner's present place of posting. The rejection is dated 04.09.2025. This rejection was put to challenge by the petitioner in pending OA No. 505 of 2025.
8. The learned Senior Counsel for the petitioner submitted that the petitioner is not pressing his claim for grant of benefit under the 2015 Rules. He is in fact, claiming leave under WBSR-I, to pursue the PDCC and, during the Course (one year), he submits that he shall not avail any salary. His

substantial relief is now for grant of leave without pay under the WBSR Rules, 1974.

9. The petitioner alleges discrimination being meted out to him by the authorities. He submits that the authorities are selectively considering the study-leave applications. He has given example of other Doctors who have been granted study-leave/leave under the Trainee Reserve Rules 2015. He thus submits that the arbitrary and discriminatory grant of study-leave to the Doctors is to prejudice the writ petitioner.
10. In support of the contention, the petitioner's learned Senior Advocate has placed reliance on a decision of the Apex Court, copy of which has been handed over to us, in the case of ***Director of Health Service v. Dr. Shibani Chakraborty & Ors.*** in ***Civil Appeal No. 4485 of 2016***. The other judgments relied upon are decisions of Co-ordinate benches in the case of ***Dr. Arif Mahammad v. The State of West Bengal & Ors.*** In ***WPST 126 of 2025***, ***Dr. Ratan Sasmal v. The State of West Bengal & Ors.*** In ***WPST 126 of 2022*** and ***Dr. Arup Ratan Saha v. The State of West Bengal & Ors.*** In ***WPST 126 of 2023***. He submits that the petitioner's case is covered by these decisions and, therefore, the authority should allow him to pursue the one year PDCC without availing any salary.
11. Mr. Sen learned AAG submits that the petitioner earlier availed benefit under the 2015 Rules. His service is covered by the 2015 Rules framed for his service; the petitioner cannot be allowed to invoke the provisions contained in the WBSR for grant of leave to him.

12. The Director, while disposing of the petitioner's leave application, has taken note of the fact that since he has already availed the three years' leave period, he is not anymore eligible for grant of such leave under the 2015 Rules. The Director has further dealt with the shortage of doctors in the department of Radiology at the Sagar Datta Hospital where the petitioner is posted. The Director has stated that there is only one Professor (petitioner) and one Associate Professor in the Radiology Department. The Associate Professor was granted permission for pursuing the same course, and if both of them are allowed to pursue PDCC in Neuroradiology, at the same time that would lead to service difficulties and continued absence of both of them for a period of one year would inevitably lead to hardship to the patients requiring care in the concerned department. The petitioner's prayer for one year leave to pursue the PDCC, therefore, in the opinion of the Director, could not be granted.

13. The learned AAG has submitted that three out of four judgments relied upon by the learned Senior Advocate for the petitioner are arising out of interim orders passed by a division bench of this court, and therefore, cannot be relied upon as a precedent. He also submitted that the judgement of the apex court in the case of ***Director of Health Service v. Dr. Shibani Chakraborty & Ors. In Civil Appeal No. 4485 of 2016*** is delivered in a different context and has no application to the facts and circumstances of the present case.

14. Whether the petitioner has a right to leave under WBSR Rules, 1974 is an issue raised on an earlier date in the present proceedings. Having

regard to the nature of relief now sought, being leave without pay, this Court directed reconsideration of the petitioner's claim. A report was filed by the learned AAG pursuant to such reconsideration. As per the report dated 25.11.2025 petitioner's request for leave without pay has been rejected.

15. While doing so, the Director of Medical Education, West Bengal, noticed a fact that the petitioner, prior to the present claim for leave, was granted Trainee Reserve facility with full Government sponsorship for a period of three years for undergoing Post-Graduate course in Radiology from 31.05.2007 to 31.05.2010 under the 2015 Rules.
16. Under the WBSR, there is a maximum permissible limit of 24 months for study leave. The petitioner however has already availed three years' leave under the 2015 Rules which governs a claim for pursuing higher studies by doctors employed in any of the three cadres.
17. Keeping in view the earlier benefit availed under the 2015 Rules, the writ petitioner in the present proceeding chose to invoke discretion of the Government for grant of study leave/extraordinary leave/leave without pay under the WBSR. The petitioner is willing to forgo payment of any salary for the period required for pursuing PDCC.
18. We find that provision for grant of study leave is contained in appendix 5 of the WBSR part (1) wherein study-leave can be granted provided the proposed course of study or training is of definite advantage from the point of view of "public interest". Section 1 (6) under Appendix 5 of the WBSR part (1) further provides "*study-leave shall not be granted to a Government*

employee with such frequency as to remove him from contact with his regular work or to cause cadre or service difficulties owing to his absence on leave”.

19. Section 2 provides:

Maximum amount of study leave- the Maximum amount of study leave which may be granted to a Government employee shall be-

(a) ordinary twelve months at any one-time and

(b) during his entire service, twenty-four-months in all (inclusive of similar kind of leave for study or training granted under any other rule)”

20. There is no dispute that the petitioner already availed a period of three years trainee reserve facility with full sponsorship for three years to pursue his Post-Graduate Course in Radiology from 31.05.2007 to 31.05.2010. From plain reading of Section 2 extracted above the petitioner having availed three years’ leave under 2015 Rules is not eligible for any further study leave under WBSR.

21. Another fact relevant to consider, based on stand of the State-respondent is that apart from petitioner, who is Professor, there is one Associate Professor in the Department of Radiology at Sagar Datta Hospital Kamarhati, Kolkata, who also applied for one year leave for pursuing the PDCC course in Neuroradiology from IPGME & R, Kolkata for the same session 2024-25. If study leave is granted to both at the same time, the fact that the same would lead to great deficiency in healthcare services offered at the Hospital where the petitioner is posted in the Department of

Radiology, cannot be denied. Continued absence of both petitioner and the Associate Professor would have an adverse effect resulting in deficiency of public health care services at the hospital in question. It, therefore, cannot be denied or disputed that both, petitioner as well as other Doctor (Associate Professor) cannot be allowed to proceed on study leave for pursuing the one-year PDCC Course at the same time.

22. Such situation gives rise to a question whether grant of leave to the other Doctor (Associate Professor) and denial of the same to the petitioner is discriminatory as alleged by the petitioner. To sustain such allegation the petitioner was required to make out a case that the petitioner's claim is at par with the claim of the other Doctor (Associate Professor). The petitioner was also required to implead other Doctor (Associate Professor) as a party respondent in the Original Application and the writ petition. But the petitioner has not done so. The other Doctor (Associate Professor) was not made a party.

23. This Court also finds that there is no material in the averment made in the OA or in the Writ petition filed by the petitioner that other Doctor (Associate Professor) who has been granted study leave had earlier availed three years Government sponsored leave under the 2015 Rules and was thus similarly situated as the petitioner. The plea of discrimination raised by the learned Advocate for the petitioner with reference to the other doctor therefore cannot be considered for want of pleading in this regard. Such a plea also cannot be considered behind the back of the Associate Professor.

24. In so far as reliance placed on the decisions of **Dr. Arif Mahammad** (*supra*), **Ratan Sasmal** (*supra*) and **Dr. Arup Ratan Saha** (*supra*) we find these are not final decisions. The three decisions are arising out of the interim orders passed by the Tribunal. This Court in the writ proceeding arising out of the Tribunal's interim order has in para 26 of the order passed in the case of **Arif Mahammad** (*supra*), stated:

“26. We clarify that this interim order of ours will not create any right, title and interest or equity in favour of the writ petitioner, if on final hearing of the writ petition it is found that writ petitioner is not entitled to the relief as prayed for”.

25. In so far as the case of **Dr. Ratan Sasmal** (*supra*) is concerned, we find that this Court considered therein a stand taken by the State that departmental proceeding was contemplated against the Doctor/petitioner and he was being denied study leave on the ground that Grant of study leave was likely to impede the progress of the enquiry. There was no issue in the said case that he had earlier taken benefit under 2015 Rules or that grant of Study leave to Dr. Sasmal would adversely affect health care services at his posting place as raised in the present writ petition. We further find that this Court in the case of **Dr. Ratan Sasmal** passed an interim order dated 08.12.2022 allowing the petitioner therein to get admission and pursue the course subject to the outcome of application filed before the Tribunal. The order passed in the case of **Dr. Ratan Sasmal** (*supra*) relied upon by the petitioner, therefore, is not a final order and of no avail to the present writ petitioner.

26. In the case of **Arup Ratan Saha** (*supra*) also there was no issue arising for consideration of Dr. Saha having earlier availed Government Sponsored leave under 2015 Rules; or health care services being adversely affected by grant of study leave to Dr. Saha. The decision of the coordinate bench in the case of **Dr. Arup Ratan Saha** (*supra*) therefore, is factually distinguishable from the present case and has no application to the facts and circumstances of the present case.

27. As far as the decision in the case of **Shibani Chakraborty** (*supra*) we find that the same also does not come to the aid of the present writ petitioner. The order dated 27.04.2016 passed in the case **Shibani Chakraborty** (*supra*) by the Apex Court was considering an issue whether the respondents therein would be entitled to benefits under the 2015 Rules, since they did not have requisite rural service to qualify as Trainee Reserve Candidates. The decision of the Apex Court, therefore, has no application to the facts and circumstances of the present case.

28. In view of our above consideration, we find that writ petitioner has not been able to make out a case of discrimination with any other Doctor in the matter of grant of study leave.

29. We appreciate that acquisition of higher qualification should be encouraged. More so, when such acquisition of higher qualification is to subserve the public interest. But the decision of the authority to grant study leave for pursuing higher qualification is to be based on several factors as taken note of above. The authority is required to consider the past services rendered by the Doctors, seeking study leave. The nature of

course sought to be pursued with reference to its benefit for larger public interest during service tenure of the Doctor concerned is also to be considered. While granting such leave the State also has to ensure that availability of health services in public interest is not adversely affected in public charitable institutes, hospitals, health centers which are catering to public health care. Therefore, the decision to grant; or a circumstance requiring rejection of request for study leave is a decision to be taken by the authority having regard to such relevant factors, and the provisions contained in the rule(s) for grant of study leave, to serve the larger public interest.

30. Viewed thus we found from consideration of the facts and circumstances and study leave rules in the WBSR; that the petitioner earlier availed Government sponsored study leave. He has not been able to make out a case of discrimination in the matter of grant of study leave/leave. While rejecting the petitioners claim the authority also considered the adverse impact of grant of such leave to the petitioner, on health care services at the hospital where he is posted since there is no other senior doctor in the concerned department,

31. Therefore, there is no infirmity in the decision of the Director of Medical Education West Bengal Dated 04.09.2025 rejecting the petitioner's claim for study leave for pursuing the Post- Doctoral Certificate Course in Neuroradiology at IPGME & R for the Session 2024-25.

32. The writ petition is thus dismissed. OA 505 of 2025 filed before the Tribunal is accordingly dismissed. Pending application if any, also stands dismissed. Interim order if any stands vacated.

33. There will be no order as to costs.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)