

MAT 1736 of 2025
with
IA No. CAN 1 of 2025

(State of West Bengal & Ors. Vs. Dr. Aniket Mahata & Ors.)

Mr. Kishore Datta, Ld. Adv. Gen.
Mr. Debayan Sen
Mr. Niket Ojha
Ms. Dipti Priya

.... For the appellants

Mr. Pratik Dhar, Sr. Adv
Mr. Kartik Kumar Ray
Mr. Debashis Banerjee
Mr. Rakesh Jana
Mr. Snehal Sinha

**..... For the writ petitioner/
respondent no. 1**

1. The Writ Petition WPA 12496 of 2025 was allowed by the learned Single Judge by an order dated 24th September, 2025, thereby setting aside the impugned notification of 27th May, 2025 for deployment of the writ petitioner/respondent no. 1 at the Raiganj Government Medical College and Hospital in the District of Uttar Dinajpur.
2. It is this order which is impugned before us.
3. The writ petitioner/respondent no. 1 got admission at a medical college under the All India Open Quota and not being an in-service trainee reserved candidate and having completed his course and obtained a degree in Medicine in the R. G. Kar Medical College and Hospital, Kolkata (hereinafter referred to as R. G. Kar), had to execute an indemnity bond undertaking *inter alia*

that he would serve as a senior resident doctor for a period of three years upon successful completion of his Post Graduate (MD) Course, failing which the writ petitioner/respondent no. 1 would be liable to recompense the Government along with penalty for a sum of Rs.10,00,000/- for every defaulting year.

4. After completing their studies and obtaining a medical degree from a government college, all doctors are required to serve for a particular government medical college and hospital.
5. The writ petitioner/respondent no. 1, after having completed his post graduate medical course in MD in the discipline of anesthesiology from R G Kar, had obtained a fairly high rank (24) in the merit list in the said discipline.
6. In terms of the undertaking, the writ petitioner/respondent no. 1 had duly filed for the online registration for senior resident counseling in the departmental website and had exercised his option to be appointed in R G Kar for such senior residency. This option was exercised upon perusal of the advance vacancy list and seat matrix which indicated that there were four vacancies in the discipline of anesthesiology in R G Kar.
7. As per his merit ranking, the writ petitioner/respondent no. 1 had opted for R G Kar and was

entitled to be posted in such medical college of his choice in his discipline as he was second in the merit list for the four seats available at R G Kar in the said discipline.

8. By a notification of 27th May, 2025, almost 2 months after the counseling, which was held on 25th March, 2025, the writ petitioner / respondent no. 1 was posted at the Raiganj Government Medical College and Hospital, Uttar Dinajpur in a glaring contravention of the counseling outcome.
9. In fact, of the four vacancies indicated in the discipline in RG Kar only three have been filled and the fourth is presently lying vacant. It was this process adopted by the State/respondent that the writ petitioner/respondent no. 1 had assailed in the aforesaid writ petition, which was disposed of in his favour by the impugned order.
10. The learned Advocate General appearing for the State/appellant has raised the following issues:-
 - a. In terms of the SOP of 16th February, 2023, merit is the qualification for the counseling process and not for the engagement/appointment as envisaged in clause 7a of such SOP.
 - b. The self-declaration made by the concerned doctor, including the writ

petitioner/respondent no. 1 comes with the qualification that the concerned doctor would take up the assignment “if offered”. Clearly there is no mandate under the SOP to follow merit-based engagement/appointment.

c. The SOP is not a statute and cannot be sought to be implemented in a stringent manner.

d. The option exercised by the concerned person/doctor is a mere option. Such exercise of option by the doctor does not bind the State to ensure appointment of the doctor as per his choice.

e. Employment therefore is need-based and not choice-based.

f. Deployment and posting are not synonymous and irrespective of clause 7a of the SOP, posting is a prerogative of the employer, in this case the State.

11. Two other issues have been raised which are rather technical at best. The first of these issues is that, not having filed an affidavit in opposition to the opposition filed by the State authorities to the writ petition, the writ petitioner/respondent no. 1 has by the doctrine of non-traverse accepted the statement made in the opposition by the State.

12. The second issue, also rather technical, is that the passing reference by the learned Judge in the impugned order to the principle of Keshavnanda Bharti case is a clear violation of principles of natural justice as neither of the parties had cited such judgment.

13. Mr. Pratik Dhar, learned senior advocate appearing for the writ petitioner / respondent no. 1 has argued the following points:-

- a. The SOP is only a mechanism for deployment, the SOP contains all the mechanism for deployment of doctors after completion of their course, whether a degree or a diploma and the merit-based selection cannot be construed as being applicable only to counseling as that would destroy the very fabric of an impartial and transparent system of appointment.
- b. He argues that the SOP is not merely for counseling but also for engagement and or deployment of doctors as senior residents and the word merit cannot be construed in a narrow conspectus to imply that it relates only to counseling and not to engagement.
- c. The State having laid down its own SOP cannot on its own whim and fancy depart from the same without any reason.

- d. There is complete violation by the State authorities, in following the SOP, in as much as of the 871 candidates, 869 were given deployment on the basis of strict conformity with the SOP established by the State. Only in the case of two of the candidates there was a deviation from the SOP.
- e. The only situation in which the State authorities can exercise their own discretion in making an appointment is contained in the memo of March 4, 2025, which states that if the registration is not completed within March 10, 2025 by 5 PM, only then the State authority can deploy the candidate in the remaining vacancy available after the counseling process. Beyond this, the State does not have any liberty to exercise any discretion in the case of appointment.
- f. The writ petitioner's/respondent's no. 1 rank (24) makes him the second in line of four persons who had applied for RG Kar, the other three ranked 13, 26 and 34 respectively. Thus, if candidates with ranks 26 and 34, both below the rank of the writ petitioner/respondent no. 1 were assigned to RG Kar, there is absolutely no reason

why the writ petitioner/respondent no. 1 could not be assigned to the said RG Kar.

g. He has also submitted that there are several decisions which say that a mere reference to some well-accepted principles in law, to a particular judgment does not in any manner violate the principles of natural justice.

h. It has also been submitted that the issue of choice and vacancy in RG Kar and the fact that the writ petitioner/respondent no. 1 was of a higher rank than those persons who had been given appointment/deployment in RG Kar are all admitted facts, which are not disputed by either of the parties. The other issues regarding the allocation made in the affidavit in opposition filed by the State/respondent to the writ petition, are not germane and require no traverse. They are mere submissions made by the deponent of the said affidavit.

14. We have heard the learned counsel for the parties and considered the documents on record.

15. The following facts are not in dispute:-

a. RG Kar had four vacancies in the discipline of anesthesiology.

b. The writ petitioner/respondent no. 1 was ranked second amongst the four persons who had applied for deployment as senior residents to RG Kar.

c. One of the posts is still lying vacant in RG Kar.

d. No pressing urgency or need was disclosed as to why the writ petitioner/respondent no. 1 would not be granted a posting of his choice, even though entitled, and rather be appointed in a place far away such as Raiganj.

16. The standard procedure (SOP) had been enunciated to ensure transparency, clarity and fairness in the manner in which posting/deployment of doctors as senior resident doctors was made by the State. This mandate of the SOP has been followed, without any deviation in respect of 869 out of a total of 871 candidates.

17. The State has admitted that there has been a deviation from the SOP and sought to justify it on various grounds.

18. The notification of 27th May, 2025 issued by the State which was challenged by the writ petitioner/respondent no. 1 also supports the aforementioned admitted facts and yet falls short of explaining as to why the writ petitioner/ respondent no. 1 was singled out for such arbitrary treatment.

19. The concerned clause of SOP dated 16th February, 2023 would be clauses 7a, 7b and 7c. The argument of the learned Advocate General that the merit-based criterion would be a qualifying mark only for counseling and not for engagement belies logic. However, if indeed the merit-based criterion is not a qualifying parameter for engagement, then the choice exercised by the concerned doctor would have to be a qualifying parameter. On both counts, that is as merit for counseling or choice for engagement, the writ petitioner/respondent no. 1 succeeds. Thus no explanation has been given as to why the writ petitioner/respondent no. 1 would not be appointed to a medical college/hospital of his choice and rather be appointed to one which was not his choice at all.

20. Even if we are to accept the learned Advocate General's argument that the exercise of option is final in so far as the doctor is concerned, it does not bind the State, the State is duty bound to assign some reasons, and indeed to inform such person as to the reasons why he was not being given the medical college of his choice even though he was absolutely qualified for the same. In fact, persons below him in rank in the merit list were given the same college and rather surprisingly a post in that college is still lying vacant. There is no explanation to this issue.

21. Needless to mention, that in judicial review the power of the writ court are rather limited and have to be exercised with much care and caution. With such care and caution in mind we cannot turn a blind eye to the SOP enunciated by the State authorities themselves, a plain reading whereof clearly prescribes that the posting would be preceded by counseling based on merit which, needless to mention, would have to satisfy the principles for fairness and transparency as specifically held by the Hon'ble Supreme Court of India in the case of State of UP and another vs. Bhavna Tiwari and Ors. (2025) SCC OnLine SC 1357.

22. This issue of fairness and transparency has been completely glossed over in as much as of the 871 candidates, in the case of 869 the directions contained in the SOP were followed to the letter while in the case of the writ petitioner/ respondent no. 1 and another person, there is a deviation. In this deviation the State has adopted a procedure which is completely opaque as to reasons and may well be construed to be a colourable exercise of the powers vested in the authorities. We were unable to ascertain any reason as the State was unable to assign any reasons as to why persons in the merit list below the rank of the writ petitioner/respondent no. 1 were granted posting in R G Kar and also as to

why one of the posts in the said discipline in R G Kar is still lying vacant.

23. The interpretation of the appellant of the phrase “if offered” in the self-declaration made by the doctors including the writ petitioner/respondent no. 1 herein does not stand to reason. It does not stand to reason as in the case of 869 doctors it was not an issue while only in the case of this writ petitioner/respondent no. 1 along with another doctor, this became an issue. Clearly the State has acted in an arbitrary manner, has adopted a different procedure in respect of the writ petitioner / respondent no. 1, while applying the same SOP without any reasons whatsoever.

24. In view of the aforementioned facts and circumstances, we are unable to accept the submission of the learned Advocate General.

25. We do not find any reason to interfere with the order of the learned Single Judge.

26. Thus the appeal and the connected application are dismissed.

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

28. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

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