

30.01.2025
Item No.23
gd/ssd

WPA(P)/511/2024
DR. SWAGATA MUKHOPADHYAY AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Aniruddha Chatterjee,
Ms. Gargi Goswami
..for the Petitioners.

Sk. Md. Galib,
Ms. Priyamvada Singh
..for the State.

Mr. Sakya Sen,
Mr. Sunil Kumar Gupta
..for the Respondent Nos.2 to 4.

1. By this public interest writ petition the petitioners who are doctors have pointed out that the Registrar of the Council being the 4th respondent has been permitted to continue beyond the age of superannuation which he attained in the year 2019 without prior approval of the Government.

2. Mr. Sen, learned senior advocate appearing for the West Bengal Medical Council would submit that already recruitment notice has been issued for recruitment of the Posts of one Registrar and one Assistant Registrar and the process has already commenced and the preliminary examination has been fixed on 7th February, 2025.

3. After hearing the learned advocates for the parties and for a considerable end of time and carefully

perusing the materials placed on record, we find that under the scheme of the Bengal Medical Act, 1914 the control over the Council more particularly the service condition etc. of the employees is with the local Government. Section 14 deals with Registrar and Establishment of the Council. Sub-section (1) of Section 14 states that with the previous sanction of the local Government the Council (a) shall appoint a Registrar.

4. Therefore, if a person needs to continue beyond the age of superannuation it pre-supposes and it is required to be pre-supposed with the prior consent of the Government has to be obtained since pay and allowances have to be sanctioned accordingly and what would be the pay payable to a person who is allowed extension of service beyond the age of superannuation or all issues which we have financial implications and has to be considered by the local Government.

5. It is no doubt true that the Executive Council of the West Bengal Medical Council would be permitted to take a decision for extending the services of a particular officer of the Establishment of the Council for good and sufficient reasons but nonetheless that extension is subject to the approval of the Government.

6. Therefore, we direct the private respondent, namely, 5th respondent, namely, who is presently functioning as Registrar of the West Bengal Medical

Council to step down of his own volition and the Medical Council shall forward the proposal for regularizing/approving his engagement beyond the age of superannuation by submitting appropriate proposal to the Government which shall be considered on merits and in accordance with law.

7. This is required since the Government as early as on 25.10.2024 has informed the President of the West Bengal Medical Council that the 5th respondent has been appointed as Registrar on re-employment basis since 1.11.2019 without prior sanction of the Government following statutory provision laid down in Section 14(1) of the Bengal Medical Act, 1914 and the Medical Council was advised to arrange for appointment of a new Registrar though this communication has been issued on 25.10.2024. Recruitment Notice has been issued only recently. However, the copy of the Recruitment Notice handed over to us by Mr. Sen, learned senior advocate appearing for the West Bengal Medical Council does not contain a date and only gives the other details.

8. In any event the Government has stated that the appointment of the 5th respondent as Registrar on re-employment since 1.11.2019 has been made without prior sanction of the Government and, therefore, the 5th respondent has no right to continue to function as Registrar of the Medical Council.

9. Therefore, as observed earlier, he shall step down on his own volition by 5 pm tomorrow i.e. 31.1.2025 or else there will be an order directing him to remove from the Post of Registrar of the Medical Council.

10. Since the other issues which have been pointed out in the writ petition, in our opinion are not required to be gone into in this writ petition and, therefore, all those issues are left open.

11. With the above directions, the matter stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)