

(2011) 11 CAL CK 0052
In the Calcutta High Court
Case No : Writ Petition No. 14091 (W) of 2010

Dr. Rabindra Nath Saren

APPELLANT

Vs

The State of West Bengal 61 Ors

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

West Bengal Health Services Act, 1990 — Section 21

Citation : AIR 2012 Cal 157 : (2012) 1 CALLT 497 : (2012) 4 CHN 58

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Tulshidas Ray, Mr. Himangshu Ghosh and Mr. Tapan Ray, for the Appellant; Suchitra Saha for the State Respondents Mr. Indranil Roy and Mr. Ayan Bhattacharjee for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Aniruddha Bose, J

1. The grievance of the writ petitioner in this proceeding is over his exclusion from the final list published by the State Government permitting him to undergo the course of MS in orthopaedics from in-service category that is from among the Medical Officers already in service of the State Government. This category of examinees or students are known as Trainee Reserve candidates. The petitioner was initially selected for pursuing the course from Nil Ratan Sarkar Medical College. At the time when the petitioner applied for admission, he was an employee of the State Government, being a Medical Officer under the West Bengal Health Services. He belong to a Scheduled Tribe and had obtained his degree of Bachelor of Medicine and Surgery under the University of Calcutta in the year 2003 and completed his internship in the year 2005. He was initially appointed in the cadre of the West Bengal Health Services temporarily on a purely ad-hoc basis for a period of six months. His appointment was notified by a memorandum issued on 25th September 2006 by the appropriate authority of the State Government. Thereafter by another memorandum dated 26th April

2007, his service was extended by a further period of six months. His ad-hoc appointment continued till 17th March 2008 and with effect from 18th March 2008 he was permanently appointed as a Medical Officer under the same service. His initial appointment on ad-hoc basis was made subject to the following condition as stipulated in Clause 3 of the notification dated 25th September 2006:

3. The appointments of the candidate will also be subject to the following conditions viz:

(i) their service will be liable to termination without further notice on the expiry of the period of six months referred to in the above para unless they are in the meantime, selected by the PSC, West Bengal for recruitment of the West Bengal, Health Service in the regular way or the Ad-hoc period is extended by the Government.

(ii) They will be liable to transfer to any station within the State of West Bengal in the interest of public service and they will not undertake or continue in post graduate studies without permission of Government. They shall have to give in writing acceptance of these conditions before they are allowed to join the West Bengal Health Service.

2. To pursue the MS course as an in-service candidate, the petitioner had to be sponsored by the concerned department of the State Government and the petitioner had to fill up a proforma prescribed by the authorities. The petitioner had to give details of his educational qualification and particulars of service rendered by him. It appears that for this purpose the routine procedure had been followed and the Assistant Chief Medical Officer of Health of the concerned district, being Paschim Medinipur where the petitioner was serving had forwarded the same to the Chief Medical Officer of Health of the same district, who also had endorsed the same. The Director of Medical Education/Director of Health Services, Government of West Bengal by a memorandum dated 29th March, 2010 endorsed his consent in permitting the petitioner to appear in the entrance examination as Government Sponsored candidate and recorded that he would be eligible for counseling if selected for the course in question as per "existing TR Rules 2008". This was in reference to the West Bengal Medical. Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (Placement on Trainee Reserve) Rules, 2008 which was framed by the State Government in exercise of power u/s 21 of the West Bengal Health Services Act, 1990. The relevant provision in this regard is contained in paragraph 3 of the said Rules, which stipulates;

3. Criteria for placement on trainee reserve.-The following shall be the eligibility criteria for placement on trainee reserve as Government sponsored candidates:

(a) for the Officers of the West Bengal Medical Education Service, West Bengal Health Service, and the West Bengal Public Health-cum-Administrative Service. -

(i) a minimum of three years qualifying service under the employment of the

Government of West Bengal in the respective cadre as determined on the thirty-first day of March of the concerned year and for the officers who have been appointed in any of the three cadre service from any of the two other cadre services, they must have put in at least three years service in the West Bengal Public Health-cum-Service, taken together:

Provided that the minimum period of service required shall be two years in case of acquiring eligibility for trainee reserve in the dearth disciplines as enumerated in Schedule A of these rules:

Provided further that in case of officers of the West Bengal Health Service, the minimum period of qualifying service required shall have to be rendered in rural areas in Primary Health Centres, Block Primary Health Centres and Rural Hospitals:

Provided also that the compulsory requirement of qualifying rural service may be relaxed or dispensed with in case of such specialist Medical Officers in the disciplines other than Anesthesiology, Pediatrics and Obstetrics and Gynecology, who have been directly recruited through the Public Service Commission, West Bengal and appointed in State General Hospitals, Sub-divisional hospitals and district hospitals and for all other Medical Officers who could not serve in any Primary Health Centre, or Block Primary Health Centre or any rural hospital for the reason of his posting elsewhere by the State Government, who may also be considered for placement on trainee reserve as Government sponsored candidate, based on merit on each case;

3. The petitioner had appeared in the entrance test held on 24 January 2010. As the petitioner was working as a Medical Officer at that point of time, his name had to be sponsored as a Government sponsored candidate. In his bio-data furnished in the prescribed form, he disclosed his length of service as three years and five months which included the one year period he served in ad-hoc capacity. Against the column "Date of Joining in Service" he disclosed "ad hoc" on 4th October 2006 and as "PSC on 18 March 2008. Computing his service in these two categories, he had described his total length of service as three years and five months.

4. The petitioner was successful in the said examination and was directed to appear in the first counselling which was scheduled to be held on 5 April 2010. Such counselling was conducted by the West Bengal University of Health Sciences. By a communication dated 6 April 2010 the Registrar of the said university informed the petitioner that as per his application for admission and choice before the selection committee, the petitioner had been allotted a seat in MS Orthopaedic in the NRS Medical College, Kolkata. The petitioner, by a communication issued by the Principal of the college on 8 April 2010, was informed that he was selected for such course and was permitted to get admission for the session 2010-2013 on payment of fees stipulated therein. In this communication, he was shown as the first candidate in the ST category from

"service" candidates. This appears from the abbreviation shown against the name of the petitioner as "Service/ST/ 1" in that communication.

5. The petitioner however found his name missing from the list of successful 66 candidates from his category selected for being placed on Training Reserve from the Medical Officers of the West Bengal Health Services. The memorandum to that effect was issued on 9th June 2010; a copy of which has been made annexure "P16" to the writ petition.

6. The petitioner was not informed the reason for his exclusion from the said list. He accordingly sent a notice requesting for inclusion of his name. When this was not done, he approached this Court by filing the present writ petition. On behalf of the State a preliminary objection on maintainability of this writ petition has been taken. Relying on the decision of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, , it was argued that since for deciding the writ petition condition of service of the petitioner was required to be adjudicated upon. in substance the dispute involved service related controversy of a State Government employee. On this ground, it was submitted on behalf of the State respondents that the petitioner was required to apply before the State Administrative Tribunal first.

7. I am however unable to accept this submission. It is true that service conditions of the petitioner has a bearing on this proceeding as the petitioner is seeking admission to the course as a Trainee Reserve candidate, a special category of applicants who are in service of the State Government. Interpretation of certain provisions of the service rules and the nature and terms of his appointment is also necessary for the purpose of adjudication of this writ petition. But such interpretation is necessary for determining his eligibility for admission in the said course, and not for deciding any issue relating to the terms of his service. Thus the dispute in this proceeding is not in respect of the service of the petitioner, but his entitlement to get admission in a Post Graduate course and pursue such course. The core issue in this proceeding does not relate to employment of the petitioner, but his right to get admitted in the Post Graduate Medical course of MS in Orthopaedic. The dominant controversy in this case is over rules for admission rather than terms of employment. As this writ petition is primarily concerned with admission in an educational institution. I am of the opinion that the Constitutional Writ jurisdiction of this Court can be invoked straightaway for deciding the dispute without taking recourse first to the State Administrative Tribunal. I do not think the State Administrative Tribunal would have the jurisdiction to entertain and adjudicate this proceeding in any event.

8. Now I shall address the issues raised in this writ petition on merit. The reason disclosed in the affidavit-in-opposition of the State respondents for exclusion of the petitioner from the final list of Trainee Reserve candidates is that he had not completed the minimum requirement of three years of qualifying service as per the Trainee Reserve Rules. Twelve months of service rendered by him on ad hoc basis ought not to have been computed in his case, such service not being

regular service and hence he was disentitled from pursuing the course of MS in Orthopedic from that category of examinees. The contention of the State Government is that he could pursue the courses termed as "dearth discipline" on completion of two years of service. Orthopedic however is not a "dearth discipline" subject and to the petitioner such subjects for whatever reason do not seem to be attractive enough. It was contended on behalf of the University that another candidate had already been admitted in his vacancy since the State Government did not permit him to undertake the Post Graduate programme as a Trainee Reserve candidate and hence the petitioner could not be accommodated in the course of his choice. A misstatement was attributed to the petitioner as he had disclosed in the form prescribed that total length of his service was for a period 3 years and 5 months. A copy of this form duly filled in has been made Annexure "P8" to the writ petition. Moreover, learned counsel for the State has submitted that the communication dated 5th April 2010 by which his selection was confirmed by the University, a copy of which has been made annexure "P12" of this writ petition, was not absolute in terms. It has been recorded in this communication:

This is subject to verification of original certificates of eligibility for admission as per the "Rules for admission", published in the notification for admission to the said course by the University. You are required to submit a photocopy of this offer letter with your full signature as proof of your acceptance of the offer.

You are directed to report to the Director/Principal/Dean of the allotted institution positively on or before 17.04.2010.

The allotment of seat is provisional subject to the final verdict of the Court.

9. The stand of the University is that it was only a provisional allotment and as he did not fulfill the eligibility criteria for selection, they could not accommodate an ineligible candidate in the said post. On behalf of the University the decision of the Supreme Court in the case of *Mridul Dhar & Anr. v. Union of India* was relied upon. It was contended that in view of the decision of the Supreme Court in this case reported in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, they were required to complete the admission by 30th June that year and hence there was no scope of admitting the petitioner at a later date. This writ petition was filed on 1 July 2010. On the question of eligibility of the writ petitioner, the provisions of the "Trainee Reserve" Rule quoted above has been cited before me by the learned counsel for the respondents. A booklet of the West Bengal University of Health Sciences, which has been annexed as "R1" to the affidavit of the university has also been referred to, in which it has been stipulated:

2.1.2. In-service candidates applying for Government Sponsored seats will have to provide Sponsorship Certificates from the appropriate authorities of the Govt. of West Bengal. The Sponsorship Certificate must also authenticate that the candidate has served in remote and/or difficult areas for 3 (three) or more years

to consider the candidate for Diploma" seats. The Sponsorship Certificate from the Government and an Undertaking by the candidate committing to serve for 2 (two) more years in remote and/or difficult areas after completion of Diploma Course, must accompany the completed application form without which the application will be treated as incomplete and summarily rejected."

10. Now the question arises as to whether in the case of the petitioner his ad hoc service of 12 months ought to have been computed or not for the purpose of determining the length of his qualifying service. That is the main dispute in this writ petition. No controversy over the petitioner's service in remote or difficult area in terms of clause 2.1.1. contained in the booklet of the University has been raised as disqualification of the petitioner by the learned Counsel for the respondents in course of hearing. On behalf of the petitioner it has been argued that the West Bengal Services (Probation & Appointment) Rules 1979 includes appointment on probation. Learned Counsel for the petitioner has also drawn my attention to certain clauses, of the West Bengal Services (Death-cum-Retirement Benefit) Rules 1971 which incorporates service rendered in temporary capacity as regular service for the purpose of computing qualifying service for State Government employees.

11. Learned Counsel for the petitioner has also submitted that in the form prescribed by the authorities themselves, to which I have referred to in the earlier part of this judgment, there is a column to indicate service on ad hoc basis. The case of the petitioner is that total service period is required to be arrived at computing his service rendered as ad hoc employee as well as a regular employee, after clearing the selection process conducted by the State Public Service Commission, In column 4 of the said form, against the column entitled "Date of Joining Service", a candidate is required to disclose particulars under two heads, as ad hoc and as PSC. On the strength of this requirement, he argued that ad hoc service rendered by the petitioner ought to have been computed to decide as to whether he had completed requisite three years of service or not.

12. Mr. Roy, learned Counsel for the petitioner has also argued that since the authorities themselves had cleared the petitioner's name for being sponsored in the Trainee Reserve category, it was not open to them to question the eligibility of the petitioner as the petitioner had all along disclosed the status of his service rendered in ad hoc capacity as well as on regular employment. There is no allegation of any misrepresentation on the part of the petitioner as regards the nature of his appointment or employment on the basis of which his qualification service was computed. Two authorities were relied upon by the petitioner in support of his contention that once the petitioner was endorsed as being eligible for pursuing the course from the Trainee Reserve category on verification of his service status, the authorities were estopped from questioning his eligibility after selecting him. These decisions are (i) Ashok Chand Singhvi Vs. University of Jodhpur and Others, and (ii) Sujoyv. State of Maharashtra [2009(1) ESC; 3311.

being a Bench decision of the Bombay High Court.

13. It has also been contended on behalf of the petitioner that since the vacancy for which he was originally selected belonged to Reserved category for Scheduled Tribe candidates in the 100 point roster, the said post could not be dereserved and utilized for a general category candidate. In this case, the petitioner's vacancy appears to have been filled up by a general category candidate only. The decision relied upon in support of this submission is a judgment of the Supreme Court of India in the case of R.K. Sabharwal v. State of Punjab (AIR 1975 SC 1371).

14. In the notification dated 25 September 2006, by which the petitioner was initially engaged in the service of the State Government, it was clearly stipulated:

The Governor is pleased to appoint the persons named below temporarily on a purely ad hoc basis as Medical Officer in the cadre of the West Bengal Health Services for a period of 6 (six) months with effect from the date on which they join as such and to post them in the places as noted against each.

15. So far as the Appointment Rules of 1979 is concerned, the contention of the State Government is that even on regular appointment, a government employee is deemed to be on probation after completion of continuous temporary service of two years and it is this probation period only after regular appointment which could qualify for being computed for the three year period. My attention has been drawn by the learned Counsellor the State to the provisions of sub-rule (3) of Rule 2 of the Appointment Rules 1979, which provides that the said Rules would not apply to persons appointed on contract basis or appointed otherwise than in accordance with recruitment rules. In my opinion, however, the Trainee Reserve Rules cannot be construed in a manner to exclude the petitioner's service in ad hoc capacity for computing the three year qualifying service period. The Trainee Reserve Rules, 2008 has been promulgated in exercise of power under the West Bengal State Health Service Act, 1990. A copy of this Rule has been annexed to the affidavit-in-reply of the petitioner. The eligibility requirement for being placed as Trainee Reserve as a Government sponsored candidate is minimum of three years' qualifying service under the employment of the Government of West Bengal in the respective cadre. This Rule does not exclude the period during which a candidate serves the State Government under ad hoc or temporary appointment. There is no stipulation that the period of qualifying service ought to be computed only on the basis of service rendered after being permanently appointed on being selected by the Public Service Commission. The stipulation is three years of qualifying service under the employment of the Government of West Bengal in the respective cadre. The notification by which the petitioner was appointed on 25 September 2006 specifically stipulates that he was being appointed in the cadre of the West Bengal Health Services. In my opinion, the requirement of clause 3(a) of the Trainee Reserve Rules would stand satisfied if the employment of the candidate is in the cadre of the West Bengal Health Service, irrespective of the fact as to whether such appointment is on temporary

or ad hoc basis or not. To further qualify such employment as permanent or regular employment would be to import certain provisions in a statutory instrument when the requirement of the statute can be ascertained from a plain reading of the provision of the statute itself, without any external aid. In such a situation, there is no necessity to refer to any other statute or regulation, nor any requirement to apply the tools for interpretation of statutes except the fundamental rule that a statute means what is revealed through its plain meaning. Thus I do not consider it necessary to refer to the Appointment Rules of 1979 or the Death-cum-Retirement Benefit Rules of 1971 in aid the interpretation of the provisions of the Trainee Reserve Rules. The Trainee Reserve Rules of 2008 does not specify that employment under the State would have to be in accordance with the 1979 Rules. The notification by which the petitioner was appointed also specifies that such appointment was on ad hoc basis as Medical Officer in the cadre of the West Bengal Health Services. This fulfills the requirement of the Trainee Reserve Rules and service of the petitioner in ad hoc capacity can be counted for determining his qualifying service. For this reason, I do not think any misstatement was made by the petitioner in the form as regards his service in the past.

16. In any event, in my view, the "Trainee Reserve" Rules would require a liberal construction so far requirement to fulfill the conditions of qualifying service is concerned as qualifying service is not the sole criteria for admission to the MS course. Individual candidates are required to sit in an entrance examination. Moreover, in the case of the petitioner he made full disclosure of his past service and the authorities at the initial stage had accepted that the petitioner had rendered qualifying service to be eligible for admission in the said course. The decision of the Supreme Court in the case of Ashok Chand Singh v. Jodhpur University and the decision of the Bombay High Court in the case of Sujoy were relied upon by Mr. Roy in support of his case that once the petitioner made full disclosure of his qualification in the form of past experience in this case and the authorities had found him eligible, later on the authorities could not take a different view and disqualify him. The ratio of these two judgments however would not strictly apply in this case as the petitioner here was excluded at the initial stage only before formally being admitted to the course though it has been asserted on his behalf that fees were paid by him. The letter of his selection issued by the University made it clear that it was provisional. But as I am satisfied on merit that the petitioner had fulfilled the norms relating to qualifying service provided in the Trainee Reserve" Rules, the petitioner can succeed even if the ratio of these two judgments do not apply in his case. The other judgment cited on behalf of the petitioner is also a decision of the Supreme Court in the case of Punjab State Electricity Board and Another Vs. Narata Singh and Another, . In this case, the Supreme Court examined the question as to whether the period of service rendered by an employee in work charged capacity should be computed for determining his qualifying service for grant of pension. But this case was decided on the basis of provisions of different Rules and circulars, and

the ratio of this decision also cannot be applied in the present case, where there is a specific statutory instrument laying down the eligibility standards for admission to the course in question. In this proceeding, I also do not consider it necessary to decide as to whether filling up the vacancy for which the petitioner was initially selected by a general category candidate was proper or not, as on merit I am satisfied of the petitioner's case but for reasons I shall discuss later in this judgment, I cannot direct the petitioner to get admitted to that very vacancy.

17. What relief the petitioner would be entitled to now? The MS course, I understand, has run through two third of its duration. Another candidate has been admitted In the petitioner's seat, though in my opinion without informing the petitioner the fact that his selection was cancelled and the reasons for such cancellation, it was arbitrary on the part of the respondents to admit another candidate. The deadline specified by the Supreme Court in the case of Mridul Dhur had also lapsed before the writ petition was filed. In these circumstances it would be impractical and unworkable to direct admission of the petitioner for the said course for the same academic session.

18. Since the writ petitioner has already qualified for the MS course and at present has completed three years qualifying service period, I give option to the State Government and the concerned medical college to admit him in the ensuing course in the same subject which is to commence in the next academic session, admitting him from the special category to be placed as "Trainee Reserve" candidate without requiring him to sit afresh in the examination. Such a course, if followed would of course involve an element of irregularity, as the petitioner would be admitted in an academic session without sitting for an examination held for that specific year. That would deprive a candidate who might have had qualified in the examination in that particular year, and there would be one seat less available for the aspiring candidates for admission in that particular year. But the person who would be deprived in such a situation would be an unspecified candidate, and the risk for not being selected for that particular seat would be spread over all the appearing and aspiring candidates. On the other hand, if the petitioner is deprived from pursuing the course even after being selected for unsustainable reason, and the information he received in that regard made it practically impossible for him to seek legal recourse in that very year, in view of the deadline prescribed by the Supreme Court in the case of Mridul Dhar, in my opinion equity would be in favour of the petitioner's admission in the next academic year. But I am not issuing a mandatory direction on the State and the University to admit the petitioner in the manner I feel would be equitable. I leave this choice to be made by the respondents, considering the competing equity. I also make it clear that if the State decides to recommend or sponsor the petitioner from the Trainee Reserve category for the same course next academic session, then the University shall admit him on the basis of his past result in the entrance test. I am of this opinion because the petitioner was not admitted for the course in question because the State did not eventually

sponsor his name. The fault primarily lies on the State, not the University for such injustice.

19. But if the State chooses not to sponsor the petitioner in the manner I have directed in the preceding paragraph for any compelling administrative reason, the petitioner should be compensated by a sum of Rs. 3 lacs (rupees three lacs). Of course it could be argued by the respondents that the petitioner would have the chance to appear in the entrance test for the next academic year, but that would not compensate the petitioner's loss from being deprived of his chance of pursuing a course in spite of being selected, and there is no assurance that the petitioner would be successful in the entrance examination the following year. The petitioner, coming from a Scheduled Tribe community has already undergone undeserved trauma and harassment for not being able to pursue the course because of misconstruction of the admission regulations by the authorities, and I am of the opinion that if the State respondents and the University concerned decline to admit the petitioner for the next academic session, then the State should at least compensate him in monetary terms for such loss and prejudice. In my opinion, the said sum would be equitable compensation in the facts of this case. The respondents shall inform the petitioner within a period of four weeks from the date certified copy of this judgment or a copy thereof is served upon them the course they choose to follow, that is whether they will admit the petitioner in the same course for the next academic session or they will compensate the petitioner financially as directed. If the State decides to opt for the latter, then compensation shall be paid to the petitioner within a further period of six weeks. The writ petition stands allowed in the above terms, but without any order as to costs.

Urgent Photostat certified copy of this judgment be supplied to the learned Advocates for the parties if applied for with necessary formalities as expeditiously as possible.