
(2016) 05 CAL CK 0100
In the Calcutta High Court
Case No : W.P.S.T. No. 65 of 2016

Dr. Subhenjit Ray

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-05-2016

Acts Referred:

Citation : (2016) 4 CalHCN 146

Hon'ble Judges : Nishita Mhatre and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Mr. Bikash Ranjan Bhattacharya, Mr. Uday Sankar Chattopadhyay and Ms. Snigdha Saha, Advocates, for the Petitioner; Mr. Joytosh Majumdar, Mr. Pinaki Dhole and Mr. Benazir Ahmed, Advocates, for the State; Mr. Siddhartha Banerjee and Mr. Debaki Nandan Maiti,

Final Decision : Dismissed

Judgement

1. The Petitioners are aggrieved by the decision of the West Bengal Administrative Tribunal passed in different original applications filed by them.
2. It appears that only one set of court fees have been submitted by the Petitioners although separate original applications have been filed. The Petitioners shall immediately deposit the required court fees in the office.
3. It appears that OA-420 of 2016 and OA-421 of 2016 were filed by the Petitioners. The applications were heard together by the Tribunal and were disposed of.
4. The Petitioners all applied for Sponsorship Certificates which are issued in consonance with 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, 2015. Under these Rules an in-service candidate, who wants to prosecute higher studies, either post doctoral degree or diploma, is entitled to seek sponsorship and consequently the Trainee Reserve facility. The Government decided that ten per cent of the seats each from the

West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service should be available for sponsorship and later the Trainee Reserve facility. Accordingly, a memo was issued on 1st April, 2016 directing 189 candidates, who had applied for sponsorship to participate in the counselling process in the post-graduate courses under the West Bengal University Health Sciences (W.B.U.H.S.), to collect their Sponsorship Certificates which were to be distributed in accordance with merit and reservation norms.

5. The Petitioners did not find their names amongst these 189 candidates and, therefore, they approached the Tribunal seeking the following reliefs:

"a) A direction do issue upon the concerned respondent authorities to forthwith issue sponsorship numbers in favour of the applicants as well as to allow them to participate in the ensuing Counselling Process for PG Courses under W.B.U.H.S. after setting aside the impugned Notice issued by the Deputy Director of Health Services (MART), Government of West Bengal, issued under Memo. No. Singly/06, dated 01.04.2016, being Annexure - "B" herein, and to command them to act in accordance with law;

b) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced the entire records relating to the applicants" case and on such production being made, render conscionable Justice upon perusing the same.

c) ?. ?. ?. ?. ?. ?.

d) ?. ?. ?. ?. ?. ?."

6. The Tribunal by its decision dated 7th April, 2016 held that in view of the stand of the Respondents and the University of Health Sciences that in case some seats remained unfilled, additional candidates would be called for the second round of counselling after issuing sponsorship number, registration etc.

7. Aggrieved by this decision the Petitioners have approached this Court.

8. The main contention of Mr. Bhattacharya the learned Counsel appearing for the Petitioners is that the Government has erred in considering 10% quota of each stream i.e. the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service separately rather than considering them as one cadre for granting Sponsorship Certificates. According to him, had the Government clubbed all three streams together and granted the Sponsorship Certificates on merit to 10% of all the candidates in three streams, the Petitioners would certainly have been granted the sponsorship as well as the Trainee Reserve facility.

9. Mr. Banerjee the learned Counsel appearing for the West Bengal University of Health Sciences / Respondent No.5 submits that the University has already completed the first round of counselling and the second round of counselling is in

progress today. According to him, this round also would be completed by tomorrow. The University of Health Sciences has informed the Government that there are 26 seats available for the second round of counselling and it is for the Government to decide who should be granted Sponsorship Certificates so that they can avail of the second round of counselling.

10. Mr. Joytosh Majumdar, learned Counsel appearing for the State-Respondents vehemently submits that the three streams aforesaid cannot be considered together while deciding the ten per cent quota. He submits that these three streams form different cadres and, therefore, have to be retained separately. According to him, the Government has taken a policy decision to give the sponsorship to only 10% of each stream so that doctors are available to look after the patients at any given point of time. He submits that if all the quota of Sponsorship Certificates would be available only to the West Bengal Health Service and the West Bengal Public Health-cum- Administrative Service, there will be a dearth of doctors in West Bengal Government Hospitals and the ratio of doctors to patients would be more skewed than it is today. He submits that even though there are less number of candidates from the Education Department who are going to avail of the sponsorship, the seats which will be left vacant in the education stream cannot be filled in by doctors in the others streams as that would lead to disastrous effects on the health services in the State of West Bengal.

11. Mr. Majumder points out that four Petitioners would be entitled to the second round of counselling. He submits that there has been a mistake in not forwarding the name of the Petitioner No.2, Angshuman Roy in the first list of sponsorship and he has unfortunately been deprived of the first round of counselling. He submits that the application sent by this candidate (i.e., P.W.2) was misplaced and it is only now that the Government has found that he was entitled to the first round of counselling itself. To rectify this error, Mr. Majumder states that Petitioner No.2, Angshuman Roy would be entitled to attend the second round of counselling. He also points out that the Petitioner No.1, Subhenjit Ray, the Petitioner No.13, Sudipta Chattopadhyay and the Petitioner No.17, Ujjwal Mondal would all be entitled to the second round of counselling. However, as regards the others, he points out that they do not fall within the quota according to the merit list.

12. A policy decision was taken by the Government in the year 2008 that only ten per cent of the candidates of each stream would be entitled to sponsorship even after the Trainee Reserve Rules were enacted afresh in the year 2015. The Government continued to maintain this 10% quota from each of the streams. By a Memo, dated 6th January, 2016, the Director of Health Services was informed that the maximum number of candidates who may be allowed the Trainee Reserve facility was 10 per cent of permanent duty posts of Medical Officers in the West Bengal Health Service and the West Bengal Public Health-cum- Administrative Service. This communication has not been challenged by the

Petitioners in their original applications. Therefore, the ten per cent quota to be maintained in each of the streams continues even today.

13. The argument of Mr. Bhattacharya that it should be a combined list of candidates which must be reckoned for ascertaining the candidates who fall with the quota is attractive. However, delving deep into the issue it appears to us that the Government has taken a policy decision to maintain the ten per cent quota from each stream so as to give an opportunity to candidates of each stream to improve their educational qualifications. Moreover, if only candidates from the Health Services are to be given Sponsorship Certificates then the possibility of candidates from the others streams being granted to facilitate would be minimised as the number of persons in the health services is far larger than in the others services. Furthermore, indisputably the seniority list in each cadre is maintained separately showing that there is no interchangeability amongst the cadres. Therefore, in our opinion, the submission of Mr. Bhattacharya that the sponsorship should be thrown open for the candidates from all streams together is untenable.

14. Mr. Bhattacharya then submits that in the case of Angshuman Roy (Petitioner No.2), he has been deprived of the first round of counselling and, therefore, his choice of subjects for availing of the Trainee Reserve facility. He, therefore, submits that Angshuman Roy should be permitted to attend the first round of counselling so that he could avail of the subjects of his choice by cancelling the first round of counselling already held.

15. Mr. Banerjee for the University of Health Sciences/Respondent No.5 submits that once the counselling is over it is impossible to change things today. He points out that after the first round of counselling, seats for the subjects of Angshuman Roy's choice may have been filled in. However, he submits that he does not have those particulars today. He further points out that in view of the fact that the second round of counselling is in progress today, all the four persons whom the State Government has agreed to sponsor must complete the formalities by today.

16. It is true that it is unfortunate that Angshuman Roy (P.W.2) was not able to avail the first round of counselling for no fault of his. However, it is impossible now to put the clock back and reverse the situation. Furthermore, others candidates who would be affected if such an order is passed are not before us.

17. In these circumstances, in our opinion, there is no need to interfere with the impugned order passed by the Tribunal. The aforesaid Petitioners No.1, 2, 13 and 17, Subhenjit Ray, Angshuman Roy, Sudipta Chattopadhyay and Ujjwal Mondal respectively shall immediately avail of the second round of counselling by completing all formalities in accordance with law. The petition is dismissed as regards the others candidates.

18. Photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the learned Counsel for the parties on their usual

undertakings.