
(2013) 08 CAL CK 0014

In the Calcutta High Court

Case No : M.A.T. No. 1242 of 2013 and C.A.N. No. 8281 of 2013

Krishna Kanta Majhi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2014) 1 CHN 555 : (2014) 2 WBLR 198

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Judgement

Arun Mishra, C.J.—The intra-Court appeal has been preferred by the in-service candidates as against the dismissal of their writ petition questioning the entitlement of the private respondents to stake their claim for sponsorship of the second Post-Graduate Course. The National Eligibility Entrance Test (Post-Graduate) for 2013 Session was held in the month of November and December, 2012. The result of the NEET-PG was declared on 15.5.2013. Revised result was published on 4.6.2013. The petitioners filed writ petition praying for the reliefs that the respondent Nos. 10 to 28 were not eligible to appear in the said examination as sponsored candidates for Post Graduate Medical Course in view of the Rule 6 of the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (Placement and Trainee Reserve) Rules, 2008, hereinafter referred to as the "Rules of 2008", framed in exercise of the power conferred by section 21 of the West Bengal State Health Service Act, 1990.

2. The examination of diploma course which the respondent Nos. 10 to 28 were pursuing, was held on 23rd April, 2013 and result had been declared on 14.6.2013. They obtained the sponsorship certificate on 14.06.2013 onwards. However, counseling was started from 27.06.2012. It was submitted by the petitioners that the respondent authorities had acted arbitrarily and in contravention of the decision of this Court while violating the mandate of Rule 6 of the Rules of 2008. The incumbents doing PG Diploma Course could not be

treated to have been completed the course by 30.04.2013 as their results had been declared on 14.06.2013. On the date of examination of NEET, the PG Course had not been completed by the respondent Nos. 10 to 28. As such, they were not eligible. By participation of the ineligible candidates, rights of the petitioners have been adversely affected. Ineligible candidates had been included in violation of the Rules of 2008. Hence the writ petition had been preferred.

3. The Single Bench by the impugned judgment and order dated 25.07.2013 has dismissed the writ petition. Aggrieved thereby intra Court appeal has been preferred.

4. The learned counsel appearing on behalf of the appellants has relied upon Rule 6 of the Rules of 2008 and submitted that at the time of examination of NEET it was incumbent to have cleared course by the respondent Nos. 10 to 28, The learned counsel has relied upon a Division Bench decision of this Court in Dr. Sandip Das Ray & Ors. vs. Dr. Md. Liyakat Ali Chowdhury & Ors. in A.S.T. No. 124 of 2012 and other connected matters decided on 18.5.2012.

5. The learned counsel has also referred to the provisions contained in Clause 3.9 of the Eligibility Criteria for NEET-PG-2013 to contend that it was necessary to fulfil the eligibility criteria laid down by the universities or the institutions at the time of examination. Reliance has also been placed on the circular issued by Government of West Bengal, Department of Health and Family Welfare, dated 19.12.2012 to contend that sponsorship certificate has to be submitted within 15 days of the publication of the result of NEET-PG Medical Entrance-2013. It was not submitted within a period of 15 days from the date of publication of result of NEET-PG Medical Entrance-2013. Thus, the respondent Nos. 10 to 28 could not be said to be eligible to stake their claim as in-service candidates.

6. The learned Counsel for appellants also submitted that the interpretation of the Court upon clause 2.4 of the Information Booklet of Regulation for Admission to Post Graduate Degree and Diploma Courses in Modern Medicine, 2012, though it was not applicable to the examination held for 2013, is not correct.

7. The learned counsel appearing for the respondents has submitted that considering the clause 2.4 of the Information Booklet of Regulation for Admission to Post Graduate Degree and Diploma Courses in Modern Medicine, 2012 and the provisions contained in Rule 6 of the Rules of 2008, it is apparent that the decision of the Division Bench in Dr. Sandip Das Ray & Ors. vs. Dr. Md. Liyakat Ali Chowdhury & Ors. (supra) is distinguishable as in that case the result had not been declared and the examination of the petitioners was not over and the result had also not been published at the time of counseling. Thus, it was held that in view of Rule 6 of the Rules of 2008, such candidates could not be said to be eligible so as to stake their claim. Apart from that, the Circular issued by the State Government and Rules 6 of the Rules of 2008 has to be read harmoniously. In the instant case the examination was held on 23rd April, 2012, result had been declared on 14.06.2013 and sponsorship certificate had been obtained

within the period as specified in the circular dated 19.12.2012. Thus, the respondent Nos. 10 to 28 could not be said to be ineligible in any manner.

8. The Rules of 2008 are applicable for all categories of medical teachers under the employment of the West Bengal Medical Education Service, the Medical Officers of all ranks in the West Bengal Health Service and the officers of the West Bengal Health cum Administrative Service. Criteria for placement of trainee reserve has been dealt with in Rule 3 of the Rules of 2008. Rule 4 deals with execution of Bond. Rule 5 deals with procedure for application and placement on trainee reserve. Rule 6 of the Rules of 2008 deals with eligibility for further Government sponsorship. Rule 6 reads thus:

Rule 6. Eligibility for further Government sponsorship,--Any officer after completion of one course by availing "Trainee Reserve" facility, may be eligible for further Government sponsorship as "Trainee Reserve" for the Post - doctoral/ Post-graduate Degree/Post-doctoral diploma course after the result of the 1st course has been officially published, but the bond period and bond money of the said two courses will be carried forward and computed summatively after the incumbent had completed the second course.

9. It is apparent from Rule 6 of the Rules of 2008 that after completion of one course by availing trainee reserve facility any officer may be eligible for further Government sponsorship for the Post-doctoral/Post-graduate Degree/Post-doctoral diploma course after the result of the 1st course had been officially published, but the bond period and the bond money of the said two courses will be carried forward.

Clause 3.5 of the Eligibility Criteria for NEET-PG - 2013 makes relevant regulations and guidelines of respective universities/medical institutions. Clause 3.5 is quoted below:

Clause 3.5 - Eligibility for pursuing MD/MS/PG Diploma shall be as per the rules, regulation and guidelines of respective universities/medical institutions.

Clause 3.9 is also relevant which provides that some of the universities/institutions are having regulations to the effect that the persons who are already pursuing the P.G. Course in their universities or in another universities are not eligible for admission till they complete the course. The candidates have to go by such regulations. Clause 3.9 of the Eligibility Criteria is quoted below:

3.9 Some of the Universities/institutions are having regulations that candidates who are already pursuing the P.G. Course in their University or in another University are not eligible for admission till they complete the course. The candidates who are already pursuing P.G. Courses either through All India Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility conditions of that University in this regard. NBE/MCC/MoHFW shall not be responsible if such candidates are refused for admission. Such candidates may opt for the subject and the college at their own risk and cost.

The Government of West Bengal, Department of Health & Family Welfare, has issued a Circular dated 19.12.2012. The relevant portion of same is quoted below:

This is for information to all concerned, that, all eligible in-service candidates as per T.R. rule of Deptt. of Health & F.W., must submit requisite Sponsorship Certificate, 1st page duly filled in and signed by appropriate authority after careful verification of eligibility criteria, to DHS/DME (as the case may be) within 15 (fifteen) days of publication of result of NEET of P.G. Medical Entrance 2013.

Counseling of in-service candidates will be conducted by WBUHS on the basis of the Sponsorship Certificates after signature by DHS/DME.

As per the Government Circular requisite Sponsorship Certificate has to be obtained within 15 days of publication of result of NEET of P.G. Medical Entrance 2013 and has to be submitted also.

10. When we consider Rule 6 of the Rules of 2008, it is apparent that any officer after completion of one course on the basis of Trainee Reserve" facility will be eligible for further Government sponsorship after the result of 1st course has been officially published. In the instant case, the 1st sponsored course of post-graduate diploma was over by holding examination on 23rd April, 2013 and its result had been declared on 14th June, 2013 and the sponsorship had commenced for trainee reserve" Post-graduate degree/Post-graduate Diploma course after the result of 1st course had been officially published. The 2nd course has also commenced after counseling had been held. Thus, we find that there is no violation of the provisions contained in Rule 6 of Rules of 2008 in the facts of the instant case. The NEET Examination was held in November and December, 2012. Its initial result was published on 16th May, 2013 and revised result had been published on 4th June, 2013. By the time result of NEET of 2013 was declared, the examination of Post-Graduate Diploma Course was already over in April, 2013 and result had also been declared on 14.06.2013, much before the counseling being initiated on 27th June, 2013. Sponsorship Certificates have been issued; there is some factual dispute whether they were issued on 13th June, 2013, but it appears that they have been issued on 14th June, 2013 onwards. Sponsorship Certificates, thus had been obtained in accordance with the Circular dated 19th December, 2012 and they were available when counseling was held with effect from 27th June, 2013. Thus all the requirements were fulfilled as per the Government Circular and as required under Rule 6 of the Rules of 2008.

11. The decision rendered by the Division Bench of this Court in Dr. Sandip Das Ray & Ors. vs. Dr. Md. Liyakat Ali Chowdhury & Ors. (Supra) is distinguishable on facts. In the aforesaid case at the time of counseling, the course had not been completed by those incumbents much less their results could have been declared. In the aforesaid factual matrix, as the Post-Graduate Diploma course had not been completed, final examination had not been held and there was no

question of declaring of the result. The decision is distinguishable on facts. At that time circular of Government of 19.12.2012 had not been issued.

12. It was submitted by the learned counsel appearing on behalf of the appellants that application for sponsorship certificate was filed on 25th April, 2013 and it could not have been filed on 25th April, 2013. Merely by the fact that the application was submitted for obtaining sponsorship certificate on 25th April, 2013, certificate so issued after completion of diploma course could not be invalidated. There is no regulation that the application has been filed after declaration of the result and not before it. We cannot interpret Rule 6 in the method and manner suggested by the learned counsel for appellants so as to hold that result should have been declared for such incumbents before 30th April, 2013.

13. Clause 3.5 of the Eligible Criteria for NEET-PG-2013 lays down that eligibility for pursuing MD/MS/PG Diploma shall be as per the rules, regulations and guidelines of respective universities/medical institutions. The same is again reiterated in Clause 3.9 thereof, in which it is clarified that some of the institutions are having regulations that candidates who are already pursuing the P.G. Course in their University or in another University are not eligible for admission till they complete the course. In the instant case the candidates had already completed course were not pursuing it at the time of counseling and sponsoring for admission in the next P.G. Course. Thus, no sustenance can be derived from Clause 3.9. The provisions contained in Circular of 19.12.2012 and in Rule 6 of the Rules of 2008 cannot be interpreted so as to hold the respondent Nos. 10 to 28 ineligible to stake their claims.

14. Thus, we find that no case is made out so as to interfere in the impugned judgment under appeal.

15. Resultantly, the appeal, being devoid of merits, is hereby dismissed. However, we direct the parties to bear their own costs. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.