
(2016) 03 CAL CK 0144
In the Calcutta High Court
Case No : WPST 254 of 2015

Shibani Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 2 CalLT 213 : (2016) 5 SLR 698 : (2016) 5 WBLR 100

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

Bench : Division Bench

Advocate : Gopal Chandra Ghosh, for the Appellant; Jayanta Kumar Mitra, Learned A.G., Chaitali Bhattacharya and Moloy Roy, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—1. The petitioner is a doctor who is aggrieved by the actions of the Government in not granting her the trainee reserve certificate and sponsorship for her to prosecute her Post Graduate degree. The West Bengal Administrative Tribunal has dismissed her claim for the Sponsorship Certificate for prosecuting her Post Graduate course under the Trainee Reserve Certificate category as she had not completed three years of rural service.

2. The undisputed facts are as follows:

"The petitioner completed her Higher Secondary education in 1999 and was admitted to the Calcutta National Medical College to prosecute the MBBS course in the year 2001. On successfully completing the course and obtaining her degree of M.B.B.S., she completed House-staffship in the Paediatric Department of the S.S.K.M. (Government) Hospital, Kolkata in 2008. She then joined service of the West Bengal Health Service as a Medical Officer at Chandipur Primary Health Centre, Malda on 20th May, 2011. The Chief Medical Officer of Health, Malda, directed the petitioner to attend a one month training course for medical officers in the Department of Neonatology, IPGMR SSKM Hospital between the

period 10th August, 2011 and 10th September, 2011. Thereafter on 2nd December, 2011 the petitioner was directed to join as Medical Officer in the Paediatric Department of the District Hospital, Malda in the public interest. By a Memo of the same date, she was directed to continue in this post in Malda. By a subsequent notification dated 20th December, 2011, the petitioner continued in the same post. She was then appointed by the State Government as Medical Officer, SNCU, District Hospital by an order dated 23rd August, 2012. She was released from the Chandipur Primary Health Centre by an order dated 17th October, 2012. She then joined Malda District Hospital as Medical Officer, SNCU on 10th January, 2013."

3. The petitioner appeared for the West Bengal Post Graduate Medical Entrance Examination as an in-service candidate in the year 2015. She cleared the examination successfully and therefore sought a sponsorship certificate from the government. This was issued in her favour by the Deputy Director, West Bengal Health Service on 26th March, 2015. She was admitted on 10th June, 2015 in the M.D. Course (Anesthesiology) in the Calcutta National Medical College during the third round of counselling under the service quota.

4. The sponsorship certificate was issued to the petitioner under the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (Placement of Trainee Reserve) Rules, 2008 (hereinafter referred to as "Rules of 2008"). These Rules have been superseded by the 2015 Rules.

5. The petitioner submitted a representation to the Director of Health Service for permission to study the M.D. course as a Trainee Reserve in the service quota. As there was no response from the State and its officers, the petitioner preferred OA 993 of 2015 before the West Bengal Administrative Tribunal.

6. The West Bengal Administrative Tribunal by its order dated 29th September, 2015 considered the material on record and concluded that the petitioner had worked only for one year and seven months in the rural areas. She was thus not eligible to be granted the facility of a trainee reserve candidate. The Tribunal observed that this was a case where the department ought to have considered the petitioner's request sympathetically and relaxed the Rules. The Tribunal therefore ordered the Director of West Bengal Health Service to consider the petitioner's prayer in accordance with the Rules and to pass an order within a period of two weeks from the date of the communication of the order of the Tribunal. The Director of Health Services by his order dated 30th November, 2015 dismissed the representation and held that the trainee reserve facility could not be given to the petitioner.

7. The petitioner has submitted a further representation to the Director of Health Services as directed by the Tribunal on 1st October, 2015. However, there has been no communication about her request from the authorities. It is in these circumstances that the petitioner has approached this Court under Articles 226

and 227 of the Constitution of India for relief.

8. Mr. Gopal Chandra Ghosh, the learned Counsel for the petitioner, pointed out that the ground on which the petitioner's case for the sponsorship certificate for the trainee reserve facilities has been rejected, is that she had not completed three years of rural service which was mandated by the Rules of 2008. He submitted that the petitioner was not permitted to complete the three years' period of rural service, although she was always ready and willing to do so, because of the Government's directive to join at the Malda District Hospital. According to the learned Advocate, it is not for a doctor who is an employee of the Government to oppose a transfer by contending that she desired to continue work in the rural areas in order to prosecute her further studies for a Post Graduate degree. The learned Counsel has taken us through the relevant Rules and submits that the Government is vested with the power to relax the Rules where it finds that genuine reasons exist for relaxing the Rules in order to ensure that the candidate is able to complete the Post Graduate degree as a trainee reserve.

9. This petition has been vehemently opposed on behalf of the State. The learned Advocate General who represented the State in this matter argued that the Rules of 2008 vest the discretion to relax them in the State Government and unless there are any allegations of mala fides or of ulterior motives on the part of the State, the Rules will have to be implemented strictly. He submitted that in view of the dearth of doctors in the State, the Government has taken a policy decision to provide medical aid and competent doctors for the rural population. The mandatory three year stint of rural service enures to the benefit of the public at large in the rural areas. According to the learned Advocate General the sponsorship certificate for the trainee reserve quota will be given to only those who perform public service in the rural areas, without any exception, unless stipulated in the Rules of 2008.

10. It would be appropriate to set out certain relevant Rules which would be necessary for deciding the issue at hand. The Rules of 2008, which admittedly apply in this case, were published in the official gazette on 24th April, 2008. They applied to all categories of medical teachers under the West Bengal Medical Education Service, the Medical Officers of all ranks in the West Bengal Health Services and also to the officers of the West Bengal Public Health-cum-Administrative Service. Surprisingly although the Rules have been framed for "Trainee Reserve" this term has not been defined. The Rules appear to have been hurriedly drafted without a care for English Grammar and without considering whether they read correctly and make sense. However the concept of "trainee reserve" becomes clear from a communication dated 31st July 2015 from the Assistant Secretary to the Government of West Bengal to Respondent No. 2 and the Director Medical Education, which is annexed to the petition. The terminology used in this missive is "Training Reserve". An officer is permitted to draw Pay and Allowances as admissible to them under the West Bengal Health Services (Cadre,

Pay & Allowances) Rules and in terms of the existing Rules of the State Government while placed as a "training reserve" which presumably applies to "trainee reserve". Rule 3 with which we are concerned reads as follows:

"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-Administrative Service, the West Bengal Health Service and in the West Bengal Medical Education 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 Anaesthesiology, 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 of each case;

(ii) ...

(iii) officers once placed on trainee reserve shall not be allowed any other facilities of trainee reserve, apart from any manner laid in clause (ii) of this rule;

(iv) the officers must not be more than fifty years of age on the thirty-first day of March of the concerned year of placement on trainee reserve. However, no officer shall be eligible for trainee reserve in excess of a total period of eight years during his entire service tenure;

(v) for placement on trainee reserve for undergoing post-graduate degree or post-doctoral courses, other eligibility criteria as may be prescribed by the

concerned University or concerned Institution both within the State or outside shall also determine the eligibility for being placed on trainee reserve. Officers joining any postgraduate course on trainee reserve shall not be allowed such facility in any other discipline, if not such change is determined by way of recounselling conducted by the same University for the same batch of post-graduate course entrants and for the same academic session."

11. The Rule 3(b) speaks about the officers of the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service who are eligible to be placed in the trainee reserve category.

12. The officers of the West Bengal Health Service, such as the petitioner, who desire to prosecute the Post Graduate course in any of the dearth disciplines mentioned in Schedule A of the Rules, can do so only if they execute a bond to serve the West Bengal Medical Education Service or West Bengal Public Health-cum-Administrative Service, if directed by the State or the competent authority. This is stipulated in Rule 3(b). The amount for the bond is specified in Rule 4 and is dependent on the number of years. Rule 5 speaks of the procedure for application and placement as trainee reserve. The eligibility for further Government's sponsorship as trainee reserve has been stipulated in Rule 6. Rule 7 deals with the study of a trainee reserve in any college or trainee facility other than those approved by the State Government. The punishment for the breach of the Rules of 2008 has been mentioned in Rule 8. Rule 9 empowers the Government to place a doctor on trainee reserve as a Government sponsored candidate at the sole discretion of the Department of Health and Family Welfare even when an officer had been selected for a course and had been given a sponsorship certificate by the Director of Health Service or the Director of Medical Education.

13. There is no dispute that anaesthesiology which the Petitioner had applied for, is considered as a dearth discipline and is included in Schedule A. The 2015 Rules do not provide for the relaxation of the three years' period of rural service. Parties agree that the petitioner's case would be covered by the Rules of 2008 which were in existence when she applied for sponsorship to prosecute her studies as a trainee reserve.

14. A careful perusal of Rule 3 indicates that for officers of all the three streams - (i) West Bengal Medical Education Service, (ii) West Bengal Health Service and (iii) the West Bengal Public Health-cum-Administrative Service, a minimum period of three years of qualifying service under employment of the Government of West Bengal is mandated as the first eligibility criterion. The first proviso stipulates that the period of service can be reduced to two years for fulfilling the eligibility criteria for being a trainee reserve in the dearth discipline as enumerated in the Rules. There is no dispute that Anaesthesiology is one of the dearth disciplines. Therefore, the minimum period of service required would be two years. But the rule does not end here. The second proviso carves out a

further exception and requires officers of the West Bengal Health Service, such as the petitioner, to render the qualifying service in the rural areas in primary health centres, block primary health centres and rural hospitals. This means that for such officers it would be mandatory to work for three years in a rural health centre for being eligible for prosecuting the post graduate degree as a "trainee reserve". The third proviso to Rule 3(a) empowers the Government to relax or dispense with rural service in case of specialised medical officers in any discipline other than Anaesthesiology, Paediatrics, Obstetrics and Gynaecology and for all other medical officers who could not serve in any primary health centre or block primary health centre or any rural hospital by reason of his/her posting elsewhere by the State Government.

15. The case at hand indicates that the petitioner had in fact worked in rural service of more than one year. She worked in the Chandipur Primary Health Centre from 20th May 2011 to 4th January 2013. But she had been directed to work in the District Hospital, Malda after there were a number of deaths in that hospital. Her transfer order mentioned that she was being transferred in public interest. She was continued in this hospital until further orders, again in public interest. Thus for no fault of the petitioner, she was ousted from a rural hospital and transferred to a place other than in a rural area, depriving her of an opportunity to complete the three year period of rural service. It has been contended on behalf of the State that a person who has been working as a doctor must decide at the initial stage whether he or she would want to prosecute higher studies in medicine and complete a Post Graduation course. The learned Advocate General submitted that it was always open to the petitioner to request the authorities to bring her back to the rural area once her work in the District Hospital at Malda had been completed. He drew our attention to the request made by one Dr. Ashik Hossain seeking to be sent back to the rural areas while he was working as a Paediatrician in the District Hospital at Purba Medinipur. The learned Advocate General further submitted that if the petitioner had applied for repatriation, she would perhaps have been sent back to the rural areas in order not to hamper her future prospects of prosecuting higher studies. He submitted that the discretion of the Government which is encompassed in the Rules and the power to relax cannot be questioned in the Court of law unless it has been exercised mala fide, arbitrarily or whimsically. According to the learned Counsel no such allegation has been made in the petition and therefore, the petitioner is not entitled to any relief. The learned Counsel has relied on U.P. State Road Transport Corporation and Anr v. Mohd. Ismail And Ors reported in , (1991) 3 SCC 239 and Suresh Estates Private Limited and AOrs v. Municipal Corporation of Greater Mumbai and Ors reported in , (2007) 14 SCC 439. He drew our attention to a list of candidates who have completed three years of rural service. He submitted that this relaxation of three years was permitted only where a candidate was to prosecute dearth subjects and by applying the first proviso. Under Rule 3(1), the candidate was granted a sponsorship certificate and allowed to be categorised as a trainee reserve in the dearth discipline

enumerated in Schedule A. The learned Counsel submitted further that it is not open for the Court to impose its own discretion and decide whether in a particular case the Government ought to relax the Rules.

16. We have given our anxious consideration to the submissions made at the bar. The foremost concern is that qualified doctors are not available to work in the rural areas in the State. That is the reason that the aforesaid Rules of 2008 had been enacted to stipulate the eligibility criteria for trainee reserve Government sponsored candidates. The eligibility criteria is that the trainee reserve candidate must have a minimum three years of qualifying service in the employment of the Government of West Bengal in the Health service, Health-cum-Administrative Service or Medical Education Service. This eligibility criterion has been qualified by the first proviso to mean that the minimum period of service required would be two years instead of three years for acquiring eligibility for trainee reserve in a dearth discipline. Thus, that proviso only relaxed the number of years of service with Government to two years instead of three years. The officers of the West Bengal Health Service, like the petitioner are required to have a minimum qualifying service of three years in a rural area. However, this period of rural service can be relaxed or waived in case of specialised Medical Officers, who have been directly recruited through the Public Service Commission and appointed to the State General Hospitals, Sub-Divisional Hospitals and District Hospitals. The period of qualifying service in rural areas can also be relaxed or dispensed with for other Medical Officers who could not serve in any primary health centre or block primary health centre or in rural hospital because he/she was posted elsewhere by the State Government. It is incumbent on the Government to consider the merit of each case to determine whether the candidate should be placed as "trainee reserve" as a Government sponsored candidate.

17. From the material on record, it is apparent that the third proviso has not been applied at all in the present case. All that the Government has done is to ascertain whether the petitioner has completed three years of rural service and since she had not, she was not offered the trainee reserve category although she had been issued the sponsorship certificate. Had the Government considered each case individually instead of applying the same yardstick of three years, the Government surely would have noticed that the petitioner had in fact put in almost two years of rural areas till she was transferred to District Hospital Malda. There is utter non application of mind on the part of the officers of the Department of Health and Family Welfare. When the discretion to relax the period is vested in the Department it must be used wisely and justly and not in a mechanical manner. The very fact that the discretion has been vested in an authority to relax the eligibility criteria indicates that it is required to be used and cannot be permitted to remain in the Rules as a dead letter.

18. To our query as to whether any option was to be exercised by a candidate who aspires for a job with the Government for being employed in the rural areas, the learned Advocate General fairly stated that no such option was required to be

submitted by the petitioner or similarly situated candidates. Thus it is not open for any candidate to choose his or her post after attaining the MBBS degree. While in service in the rural area if a candidate is transferred, she or he has no option but to leave the rural area and to join at a new posting either in the district hospital or in the city. It is not open for a candidate to refuse to join at the place of transfer. In fact if a candidate does not obey the transfer order, there is every possibility that disciplinary proceedings would be commenced against such a person for violating the transfer order. In such circumstances, it would be futile to expect a candidate to refuse to leave the rural area and join district hospital. The submission of the learned Advocate General is that the petitioner could have applied after passing in the District Hospital Malda to be repatriated to the rural areas, is also without substance. It is not open for a candidate to apply for such transfers under the rules governing their service conditions.

19. In the present case, we are of the view that the petitioner has been deprived of her three years service in the rural areas only because of the action of the Government in posting her in the District Hospital Malda. The State had made it impossible for the Petitioner to work in the rural hospitals for three years by transferring her to a District hospital. She did not leave the rural area of her own accord but because of the State's decision that her services could be better utilised in the District hospital which was facing a crisis. In such a case, the Government ought to have exercised its discretion under the third Proviso of Rule 3(a) and granted a sponsorship certificate for the trainee reserve category. The State has not acted fairly while dealing with the Petitioner. We have been informed that the State requires specialists in the Health sector for establishing new Super Speciality and Multi-Speciality hospitals throughout the State. Post graduate seats are going a begging because of the lack of students. It is unthinkable that the State should deprive the petitioner the trainee reserve category in such circumstances.

20. In our opinion, the petitioner has made out a case for granting relief and hence, the following order is passed:

The impugned order of the Tribunal is set aside. The requirement for employment for three years in rural service by the petitioner is relaxed. She had already been issued the sponsorship certificate and therefore she must be considered in the category of trainee reserve. Accordingly the petition is allowed.

21. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.