

DR. TAPAS KUMAR MANDAL AND OTHERS & ETC. A

v.

STATE OF WEST BENGAL AND OTHERS

(Civil Appeal Nos.6689-6690 of 2015)

SEPTEMBER 01, 2015 B

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

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 – Selection procedure – Notification to the effect that in-service candidates who had obtained diploma within the last three years (2012-2014) would not be considered for the degree course and only pre-2012 diploma holders would be considered – Challenge to, by the appellants who were selected and called for giving sponsorship – Held: Reasons assigned by the High Court for giving priority to those doctors who have completed their diploma courses much before the appellants upheld – Government gave opportunity to those Doctors, who had got one specialization more than three years back and they are senior to the appellants – Further, it is evident from the Rule that the placement of the Doctors would be at the discretion of the Government – Merely because the appellants got selected does not give them right as in-house Doctors to get priority above their seniors. C D E F

Dismissing the appeals, the Court

HELD: The perusal of the order passed by the High Court would show the reasons assigned for giving priority to those doctors who have completed their diploma courses much before the appellants. Admittedly, the Government has given opportunity to those Doctors, G

A who had got one specialization more than three years
back and they are senior to the appellants. The High
Court also took note of the fact that there is a huge
deficiency of Doctors in the State and the Government
is contemplating of opening of new super-specialty
B hospitals by the year 2015-15. From perusal of the
relevant rule, it is evident that the placement of the
Doctors would be at the discretion of the Government.
Merely because the appellants were allowed in the
C examination and found place in the select list does not
give them right as in-house Doctors to get priority above
their seniors. In the peculiar facts and circumstances of
the case, there is no reason to interfere with the impugned
order. However, it is recorded that the assurance given
D by the counsel for the respondents that the appellants
would be given sponsorship for the next year 2016-17.
[Para 13-15] [453-G-H; 454-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.
6689-6690 of 2015.

E From the Judgment and Order dated 17.04.2015 of the
High Court of Calcutta in A.S.T. Nos. 51 & 52 of 2015.

Huzefa Ahmadi, Rauf Rahim for the Appellants.

F Kalyan Kr. Bandopadhyay, Shagun Matta, Anip Sachthey,
Madhumita Bhattacharjee, Brajesh Pandey for the
respondents.

G The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

H 2. These appeals by special leave are directed against
the Judgment and order dated 17.04.2015 passed by the
Division Bench of High Court of Calcutta in A.S.T. Nos. 51 &

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52 of 2015 dismissing the writ petitions preferred by the appellants against the order of the West Bengal Administrative Tribunal refusing to pass an interim order and fixing the matter for final hearing. A

3. The facts of the case in brief are that the appellants-writ petitioners, who are all Doctors serving under the Department of Health and Family Welfare, Government of West Bengal, had obtained M.B.B.S. Degree and were issued Registration Certificates from the West Bengal Medical Council in different years. All of them are permanent employees under the Department of Health and Family Welfare, Government of West Bengal, having joined their services mostly before 2008. It is appellants' case that the West Bengal University of Health Sciences published an Advertisement for the West Bengal Post Graduate Medical Admission Test for the years 2011-2012. They all got rank in the test of 2011 or in the test of 2012 and after counselling, all of them were admitted to different Diploma courses and they all completed their courses in the year 2014 with Trainee Reserve Facility (T.R. Facility) following 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 (in short, "T. R. Rules of 2008"), which enabled them to study in the said courses as applicable to in-service candidates. Such T. R. facilities were allowed by the Government vide different memos issued from time to time. B C D E F

4. It has been pleaded on behalf of the appellants that they have availed two years' T.R. Facilities on completion of their courses and that they had also availed T. R. facilities to which they were entitled to get and all of them had obtained such facility in the year 2012, which came to be completed in the year 2014, just after completion of their Diploma courses. Further on completion of their Post Graduate Diploma Courses in the year 2014, their results were duly published and all of G H

A them passed the examinations and joined duty. Some of them were posted at different Health Centres while others at different Hospitals, but all of them had passed the Diploma courses with good marks.

B 5. The West Bengal University of Health Sciences issued an Advertisement on 12.12.2014 pertaining to the West Bengal Post Graduate Medical Admission Test, 2015. They also published the Rules and Regulations of the said Admission Test. The writ petitioners submitted their formal applications
C before the concerned authorities so as to enable them to appear in the said 2015 Tests. It has been contended by the appellants that they were all eligible and the process of allowing in-service Doctors to take the Tests was being followed by the concerned Department for several years and, therefore, the
D appellants submitted Proforma of Sponsorship Certificates, which were duly accepted by the concerned authorities. The appellants then applied for the West Bengal Post Graduate Medical Admission Test, 2015 by submitting necessary documents along with the necessary fees in the category of
E Government Sponsored Candidates. The authorities of the Department of Health and Family Welfare, Government of West Bengal then allowed them to appear and the University of Health Sciences also accepted their Application Forms on-line and subsequently, the appellants also submitted
F hardcopies of such Applications within the specified time.

6. In February, 2015, Written Test for the 2015 Tests was held in which appellants appeared and in the results, which were published on 11.2.2015, appellants got comfortable ranks
G and top positions. As pleaded on behalf of the appellants, on 17.03.2015 a List was published in the website informing, inter alia, that the persons mentioned therein had qualified for acquiring Sponsorship Certificates for the W.B.P.G.M.A.T. 2015 and they were instructed to go to the concerned Office
H

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and collect their certificates personally. Hence, it is contended by the appellants that they were found eligible for being given Sponsorship Certificates. However, on 20.3.2015, the authorities published yet another Notice in their website giving out the names of 223 candidates giving similar instructions for personally collecting the Sponsorship Certificates. But in this Notice, the names of the present appellants were dropped out. Upon enquiry, they came to learn that the authorities had taken a decision that they would not allow candidates, who had passed Diploma within the last three years and as such their names had been dropped. Being aggrieved, the appellants sent a Letter of Demand for justice as well as Objection against such act and prayed for modifying their stand of not allowing such persons who had passed Diploma within the last three years. According to the appellants, this was a condition, which was de hors the provisions of the Trainee Reserve Rules of 2008.

7. The names of the appellants were again not published in another Notice dated 23.03.2015, whereby the authorities allowed several Doctors, who had completed their Post Graduate Diploma prior to 2012 and before entering service and, according to the appellants, even the candidates, who had not completed 2/3 years rural service, which was compulsory as per the Rules, were allowed. It has been alleged on behalf of the appellants that these Doctors had several relatives/cousins/nephews in the higher echelons of the Government and, therefore, the action was motivated and mala fide.

8. It has been further pleaded by the appellants that by a Notification dated 24.03.2015, the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare informed, inter alia, that in exercise of powers conferred under Clause 9 of said T. R. Rules of 2008, those

A Medical Officers, who had acquired Post Graduate Diploma/
Degree on availing facilities within the last three years
(1.4.2012 to 31.3.2015), would not be allowed further T. R.
facility during this year (2015). According to the appellants,
this order is illegal, arbitrary and proceeds to debar the
B appellants purportedly on a ground, which is beyond the
grounds mentioned in the Rules. According to them, despite
being toppers of the merit list they could not participate in the
counselling session.

C 9. Aggrieved appellants, therefore, immediately
approached the First Bench of the West Bengal Administrative
Tribunal (in short, "the Tribunal"), which dismissed their petition
on the ground that Clause 9 of the T.R. Rules of 2008 had a
D non-obstante Clause whereby the Government had a
discretionary power in matters regarding placement of Trainee
Reserve candidates and that no interim orders could be
passed at that stage. Appellants, thereafter, knocked the doors
of the High Court by filing writ petitions, which were dismissed
E by the Division Bench holding that the discretion that has been
exercised in the instant case does not suffer from any
irregularity and it is based on logic, equality and on public policy
since Rule 9 of the aforesaid Rules clearly lays down that
"placement" shall be at the discretion of the Government. Thus,
F even if a Doctor is eligible for further Government Sponsorship,
he cannot claim, as a matter of right, that such sponsorship be
given to him consecutively and in short intervals by not
considering others, who are in queue for a period prior to
1.4.2012.

G 10. Hence, the aggrieved Doctors are before us by way
of these appeals by special leave. We have heard learned
counsel for the parties at length and perused the concerned
Rules.

H 11. Mr. Huzefa Ahmadi, learned senior counsel appearing

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for the appellants, mainly contended that only after the A
appellants were selected, the Notification was published on
24.3.2015 indicating that in-service candidates who had
obtained diploma in the years 2012-2014 would not be
considered for the degree course and only pre-2012 diploma B
holders would be considered. According to the learned senior
counsel, there is no rationale for this discrimination particularly
when one of the appellants all the three times finally ranked in
the merit list for the degree course. It was contended that at
the time of filling of the form for the degree course the eligibility C
criteria did not specify that only pre-2012 diploma holders will
be considered as candidates for the degree course. As a
matter of fact, the selection procedure was arbitrarily changed
after the appellants were selected and called for giving
sponsorship certificate. Mr. Ahmadi also referred to some D
decisions to the proposition that inter se merit cannot be
overlooked to promote seniority which has no place in the MCI
Regulations.

12. Per contra, Mr. Kalyan Bandopadhyay, learned senior E
counsel appearing for the respondents, at the very outset fairly
submitted that he has nothing to say so far the merits of the
appellants are concerned. But the action taken by the
respondents cannot be held to be mala fide. Indisputably,
appellants got the benefit of three years of service. It is not the F
case of admission in the open category.

13. Perusal of the impugned order passed by the High G
Court will show the reasons assigned for giving priority to those
Doctors who have completed their diploma courses much
before the appellants. Admittedly, the Government has given
opportunity to those Doctors, who had got one specialization
more than three years back and they are senior to the
appellants. The High Court also took note of the fact that there
is a huge deficiency of Doctors in the State and the Government H
is contemplating of opening of new super-specialty hospitals

A by the year 2015-16.

14. From perusal of the relevant Rule, it is evident that the placement of the Doctors shall be at the discretion of the Government. Merely because the appellants were allowed in the examination and found place in the select list does not give them right as in-house Doctors to get priority above their seniors.

15. In the peculiar facts and circumstances of the case, we do not find any reason to interfere with the impugned order. However, we record the assurance given by Mr. Bandopadhyay that the appellants will be given sponsorship for the next year 2016-17.

16. For the aforesaid reason, we dismiss these appeals. However, there shall be no order as to costs.

Nidhi Jain

Appeals dismissed.