

08.02.2022

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Sl. No. 03

Ct. No. 05

WPA 1582 of 2022

[Via Video Conference]

Tania Mukherjee & Ors.

-Versus-

The State of West Bengal & Ors.

Mr. Pratik Dhar

Mr. Kartik Kumar Ray

..... for the petitioners

Mr. Samrat Sen

Mr. Nilotpal Chatterjee

... for the State

Mr. Indranil Roy

Mr. Sunit Kr. Roy

... for the National Medical Commission

Mr. D.N. Maiti

..... for the respondent No. 6

The petitioners are 53 graduate doctors who are serving as Medical Officers in different hospitals in the State and have all qualified in the NEET PG Examination, 2021. The petitioners pray for setting aside of an order dated 3rd January, 2022 passed by the Department of Health and Family Welfare and for a declaration that the petitioners are eligible for the in-service quota by dint of serving in Specialized Units in terms of a statutory amendment notified on 21st January, 2016 by the Department of Health and Family Welfare, Government of West Bengal.

Learned counsel appearing for the petitioners urges that the petitioners, who are

presently serving in Specialized Units like the Sick Newborn Care Unit (SNCU), High Deficiency Unit (HDU), Critical Care Unit (CCU), Intensive Cardiac Care Unit (ICCU) and Intensive Therapy Unit (ITU) should be considered as having fulfilled the conditions under the Notification dated 21st January, 2016 for availing of the in-service quota in Post Graduate Medical counselling for seats in Government/private colleges in West Bengal. Counsel submits that all 53 petitioners have completed more than 3 years of service in Specialized Units with an additional one year and nine months of Covid duty and should hence be eligible for the reserved quota of Post Graduate Medical degree seats for in-service Medical Officers.

The above contentions are vehemently opposed by learned counsel appearing for the State. Counsel submits that a Writ Court should not interfere with a policy decision of the State Government and that the petitioners have not shown diligence in approaching this Court. It is further submitted that the Notification dated 21st January, 2016 does not deal with the in-service quota and is restricted to trainee reserve placement concerning payment of salaries to the eligible Medical Doctors. Counsel relies on the guidelines

provided in the Notification dated 8th October, 2021 of the Department of Health and Family Welfare which follows the observations of the Supreme Court in the *Tamil Nadu Medical Officers Association and Others vs. Union of India and Others; (2021) 6 SCC 568* requiring service in rural/remote/difficult areas for a minimum of 3 years as an eligibility criterion for the in-service quota.

The question which emerges from the submissions of learned counsel appearing for the 53 petitioners and the State is whether service in Specialized Units would amount to serving in “*remote and/or difficult areas*” for the purpose of qualifying for the 40% reservation for the in-service doctors for post-graduate medical degree seats. The petitioners say it would i.e. that service in Specialized Units is equivalent to serving in remote or difficult areas while the State reiterates the definition of “*remote and/or difficult areas*” in the Notification dated 26th February, 2020.

The expression “*remote and/or difficult areas*” is defined in Explanation II of the Notification dated 26th February, 2020 to mean and include (i) the hill areas under the

provisions of the Gorkhaland Territorial Administration Act, 2011; (ii) the Sundarbans; (iii) the areas under the Paschimanchal Unnayan Parshad and (iv) the areas under the Uttarbanga Unnayan Parshad. The expression received the assent and approval of the 5-Judge Bench of the Supreme Court in *Tamil Nadu Medical Officers Association vs. Union of India* in the form of a mandate to the State Government to formulate a policy in relation to in-service doctors who seek admission through a separate channel of entry for postgraduate Medical courses. The direction of the Supreme Court was echoed by the State Government in its Notification dated 8th October, 2021 by requiring in-service candidates to serve in “*rural/remote/difficult areas*” for a minimum period of three years, taken together, as on 30th April of the academic year, for being considered as eligible for the in-service quota.

The expression “*rural/remote/difficult area*” was again used by the Department in the impugned order dated 3rd January, 2022 by reiterating its stand that in order to avail of the in-service quota, the in-service candidates of the Department “*shall have to serve in rural/remote/difficult area for a minimum of three*

years as on 30th April of the academic year.” The Memo dated 25th January, 2022 yet again reiterates “*difficult area*” criterion for availing the in-service quota for in-service doctors but extends the boundaries of the definition of “*difficult area*” by including Covid-19 related duty as part of the eligibility criteria.

Thus, the effect of the Notifications/ Memo is this; for availing of State Quota seats in post-graduate medical courses, the in-service candidates would be required to serve in rural/ remote/difficult areas for a minimum of three years as on 30th April of the academic year for being considered as eligible for the benefits of reservation of 40% of the seats in the State Government/private colleges in West Bengal. The definition of “*rural/ remote/ difficult areas*” as explained in the Notification dated 26th February, 2020 remains unaltered save and except for the addition of Covid-19 duty under the Corrigendum dated 25th January, 2022.

In contrast, the concept of “Specialized Units” like Sick Newborn Care Unit (SNCU), High Dependency Unit (HDU), Critical Care Unit (CCU), Intensive Cardiac Care Unit (ICCU) and

Intensive Therapy Unit (ITU) finds place only in the Amendment to the West Bengal Medical Education Service, West Bengal Health Service and West Bengal Health –cum– Administrative Service (Placement on Trainee Reserve) Rules, 2015 as notified on 21st January, 2016. This Notification is limited to bringing in two additional provisos to Rule 3 of the 2015 Rules which were notified on 3rd June, 2015. Rule 3 provides for the eligibility criteria for placement on trainee reserve as Government sponsored candidates. The Amendment notified on 21st January, 2016 brings in a relaxation to the compulsory qualifying rural service in the case of Specialized Medical Officers who have been directly recruited through the Public Service Commission and appointed by the State Government in Specialized Units mentioned in the Amendment of 21st January, 2016.

Hence read together, the 2015 Rules and the 2016 Amendment would mean that for being placed as Trainee Reserve Government Sponsored Candidates, Specialist Medical Officers, who have been directly recruited through the Public Service Commission or the West Bengal Health Recruitment Board and

appointed by the State Government in Specialized Units, may use the service rendered in such Specialized Units as a substitute for the qualifying service rendered in rural areas in Primary Health Centers, Block Primary Health Centers and Rural Hospitals.

The concept of appointments in Specialized Units or using the service rendered in such units as a substitute for any of the other notified criteria for being eligible for the in-service quota does not find place in any of the Notifications/ Memo after 21st January, 2016. This omission is crucial for the petitioners' case, since the petitioners claim to have been included in the 2015 Rules which were notified in exercise of the power conferred under section 21 of the West Bengal State Health Service Act, 1990; and unfairly excluded in subsequent Notifications even though the criteria were relaxed for Covid-19 duties by the Corrigendum of 25th January, 2022.

Which brings us to the next question; Do the petitioners enjoy statutory protection, as claimed, in relation to the reservation of quota for in-service Medical Officers?

The petitioners' prayer for declaration and consequent relief is based on the Placement on Trainee Reserve Rules, 2015 as amended on 21st January 2016. The 2015 Rules are concerned with the eligibility criteria for placement on trainee reserve as Government sponsored candidates which include a minimum of 3 years' service actually rendered in rural areas for West Bengal Health Service. The 2015 Rules however have nothing to do with the 40% reservation for in-service Medical Officers and actually operate at a stage subsequent to the entry-level reservation for postgraduate medical seats. This would be clear from Rule 5 of the 2015 Rules which specifies that the application for placement as trainee reserve can be made only after the candidate has been selected or invited for counselling before admission. The 2015 Rules do not mention reservation for in-service Medical Officers of the State Services anywhere, except in the Note to Rule 3(iv) which indicates that the Department of Health and Family Welfare shall specify the number of seats available for the different courses run by the West Bengal University of Health Sciences and other Universities within the State.

Hence, the argument that the amendment to the Placement on Trainee Reserve Rules 2015 forms the basis of the petitioners' claim for inclusion in the in-service quota is belied from the Rules itself. The entirely different implication of the 2015 Rules, as amended in 2016, can be found in a Memorandum of 8th June 2018 dealing with pay and allowances of those placed on Trainee Reserve. Hence, the amendment to the Rules notified on 21st January 2016 cannot carve out any entitlement to the petitioners when the source- Rules are silent on the aspect of reservation. This also deflates the petitioners' case of being excluded from the statutory framework of eligibility when others on a similar footing have been included in the relaxed limits of eligibility.

It is relevant to point out that the starting point of the policy of reservation can first be found in the Memo dated 18th April, 2013 providing for reservation of 40% of post-doctoral and postgraduate Medical and Dental degree seats for in-service Medical Officers. The policy of reservation for in-service doctors who have rendered service in rural, remote and/or difficult areas was touched upon and explained in the

Notification dated 26th February 2020 before being asserted by the Supreme Court in *Tamil Nadu Medical Officers Association*. The differing constructions given to that decision by the parties would be laid to rest from paragraph 97 of the decision, which reads as follows;

“97. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.”

While upholding the legislative competence of the State Government to provide for reservation to in-service doctors for admission to post-graduate medical degree courses, the Supreme Court articulated the mandate on State Governments to require compulsory service in rural or remote or difficult areas for a specified period as a qualifying criterion for availing of the

in-service quota. There is little doubt that the expectation of the Supreme Court was in effect a command, in unequivocal terms, and an obligation cast upon the State Government to give immediate shape to the obligation in terms of policy.

The fourth paragraph of the Notification dated 8th October 2021 is the expression of compliance of paragraph 97 of the Supreme Court decision in terms of requiring all in-service candidates to serve in rural/remote/difficult areas for a minimum of 3 years, taken together, as on 30th April of the academic year for being considered for the in-service quota. The prescribed timeframe of 3 years is a repetition of the preferred length of service found in the earlier Notifications of the Department.

The impugned order of 3rd January, 2022 is a reiteration of the Department's commitment to carry out the mandate of the Supreme Court and this Court therefore does not find any infirmity in the basis of the said impugned order. The first prayer in the present writ petition for setting aside of the impugned order dated 3rd January 2022 is declined for the aforesaid reason.

With regard to the prayer for declaration that the petitioners are eligible for the in-service quota by reason of serving in Specialized Units in terms of the statutory amendment dated 21st January, 2016, the said prayer does not find support in any of the Rules or Notifications issued by the State Department. Without a statutory or regulatory foundation of inclusion in the eligibility parameters for in-service quota, the petitioners have avowedly sought this relaxation for the first time before this Court. An earlier writ petition (WPA 17775 of 2021) against the Notification dated 8th October, 2021, was disposed of by an order dated 6th December, 2021 directing the petitioners to follow up with the representation made to the Special Secretary, Department of Health and Family Welfare. The impugned order dated 3rd January, 2022 is a culmination of that process and is now the subject matter of challenge in the present writ petition.

The expressions “*rural areas*” and “*remote and/or difficult areas*” have been given a specific definition in the Notification dated 26th February, 2020 and are not open-ended terms. Hence the definition of rural or remote/difficult areas cannot be stretched or expanded at will to suit the needs

of a particular group of doctors or any other persons for that matter. The relaxation brought in by the Memo dated 25th January, 2022 – Covid-19 related duties cannot be seen to be outside the powers of the State Government since the 5th paragraph of the Notification dated 8th October, 2021 states that the definition of rural/remote/difficult area shall be subject to “*modification from time to time, as per the demanding situation.*” The Department, in response to the emergent situation brought about by the pandemic, thought it fit to complement the “difficult area” requirement with Covid-19 duties.

The petitioners’ claim for equivalence between service in Specialized Units to that in remote/difficult areas is also an unreasonable expansion of the definition given in the Notification dated 26th February, 2020. There is no corroborating material to show that a parallel must be drawn between serving in Specialized Units and in remote or difficult areas. Even without the specifics of the definition given to “*remote and / or difficult area*” in the Notification, the expression indicates areas/places removed from the main cities and which would not be the preferred posting of doctors. The specific naming of the

areas both under “*rural areas*” and “*remote and/or difficult areas*” in particular would lead to the inescapable conclusion that the 40% quota was being given as an incentive to those doctors who sacrifice the convenience of city-life and work in far-flung areas where life is otherwise difficult. The demarcated hilly areas under the Gorkhaland Territorial Administration, the Sundarban Unnayan Parshad, Paschimanchal Unnayan Parshad and Uttarbanga Unnayan Parshad contributes to this view.

Moreover, service by the in-service doctors in rural/remote/difficult areas must be read as part of the overall objective of the State to extend the access, availability and benefits of medical services in areas which are not easily accessible and far removed from the metropolitan cities/developed areas. It is also relevant to mention that a challenge to the definitions given to these expressions was repelled by the Single Bench of this Court in WPA 5460 of 2020 (Dr. Goutam Nemo Vs. State of West Bengal & Ors.) as well as by the Division Bench in MAT 773 of 2020 (*Dr. Sourav Chattopadhyay & Ors. vs. State of West Bengal & Ors.*) by orders dated 10th November, 2020 and 17th November, 2021 respectively.

Notwithstanding the controversy in the present matter, it should be stated that service in Specialized Units like SNCU, HDU, CCU, ICCU and ITU is by no means an easy task and may require round-the-clock duties. This Court recognizes the commitment shown by the in-service doctors who render 24x7 service in these Specialized Units. However, to include service in such Specialized Units within the definition of “*rural and/or difficult areas*” would amount to making in-roads into the policy frame-work of the State Government which a Writ Court should normally hesitate to do unless compelling reasons exist. A policy decision is not a perpetual no-go area and a Writ Court can certainly interfere in fit cases including where the policy is not backed by legislative competence or where there is an excessive delegation of essential legislative functions or an infraction of the fundamental rights guaranteed under the Constitution of India. Reference in this context may be made to *Balco Employees’ Union (Regd.) vs Union of India and Others; (2002) 2 SCC 333* where the Supreme Court advised against embarking upon the uncharted ocean of public policy. The present case is not one where the policy framed is

either capricious or arbitrary or has been framed without being informed by reasons.

Bringing the petitioners who have served in Specialized Units within the fold of those who have served in remote or difficult areas would introduce a discordant note to the overall legislative policy in incentivizing service in far-out, distant areas. Even if the petitioners have done Covid-19 duty in excess of 1 year, the petitioners cannot use the service rendered in Specialized Units as a substitute for serving in rural/ remote/ difficult areas. The geographical indication given to the definition of "*remote/difficult areas*" would also not be in consonance with service in Specialized Units which may or may not be located in or near the specific areas mentioned in the Notification of 26th February, 2020. After all, the weightage given to service in rural/ remote/ difficult areas for the reservation flows with the concept of development ("Unnayan") which is a benchmark of the Notification dated 26th February, 2020.

This Court is not persuaded to accept the contentions of the petitioners in view of the reasons stated above. It may be recorded that learned counsel for the parties have agreed that

the writ petition should be finally heard and disposed of.

It should also be noted that declining the relief sought for would not amount to violation of any of the fundamental rights of the 53 petitioners or cause irreversible prejudice to them. The fallout of this order is that the petitioners would not be in a position to avail of the in-service quota of 40% for in-service doctors under the Memo dated 18th April, 2013. All 53 petitioners will however have the opportunity of participating in the ongoing counselling process as open candidates i.e., candidates who are not in-service doctors, as suggested by learned counsel appearing for the National Medical Commission.

WPA 1582 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)