

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)  
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 244 of 2020

Dr. Safikul Sarkar Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>2</p> <hr/> <p>24.08.2020</p>	<p>For the Applicant : Mr. Shyamal Roy, Advocate</p> <p>For the Respondents : Mr. G.P. Banerjee, Advocate</p> <p>Let affidavit of service filed today be kept on record.</p> <p>In this application, Dr. Safikul Sarkar, the applicant, has prayed for certain reliefs, the relevant portion of which is as under:</p> <p>“7. a) Issue a mandatory direction to quash / set aside / rescind / voidable the Notification being Memo No. DME / SPL / Corresp / 2020 / 185 dated 06.07.2020, as issued by the authority concerned and also Memo No. HFW 23099 / 66 / 2020 / M / 905 dated 08.07.2020 will not applicable accordingly withdraw.</p> <p>b) Give a direction upon the respondents, not to cancel the admission of applicant M.S</p>	

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	<p>(ORTHOPAEDIC) under K.P.C. Medical College and Hospital Jadavpur dated 12.05.2020 as per provisional Allotment letter (Annexure P5).</p> <p>c) The respondents may kindly be directed to entertained the representation which has pending and passed a special order alternatively in connection with Memo No. D.M.E. / SPL Corresp/2020 / 185 dated 06.07.2020.”</p> <p>It appears that the applicant had joined in the Department of Anatomy as Demonstrator at Midnapore Medical College and Hospital, Paschim Medinipur on 23<sup>rd</sup> March, 2017. According to the applicant a notification dated 26<sup>th</sup> February, 2020 was published by the Health and Family Welfare Department, Government of West Bengal that from the academic session 2020 onwards for selection of candidates / admission in Post Graduate courses, weightage would be given to the in-service doctors who are the officers of the West Bengal Health Service and selection would be determined through National Eligibility cum Entrance Test (NEET). The applicant applied. After the examination results were</p>	

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	<p>published, the applicant was placed 703 in the serial number as an in-service candidate. After Round 1 counselling the petitioner obtained a seat and was admitted in K.P.C. Medical College and Hospital, Jadavpur, Kolkata in Orthopaedics on 12<sup>th</sup> May, 2020. However, as evident from the memo dated 6<sup>th</sup> July, 2020 issued by the Director of Health Services, the respondent no.3, the list was cancelled as the applicant along with others “do not qualify for such marks incentives” which has been explained as evident from the subsequent memo dated 8<sup>th</sup> July, 2020, relied on in a similar matter being O.A. 243 of 2020 : Dr. Atanu Biswas vs. State of West Bengal &amp; Others, heard today, the relevant portion of which is as under:</p> <p style="padding-left: 40px;">“The said incentive marks although initially were given to some service candidates working at BSMC, Bankura and MMC Midnapore, but the same were deducted subsequently and on being detected owing to the fact that the aforesaid two medical colleges do not fall within the jurisdiction of Paschimanchal Unnayan Parshad, in terms of government notification dated 26.02.2020 published in this regards. That was a sheer bonafide mistake and the same was therefore rectified subsequently.</p>	

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	<p>Consequently, those seats had to be cancelled. However, those candidates are at liberty to participate in the second round of counselling without any incentive marks. It is also to be kept in mind that one seat at Calcutta Medical College is kept on hold due to the order of the Hon'ble Court.”</p> <p>Mr. Shyamal Roy, learned advocate appearing on behalf of the applicant submits that as the Medinipur Medical College, where the applicant was employed comes under the Paschimanchal Unnayan Parshad, such cancellation is uncalled for and illegal and accordingly appropriate order, as prayed for, may be passed.</p> <p>Mr. G.P. Banerjee, learned advocate on behalf of the State respondents submits on instruction that since Medinipur Medical College, where the applicant was employed is not within the Paschimanchal Unnayan Parshad and mistakenly the applicant was declared successful, which is evident from the memo dated 8<sup>th</sup> July, 2020, no order may be passed. That apart as since the applicant has filed a writ application being WP No. 5935 (W) of 2020 along with CAN No. 4078 of 2020, wherein his name appears against serial no.1, on the self-same cause of action which has been suppressed in this Original Application, the application may be dismissed.</p>	

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SCN.	<p>On a query it is submitted that writ petition being W.P. No. 5935 (W) of 2020, along with CAN No. 4078 of 2020, is pending before the High Court.</p> <p>Heard learned advocates for the parties. Perusing the memo dated 6<sup>th</sup> July, 2020 as well as the memo dated 8<sup>th</sup> July, 2020 we find cogent reasons have been given for cancellation of the candidature of the applicant. We find that the grant of the incentive marks was due to bonafide mistake which has been adequately explained. The same has not been challenged in the Original Application. Moreover, as the applicant has moved the High Court as evident from the CAN No. 4078 of 2020 on 9<sup>th</sup> July, 2020 on the self-same cause of action and thereafter has moved this Tribunal on 30<sup>th</sup> July, 2020 by filing the Original Application and has suppressed about the factum of moving the High Court on the self-same cause of action, we find the application is to be dismissed. Hence, the application is dismissed with cost which is assessed at Rs.5,100/- (Rupees five thousand and one hundred only). Let a copy of the W.P. No. 5935 (W) of 2020 along with CAN No. 4078 of 2020 in W.P. No. 5935 (W) of 2020 be kept on record.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	