

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

Present :-

*Hon'ble Justice Ranjit Kumar Bag,  
Judicial Member.*

-AND-

*Hon'ble Dr. Subesh Kumar Das,  
Administrative Member.*

**J U D G M E N T**

-of-

**Case No. : O.A. 847 of 2017 :**

**DR. SHIBANI CHAKRABORTY  
-V. STATE OF WEST BENGAL & ORS.**

**For the Applicant :-**

**Mr. D.N. Ray,  
Mr. S. Ghosh,  
Mr. B. Nandy,  
Mr. R.K. Mondal,  
Learned Advocates.**

**For the State Respondents :-**

**Mr. S. N. Ray,  
Learned Advocate.**

Heard on **January 10, 2019.**

**Judgment delivered on : February 15, 2019.**

**Judgment delivered by –**

**Ranjit Kumar Bag, Judicial Member**

## **JUDGEMENT**

The applicant has prayed for direction upon the respondents to extend the benefit of trainee reserve facility to the applicant and to pay salary after cancellation of the order dated July 10, 2017 communicated to the applicant on July 11, 2017 by the Deputy Director of Health Services (Administration), West Bengal.

2. The applicant is a member of West Bengal Health Service and posted as Medical Officer in the District Hospital, Malda. She obtained sponsorship of the State Government to participate as in-service candidate in the West Bengal Post Graduate Medical Admission Test, 2015 (hereinafter referred to as WBPGMAT, 2015) to be conducted by the West Bengal University of Health Sciences (hereinafter, the University). She was successful in WBPGMAT, 2015, but her claim for placement on trainee reserve was not considered by the Government of West Bengal. However, the applicant secured admission in MD (Anaesthesiology) during pendency of the dispute over her placement on trainee reserve before the Court. There is no dispute that the claim of the applicant for placement on trainee reserve as Government sponsored candidate need to be decided in terms of the provisions of 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, the West Bengal Trainee Reserve Rules, 2008).

3. Without getting any response from the Director of Health Services, Government of West Bengal for granting the applicant benefit of trainee reserve facility, she approached the Tribunal by filing OA 993 of 2015, which was disposed of on September 29, 2015 by directing the Director of Health Services, Government of West Bengal to consider the case of the applicant sympathetically in terms of proviso to Rule 3(a)(i) of the West Bengal Trainee Reserve Rules, 2008, whereby the compulsory requirement of qualifying rural service may be relaxed on the basis of merit of each case for placement on trainee reserve as Government sponsored candidate. The order of the Tribunal was subjected to challenge by the applicant before the

Hon'ble High Court by filing WPST 254 of 2015 which was disposed of by the Hon'ble High Court on March 3, 2016. The Hon'ble High Court granted relief to the applicant by relaxing the requirement for employment for three years (03) in rural service and directed for her consideration in the category of trainee reserve. This order of the Hon'ble High Court was challenged by the State of West Bengal before the Hon'ble Supreme Court by filing an Appeal which was registered as Civil Appeal No. 4486 of 2016. The Hon'ble Supreme Court disposed of the said Appeal along with other connected Appeals (Civil Appeals No. 4486 to 4489 of 2016) by remitting the matter to the Hon'ble High Court for fresh disposal with observation that pending disposal of the matter by the Hon'ble High Court the applicant shall have the option to pursue her Post Graduate Course, though she will not be treated as trainee reserve for not having requisite rural service to qualify as trainee reserve candidate and that she will not be entitled to claim any salary or other benefits till the Hon'ble High Court finally decides the writ petition afresh. The Hon'ble Justice Dipankar Datta and Hon'ble Justice Debi Prasad Dey have disposed of the writ petition afresh on May 19, 2017 by directing the Director of Health Services, Government of West Bengal to pass reasoned order in accordance with law. The Director of Health Services passed an order on July 10, 2017 in compliance with the direction given by the Division Bench of the Hon'ble High Court on May 19, 2017.

4. The impugned order dated July 10, 2017 passed by the Director of Health Services is under challenge in the present original application. Mr. D.N. Ray, Learned Counsel for the applicant, submits that the Division Bench of the Hon'ble High Court gave direction to the Director of Health Services to decide the claim of the applicant for her placement on trainee reserve without labouring under a notion that he has no power to relax the required qualifying rural service. He further submits that the Division Bench of the Hon'ble High Court specifically observed that the Director of Health Services shall proceed to pass an appropriate order in accordance with law, if he is convinced that the qualifying rural service could not be put in by the applicant because of no fault on her part. He also categorically submits that the Division Bench of the Hon'ble High Court asked the Director of Health Services to exercise his discretion by passing a reasoned

order in the event the discretion is exercised against the applicant. By referring to the impugned order under challenge, Mr. Ray contends that the impugned order is not supported by any reason even when the claim of the applicant is turned down. He categorically argues that the Director of Health Services has mechanically repeated his previous observation that the applicant has not fulfilled eligibility criteria of qualifying rural service without taking into consideration the fact that the applicant could not fulfill the total period of qualifying rural service for her transfer from Block Primary Health Centre to the District Hospital in public interest by the order of the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare. The gist of submission of Mr. Ray is that the impugned order has not been passed by the Director of Health Services in terms of the direction given by the Division Bench of the Hon'ble High Court.

5. Mr. S.N. Ray, Learned Counsel representing the State respondents submits that the impugned order passed by the Director of Health Services has addressed the grievance of the applicant in terms of the direction given by the Division Bench of the Hon'ble High Court, though Mr. Ray has failed to explain how the direction of the Hon'ble High Court has been followed by the Director of Health Services.

6. The issue which calls for determination is whether the impugned order of the Director of Health Services is in terms of the direction given by the Division Bench of the Hon'ble High Court. We would like to point out the relevant facts before addressing the issue whether the impugned order is in terms of direction of the Division Bench of the Hon'ble High Court. The eligibility for placement of any Government sponsored candidate on trainee reserve is qualifying rural service of two years, when the candidate will pursue Post Graduation in dearth discipline as enumerated in Schedule A to Rule 3 of the West Bengal Trainee Reserve Rules, 2008. Admittedly, the applicant got admission in MD (Anaesthesiology), which is dearth discipline as per provisions of the West Bengal Trainee Reserve Rules, 2008. The admitted position is that the applicant served in the rural areas (Medical Officer, Milky Block Primary Health Centre, Malda) for about one year and seven months and thereafter she was transferred to the District

Hospital at Malda in the interest of public service by order of Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare and she was released from her assignment at Block Primary Health Centre on January 9, 2013 by the order of Block Medical Officer of Health, Milky Block Primary Health Centre, Malda. The specific contention of the applicant is that she would have acquired eligibility for placement on trainee reserve by serving in rural Health Centre, had she not been transferred from Block Primary Health Centre to the District Hospital at Malda by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare. Since the transfer and posting of the applicant is not under the control of the applicant, the proviso to Rule 3 (a) (i) of the West Bengal Trainee Reserve Rules, 2008 has conferred discretion on the Director of Health Services to relax or dispense with eligibility criteria of serving for specific period in rural areas. It is relevant to point out that the stand taken by the Director of Health Services in the impugned order is that the applicant did not fulfill requisite eligibility of serving two years in the rural areas for her placement on trainee reserve under the provisions of Rule 3 of the West Bengal Trainee Reserve Rules, 2008.

7. With the above factual matrix, we would like to quote the relevant portion of the observation and direction given by the Division Bench of the Hon'ble High Court on May 19, 2017 in WPST 254 of 2015 (Dr. Shibani Chakraborty V. State of West Bengal and Others) :

*“39. The order of the Director contained in the supplementary affidavit of WPST 254 of 2015 (Dr. Shibani Chakraborty V. State of West Bengal and Others) stands set aside. He shall proceed to decide her claim upon hearing her in terms of this order without labouring under a notion that he has no power to relax the required qualifying service.*

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*43. It is clarified that if any or all the applicants are in a position to convince the Director that the qualifying rural service could not be put in by them because of no fault on their part, the Director shall proceed to pass an appropriate order in accordance with law.*

44. *In the event of discretion being exercised against any or all the applicants, the Director shall pass a reasoned order and communicate the same to them forthwith.*”

8. On close scrutiny of the entire impugned order of the Director of Health Services we do not find that the Director has taken into consideration the fact of transfer of the applicant from Block Primary Health Centre to District Hospital at Malda before completion of two years of service in rural area, particularly when the said transfer and posting was beyond the control of the applicant. The Director of Health Services was labouring under a notion that he has no power to relax the required qualifying service of two years in rural areas for acquiring eligibility to be placed on trainee reserve in terms of proviso to Rule 3 (a) (i) of the West Bengal Trainee Reserve Rules, 2008 and as such he has not uttered a single word in the impugned order for not exercising the discretion to relax the required qualifying service, though that was the mandate of the Division Bench of the Hon’ble High Court. Last but not the least, the Director of Health Services has not assigned any reason for coming to the conclusion that the applicant did not fulfil requisite eligibility for placement as trainee reserve, except reiterating his previous stand of non-fulfilment of minimum period of two years of service in the rural area. The Director of Health Services has not considered the issue of relaxation of the required qualifying service of two years in the rural area in case of the applicant who could not fulfill the required qualifying service due to her transfer from rural hospital to the District Hospital, which was beyond her control. The impugned order is not only supported by reasons, but also not passed in terms of the mandate of the Division Bench of the Hon’ble High Court.

9. In view of our above observation, we are constrained to hold that the impugned order of Director of Health Services is not sustainable in law. Accordingly, the impugned order dated July 10, 2017 passed by the Director of Health Services, Government of West Bengal is set aside.

10. Under the provisions of Rule 5 of the West Bengal Trainee Reserve Rules, 2008, the Director of Health Services is the competent authority to issue sponsorship certificate, whereas the Department of Health and Family

Welfare, Government of West Bengal will issue placement order for trainee reserve. It is pertinent to quote the provisions of Rule 5 of the West Bengal Trainee Reserve Rules, 2008, which is as follows :

*“5. Procedure for application and placement on trainee reserve – the Officers of the West Bengal Health Services, the West Bengal Medical Education Service and the West Bengal Public Health-cum-Administration Service only when eligible under the foregoing rules can directly apply to any University or Institution for appearing in the post-graduate Entrance Examination and after being selected or being invited for counselling before admission, shall apply to the Director of Health Services or to the Director of Medical Education for sponsorship certificates. In cases wherever the concerned University or Institution requires a sponsorship certificate, for appearing in the post-graduate Entrance Examination or otherwise only the eligible candidates can directly apply to the Director of Health Service or Director of Medical Education who shall be the competent authority for such matter. After such process is over, placement orders for trainee reserve will be issued by the Department of Health and Family Welfare and thereafter such officers will proceed on trainee reserve and execute bonds as specified in rule 4 of these rules.”*

11. In view of our above findings, we direct the respondent No. 2, Director of Health Services, Government of West Bengal to pass fresh reasoned order in accordance with the provisions of West Bengal Trainee Reserve Rules, 2008 and in terms of the direction given by the Division Bench of the Hon’ble High Court on May 19, 2017 in WPST 254 of 2015 (Dr. Shibani Chakborty v. State of West Bengal and others) after giving the applicant fresh opportunity of hearing and after obtaining approval of the Principal Secretary/Additional Chief Secretary to the Government of West Bengal, Department of Health and Family Welfare (who is authorised to issue placement order for trainee reserve) within a period of twelve (12) weeks from the date of communication of the order and take necessary follow-up action, if any, within a period of four (04) weeks thereafter.

12. With the above direction, the original application stands disposed of.

13. Let urgent Xerox certified copy of the judgment and order be supplied to the parties, if applied for, on priority basis after observance of all necessary formalities.

**( Dr. Subesh Kumar Das )**  
**Member (A)**

**( Ranjit Kumar Bag )**  
**Member (J)**