

Dr. Swagata Mukhopadhyay And Ors Vs State Of West Bengal And Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 30, 2025

Hon'ble Judges: T.S. Sivagnanam, CJ; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: Aniruddha Chatterjee, Gargi Goswami, Sk. Md. Galib, Priyamvada Singh, Sakya Sen, Sunil Kumar Gupta

Final Decision: Disposed Of

Judgement

1. By this public interest writ petition the petitioners who are doctors have pointed out that the Registrar of the Council being the 4th respondent has

been permitted to continue beyond the age of superannuation which he attained in the year 2019 without prior approval of the Government.

2. Mr. Sen, learned senior advocate appearing for the West Bengal Medical Council would submit that already recruitment notice has been issued for

recruitment of the Posts of one Registrar and one Assistant Registrar and the process has already commenced and the preliminary examination has

been fixed on 7th February, 2025.

3. After hearing the learned advocates for the parties and for a considerable end of time and carefully perusing the materials placed on record, we

find that under the scheme of the Bengal Medical Act, 1914 the control over the Council more particularly the service condition etc. of the employees

is with the local Government. Section 14 deals with Registrar and Establishment of the Council. Sub-section (1) of Section 14 states that with the

previous sanction of the local Government the Council (a) shall appoint a Registrar.

4. Therefore, if a person needs to continue beyond the age of superannuation it pre-supposes and it is required to be pre-supposed with the prior

consent of the Government has to be obtained since pay and allowances have to be sanctioned accordingly and what would be the pay payable to a

person who is allowed extension of service beyond the age of superannuation or all issues which we have financial implications and has to be

considered by the local Government.

5. It is no doubt true that the Executive Council of the West Bengal Medical Council would be permitted to take a decision for extending the services

of a particular officer of the Establishment of the Council for good and sufficient reasons but nonetheless that extension is subject to the approval of

the Government.

6. Therefore, we direct the private respondent, namely, 5th respondent, namely, who is presently functioning as Registrar of the West Bengal Medical

Council to step down of his own volition and the Medical Council shall forward the proposal for regularizing/approving his engagement beyond the age

of superannuation by submitting appropriate proposal to the Government which shall be considered on merits and in accordance with law.

7. This is required since the Government as early as on 25.10.2024 has informed the President of the West Bengal Medical Council that the 5th

respondent has been appointed as Registrar on re-employment basis since 1.11.2019 without prior sanction of the Government following statutory

provision laid down in Section 14(1) of the Bengal Medical Act, 1914 and the Medical Council was advised to arrange for appointment of a new

Registrar though this communication has been issued on 25.10.2024. Recruitment Notice has been issued only recently. However, the copy of the

Recruitment Notice handed over to us by Mr. Sen, learned senior advocate appearing for the West Bengal Medical Council does not contain a date

and only gives the other details.

8. In any event the Government has stated that the appointment of the 5th respondent as Registrar on re-employment since 1.11.2019 has been made

without prior sanction of the Government and, therefore, the 5th respondent has no right to continue to function as Registrar of the Medical Council.

9. Therefore, as observed earlier, he shall step down on his own volition by 5 pm tomorrow i.e. 31.1.2025 or else there will be an order directing him to

remove from the Post of Registrar of the Medical Council.

10. Since the other issues which have been pointed out in the writ petition, in our opinion are not required to be gone into in this writ petition and,

therefore, all those issues are left open.

11. With the above directions, the matter stands disposed of.