

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

WPA 12496 of 2025

DR. ANIKET MAHATA

-Vs-

THE STATE OF WEST BENGAL & ORS.

For the petitioner :

Mr. Pratik Dhar, Ld. Sr. Adv.,
Mr. Kartik Kumar Ray,
Mr. Debashis Banerjee,
Mr. Rakesh Jana.
Mr. Snehal Sinha

For the State :

Mr. Kishore Dutta, Ld. AG,
Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,
Ms. Kakali Naskar.

For the Respondent Nos.2 & 3:

Mr. Debayan Sen,
Mr. Niket Ojha.

For the Respondent No.7:

Mr. D.N. Maiti,
Mr. A. Santra.

Judgment reserved on:

16.09.2025

Judgment delivered:

24.09.2025

Biswajit Basu, J:

1. The doctors (other than government sponsored in-service doctors), after completing post-graduate and post-doctoral courses from the State Medical Teaching Institutions, as per the indemnity bond executed by them at the time of admission, are obliged to serve the State by working in different Government Hospitals as Senior Resident (**'SR'** in short) for a certain period of time. The Department of Health and Family Welfare, Government of West Bengal (**'The Department'** in short), in order to get such service of the said class of doctors vide order bearing Memo No. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated February 16, 2023 has prescribed a Standard Operating Procedure (the **'SOP'** in short).

The issue falls for consideration in the present writ petition is ***whether the Department is bound to follow the procedures prescribed under the said SOP to deploy and/or engage the said SRs during the said bond period.***

2. The undisputed facts necessary to deal with the aforesaid issue are thus, the petitioner, in the year 2025, has completed MD course in the discipline of Anaesthesiology from the R.G. Kar Medical College and Hospital, a Government medical college, the petitioner in terms of the indemnity bond is obliged to serve the State for a period of three years. The Department, in order to get such service from the said class of doctors intended to engage them as SRs at different types of Government

Hospital and as the first step to achieve the said goal had published a notice bearing no. HAD/12M-01-2025/M/483 dated March 04, 2025 thereby instructing the doctors who have passed MD/MS course in the year 2025 to complete the online registration between the period from March 06, 2025 to March 10, 2025 for the purpose of conducting counseling. The petitioner had completed the said registration within the stipulated time.

- 3.** The Department, thereafter by a notice bearing memo no. HAD/12M-01-2025/M/549 dated March 06, 2025, had announced the schedule of the said counseling and prior to the commencement of such counseling, the Department, by a notification bearing no. HAD/12M-01-2025/M/736 dated March 21, 2025 had published a list of SR vacancies to be considered for the engagement of the said class of doctors. In the said list, four vacancies in the discipline of Anaesthesiology at the R.G. Kar Medical College were declared.
- 4.** The petitioner had participated in the said counseling on March 25, 2025, i.e. the schedule date of counseling in respect of his discipline. The petitioner as per his merit position, had opted the second seat out of the said four declared vacancies at the R.G. Kar Medical College and Hospital in his discipline. The petitioner had also submitted a formal self-declaration thereby confirming the choice exercised at the time of counseling. The Department, thereafter by the impugned notification bearing No. HF/O/MA(MES)/353/ME/MISC-161-2025 dated May 27,

2025 has declared deployment of 871 non-sponsored post-graduate doctors as SRs mentioned in the column (B) in the department mentioned in column (D) and in the Institutions mentioned in Column (E) of the list annexed with the said notification with immediate effect until further orders.

5. The petitioner is alleging that in the said list, his place of posting as SR has been altered to Raiganj Medical College and Hospital, Uttar Dinajpur by changing the choice exercised by him at the time of counseling arbitrarily. The petitioner is challenging the said notification and the list annexed thereto so far those documents relate to his place of posting.

6. The argument of Mr. Pratik Dhar, learned senior advocate for the petitioner is as follows:-

- a) The Department, by the SOP, has prescribed a standardized protocol to deal with the different issues of non-sponsored candidates to be engaged as SRs at different types of Government hospitals thereby enabling them to serve the State smoothly and without any dispute as such the State is bound by the provisions formulated in the said SOP. The decision of the Supreme Court of the United States in the case of **WILLIAM VINCENT VITARELLI vs. FRED A. SEATON, SECRETARY OF THE INTERIOR** reported in **1959 SCC OnLine US SC 87** is relied on to contend that an executive authority must be rigorously held to the standards by which it professes its action to be judged.

- b) The language of the said SOP is clear enough to indicate that it contains a complete mechanism for deployment of the SRs after completion of degree/diploma, as the case may be. Paragraph 7(a) of the said SOP prescribes that the Department shall arrange for engagement of such candidates as SR for initial period of one year through counseling based on the merit prepared on basis of collected stated particulars, the State has no scope to deviate from the said prescription.
- c) The SOP prescribes a procedure aimed to eliminate arbitrariness. The State has clearly accepted the binding nature of the SOP inasmuch as it has followed the said procedure in deploying 869 out of the total 871 candidates but strangely has deviated from it while deploying and/or engaging only for two candidates one of them is petitioner, and in this case the State has adopted pick-and-choose method without assigning any reason, such action of the State, by reason of arbitrariness, cannot be sustained and same violates the Article 14 of the Constitution. The decisions of the Hon'ble Supreme Court in the case of **SUKHDEV SINGH AND ORS. vs. BHAGAT RAM AND ORS.** reported in (1975) 1 Supreme Court Cases 421, in the case of **DR. AMARJIT SINGH AHLUWALIA vs. THE STATE OF PUNJAB AND OTHERS** reported in (1975) 3 Supreme Court Cases 503, in the case of **RAMANA DAYARAM SHETTY vs. INTERNATIONAL AIRPORT AUTHORITY**

OF INDIA AND OTHERS reported in (1979) 3 Supreme Court Cases 489 are relied on to contend that the State action must not be arbitrary but must be based on some rationale, which is non-discriminatory.

- d) The decisions of the Hon'ble Supreme Court in the case of **B.S. MINHAS vs. INDIAN STATISTICAL INSTITUTE AND OTHERS** reported in (1983) 4 Supreme Court 582, in the case of **HOME SECRETARY, U.T. OF CHANDIGARH AND ANOTHER vs. DARSHJIT SINGH GREWAL AND OTHERS** reported in (1993) 4 Supreme Court Cases 25 and also the decision of the Hon'ble Division Bench of the Allahabad High Court in the case of **PARAM SINGH AND OTHERS vs. STATE OF U.P. AND OTHERS** reported in 2018 SCC OnLine ALL 5677 are relied on to contend that once a policy has been adopted by the Government, the Administration is bound to follow it.
- e) The Department in its notification dated March 06, 2025 had made it clear that the choice once exercised by the candidate during the counseling will be final and cannot be changed under any circumstances. The said condition not only binds the candidate but also the Department. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **STATE OF U.P. AND ANOTHER vs. BHAVNA TIWARI AND OTHERS** reported in 2025 SCC OnLine SC 1357 to contend that counseling is a process to

ensure the principles of merit, fairness and transparency. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of **ASHA vs. PT. B.D. SHARMA UNIVERSITY OF HEALTH SCIENCES AND OTHERS** reported in **(2012) 7 Supreme Court Cases 389** to contend that relaxation of the rule of merit in counseling is not permissible.

- f) The merit rank of the petitioner in the discipline of Anaesthesiology is 24 and his University rank is 25, the petitioner, during counseling, had opted for the second vacancy out of four vacancies at the R.G. Kar Medical College in the said discipline, but the Department, for the reason(s) best known to it, has engaged lesser meritorious candidates viz. Dr. Antara Danki, having merit rank 26 and University rank 27 and Dr. Triparna Chattopadhyay, having merit rank 34 and University rank 32 in the two vacant seats in the said discipline of the said Hospital, nonetheless, one vacancy is yet to be filled up.
- g) The petitioner and two other doctors were the prominent faces of the R.G. Kar Medical College movement, they had faced Police harassment for their such involvement and to give them further lesson, the Department, in arbitrary contravention of the procedures prescribed under the SOP, has targeted them out of total 871 doctors of the list annexed with the impugned Notification and have placed them in the hospitals far away from

the hospitals opted by them at the time of counseling as 'punishment posting'.

7. The argument of Mr. Kishore Datta, learned Advocate

General argues is as follows:-

- a) The allegations of the petitioner must be scrutinized through two distinct aspects, i.e. counseling and posting. Counseling has to be based on merit but the posting and/or deployment is irrespective of the outcome of the counseling. The petitioner has placed heavy reliance on the SOP, particularly paragraph 7(a) thereof but it does not support the contention of the petitioner that the choice exercised during the counseling would directly reflect in posting, such an inference would amount to putting words in the SOP. It is the prerogative of the State to deploy the petitioner wherever there is a requirement.
- b) Two out of four vacancies in the post of SR in the department of Anaesthesiology at Raiganj Medical College & Hospital, Uttar Dinajpur are still lying vacant due to non-joining of the petitioner, whereas in the R.G. Kar Medical College & Hospital, Kolkata, only one out of four posts of SR in the relevant discipline is lying vacant, therefore, in the interest of public service and considering the fact that the Raiganj Medical College & Hospital is the only Government Medical College in the said District, the department has exercised administrative discretion in posting the petitioner to the said

Hospital to meet the requirement, such administrative decision is within the authority of the Department and also stands the test of reasonableness.

- c) The SOP is an administrative instruction which cannot be elevated to the status of a statutory guideline or something flowing from the Constitution as such breach thereof does not confer any enforceable right on a member of the public to invoke the writ jurisdiction of the Court under Article 226 of the Constitution. In support of such contention, reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **UNION OF INDIA AND OTHERS vs. S.L. ABBAS** reported in (1993) 4 Supreme Court Cases 357, in the case of **R. SAI BHARATHI vs. J.JAYALALITHA AND OTHERS** reported in (2004) 2 Supreme Court Cases 9, in the case of **STATE OF U.P. AND OTHERS vs. GOBARDHAN LAL** reported in (2004) 11 Supreme Court Cases 402 and in the case of **CHIEF COMMERCIAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD AND OTHERS vs. G. RATNAM AND OTHERS** reported in (2007) 8 Supreme Court Cases 212.
- d) No consequence is contemplated for non-compliance of the procedures prescribed in the SOP as such irrespective of use of the word "shall" it is directory in nature. To buttress such contention, reliance is placed on the Division Bench decision of this Court in

the case of **UPANANDA CHATTERJEE vs. STATE OF WEST BENGAL & ORS.** reported in **(2007) 4 CHN 605.**

- e) The notice dated March 06, 2025 notifies only the dates for counseling, it has no nexus with the post-counseling deployment, effect of it starts and ends with the counseling. The choice exercised by the petitioner at the time of counseling cannot override the discretion exercised by the State in deploying the petitioner to meet the administrative exigencies and public interest. No cogent case has been made out as to why the individual preference of the petitioner for a particular hospital and his inter se merit ranking should carry greater sanctity than the administrative discretion of the State. Mere dissatisfaction with the place of posting, by itself, cannot be equated with legal prejudice.
- f) The phrase “.... *If offered to me*” appearing in the self-declaration of the petitioner clearly indicates that the contemporaneous understanding between the parties has always been that there is no guarantee of an offer of deployment as per the choice exercised by the petitioner during counseling, such choice is merely an option and does not become binding unless it is offered.
- g) The allegation and/or contentions of the State made in its Affidavit-in-opposition are deemed to have been admitted as no reply to the said affidavit has been filed by the petitioner. On the point of the doctrine of non-traverse, reliance is placed on the

decision of the Hon'ble Supreme Court in the case of **LOHIA PROPERTIES (P) LTD, TINSUKIA vs. ATMARAM KUMAR** reported in **(1993) 4 Supreme Court Cases 6**.

- h) The petitioner, for the absence of specific allegation in the pleadings, not only has failed to make out a case of mala fide but also is not entitled to set up such a case without impleading persons against whom the allegation of mala fide has been sought to be labeled, on this point, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **RATNAGIRI GAS AND POWER PRIVATE LIMITED vs. RDS PROJECTS LIMITED AND OTHERS** reported in **(2013) 1 Supreme Court Cases 524**.
- i) The case of **WILLIAM VINCENT VITARELLI (supra)** need not be referred to even, no doubt it is the obligation of the State to follow the principle laid down in the said decision but the SOP does not confer any enforceable right upon the petitioner and when there is no right, there is no question of discrimination or violation of Article 14 of the Constitution arises. Besides, in the said case the legality of discharge of an employee in public employment was under consideration. In the first round of the present proceeding, it has already been decided that the petitioner is not under Public employment, therefore, the principles laid down in the aforesaid judgment has no manner of application in the present case.

- j) The SOP is merely an executive instruction and cannot be equated with the rules and regulations formulated by the ‘authorities’ under Article 12 of the Constitution, for this reason, the Constitution Bench decision of the Hon’ble Supreme Court in the case of **SUKHDEV SINGH (supra)** is not applicable. In the absence of statutory rules, the State in exercise of its executive power can issue administrative instruction, such executive actions, being gap filling exercises lack the force of law, on this score, the decision in the case of **DR. AMARJIT SINGH AHLUWALIA (supra)** is not relevant to the issue under consideration.
- k) **RAMANA DAYARAM SHETTY (supra)** is a case emanating from a notice inviting tender where certain relaxation was granted which was challenged. The Hon’ble Supreme Court though has considered the principle laid down in the case of **WILLIAM VINCENT VITARELLI (supra)** but ultimately no relief was granted. Similarly, in the case of **DARSHJIT SINGH GREWAL (supra)**, the case of **WILLIAM VINCENT VITARELLI (supra)** though was considered but no relief was ultimately granted. The case of **PARAM SINGH (supra)** is also not applicable in the present case inasmuch as in the said case it has been held that unless there is any statutory scheme, non-statutory guidelines cannot be enforced. The case of **BHAVNA TIWARI (supra)** is also misplaced in the facts and circumstances of the present case as the said case

relates to admission in medical college and the allegation was large scale blocking of the seats, in the backdrop of such fact, the Hon'ble Supreme Court has made the observations regarding the counseling. In the present case, the petitioner has no grievance against counseling. The decision in the case of **B.S. MINHAS (supra)** is not applicable in the present case inasmuch as the said case relates to employment in a body governed by a statute. The decision in the case of **ASHA (supra)** is also not applicable in the present case for the simple reason that the said decision pertains to adherence to a settled protocol in the process of selection and grant of admission but in the present case, the said SOP nowhere provides that the deployment is to be made according to the merit and preference exercised by the candidate at the time of counseling.

8. Mr. Dhar, in reply, submits as follows:-

- i. The SOP does not merely say counseling but clarifies that it should be counseling based on merit. It is preposterous to suggest that the Memo dated March 06, 2025 has got no relation with the post-counseling deployment and that the effect of it starts and ends with counseling inasmuch as a plain reading of the said Memo would indicate that the counseling is also for the purpose of engagement.
- ii. It is not a correct interpretation that the phrase '*if offered to me*' appearing in the self-declaration as required to be given by a candidate in

terms of the aforementioned memo, gives a discretion to the State to assign posting to any candidate in any place according to its choice. The correct interpretation of the said phrase is that the choice must commensurate with the rank, in other words, unless a candidate gets a rank befitting to his choice, he cannot have a right to get posting to the chosen establishment, departure from it can only happen when the candidate fails to register himself within the time stipulated under the memo dated March 04, 2025 and in that event, the Department has the discretion to assign posting of a candidate in the remaining vacant seats after counseling.

- iii. The facts of the case are not in dispute. The interpretation of the nature of the SOP and its binding effect are the issues under consideration which are fundamentally pure questions of law not dependant on the affidavits of the parties, therefore the doctrine of non-traverse has no manner of application in the present case. The petitioner has not alleged mala fide of any authority or person, therefore the argument of the State on this score and the decision in the case of **RATNAGIRI GAS (supra)** are completely irrelevant.
- iv. The decision in the case of **LOHIA PROPERTIES (supra)** relates to the Order VIII Rule 5(1) of the Code of Civil Procedure, which clearly says 'fact', the said decision has no nexus with the issue under consideration inasmuch as the facts of the present matter viz. ranking of the petitioner, vacancy, existence of SOP have not been disputed by the State. In the

case of **CHIEF COMMERCIAL MANAGER (supra)**, an existing statute and corresponding executive instructions were compared; the said decision has no application in the present matter inasmuch as no separate statute is under consideration here. The case of **R. SAI BHARATHI (supra)** is a matter arising out of criminal appeal where the code of conduct of a Chief Minister was under consideration, as such is not relevant to the present matter. The case of **S.L. ABBAS (supra)** lays down the propositions of transfer in service jurisprudence, which is completely irrelevant to the issue under consideration. The Division Bench decision of this Court in the case of **UPANANDA CHATTERJEE (supra)** is misplaced in the facts and circumstances of the case inasmuch as the said decision relates to removal of a Pradhan and service of notice, which is purely procedural in nature whereas in the present case, the sanctity of the SOP and applicability of Article 14 of the Constitution are the relevant issues.

- v. The argument of the learned Advocate General that the case of **RAMANA DAYARAM SHETTY (supra)** and in the case of **DARSHJIT SINGH GREWAL (supra)** cannot be relied on by the petitioner as no relief was ultimately granted in the said two decisions is not correct inasmuch as the Hon'ble Supreme Court in the said cases though has laid down rules inhibiting arbitrary action of the State in exercise of discretion, but has denied relief to the party only on the ground of delay, which is not the case here.

The Court

Heard learned counsel for the parties at length, perused the materials-on-record.

9. The State has sought to justify the posting of the petitioner to Raiganj Medical College and Hospital, Uttar Dinajpur by ignoring the choice exercised by him during counseling, on the ground that the SOP is an administrative instruction, having no force of law least of a regulation as such State is not bound to follow it, as the said procedure does not confer any right, therefore, it is not enforceable. The State action is under challenge, to decide the sustainability of the said challenge, at first it is necessary to introspect the scope of judicial review to such administrative action. No doubt the scope is very limited. The law is well settled that it is not open to the Court under judicial review to examine the validity of the decision but the Court can examine the correctness of the decision-making process. The Hon'ble Supreme Court in the case of **KESHAVANANDA BHARTI vs. STATE OF KERALA** reported in (1973) 4 Supreme Court Cases 225 has held that in such case, the Court reviews the constitutionality of an administrative action and also examines its fairness, reasonableness and justness.

10. The Hon'ble Supreme Court in the case of **TATA CELLULAR vs. UNION OF INDIA** reported in (1994) 6 Supreme Court Cases 651 has considered the applicability of Wednesbury Principle in judicial review and at paragraph 80 of the said report has quoted the said principle, which speaks for itself:-

“ **80.** At this stage, *The Supreme court Practice*, 1993, Vol. 1, pp.849-850, may be quoted:

“4. Wednesbury principle- A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. Per Lord Greene, M.R.)”

11. Paragraph 77 of the said decision is apposite to the context, as such is also quoted below: -

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention.”

The Hon’ble Supreme Court, following the same principle in the case of **MUNICIPAL COUNCIL, NEEMUCH vs. MAHADEO REAL ESTATE AND OTHERS** reported in **(2019)10 Supreme Court Cases 738** has held that it is not permissible for the Court to examine the validity of a decision but the Court can examine only the correctness of the decision-making process.

- 12.** Keeping such scope of judicial review in administrative action of the State in mind, let me now examine the issue under consideration. A plain reading of the said SOP would clearly indicate that it prescribes a complete mechanism to get the service of the SRs during the bond period smoothly and without any dispute, therefore, it is not correct to say that the said document contemplates two distinct aspects i.e. counseling and posting or the choice exercised during the counseling would not directly reflect in the posting. It would suffice to quote the Paragraph 7(a) of the said SOP to understand the purport of the said document:-

“7(a) Thereafter the Directorate of Medical Education along with concerned branch of the Department (MERT) will arrange for engagement of such candidates, completing Post Graduate Degree, at

different Medical College and Hospitals/Teaching Institutions of the state as SR for initial one year through **Counselling based on the merit list prepared on the basis of the collected stated particulars.....”**

13. The SOP, without any ambiguity, prescribes that posting would be preceded by counseling based on merit, obviously such counseling is aimed to achieve the principles of fairness and transparency, as held by the Hon’ble Supreme Court in the case of **BHAVNA TIWARI (supra)**. In the present case the State, following the mandate of the said SOP has posted 869 out of total 871 candidates in the hospitals opted by them at the time of counseling but such mandate has not been followed in posting the petitioner and another candidate, and in doing so the State has compromised with the merit inasmuch as Dr. Antara Danki having merit rank 26 and Dr. Triparna Chattopadhyay having merit rank 34 have been posted in the Hospital opted by them at the time of counseling i.e. R.G. Kar Medical College whereas the petitioner having merit rank 24 has been denied the posting in the said Hospital though opted at the time of counseling.

The State has sought to interpret the phrase ‘if offered to me’ appearing in the self-declaration of the petitioner to mean that it is the prerogative of the State to offer a seat, unless such offer is made, the choice made in the counseling is not binding. This Court is unable to accept such interpretation of the said phrase as it would render the procedures prescribed under the said SOP in the matter of deployment of the SRs nugatory. The logical interpretation

of the said phrase should be that a candidate must secure the merit position to get the offer according to his choice.

14. The State has sought to justify the said deviation from the SOP also on the ground that the Hospital where the petitioner has been posted has a higher requirement for a SR in the relevant discipline than the Hospital opted by the petitioner, the justification is too feeble inasmuch as the deviation, if necessary, should start from the last ranked candidate. The Hon'ble Supreme Court in the case of **ASHA (supra)** has held that higher the competition, greater is the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference.

15. The State has not disputed that it is bound to follow the principle laid down by the United States Supreme Court in the case of **WILLIAM VINCENT VITARELLI (supra)** but has refused to apply the said principle in the present case alleging that the SOP being an administrative instruction, issued only to regulate the service of SRs during bond period, lacks the force of law even of a regulation, as such not enforceable. The Constitution Bench of the Hon'ble Supreme Court in the case of **SUKHDEV SINGH (supra)** has held that even if the regulations have not got the force of law, the principle laid down in **WILLIAM VINCENT VITARELLI (supra)** should govern the situation. Excerpts from paragraph 122 is quoted below for ready reference:-

“122. That apart, the regulations framed by these corporations were intended to be binding

*upon them and were the bases on which the employments were made. As the employments were under corporations created by statutes for carrying on businesses of public importance, they were public employment. And even if the regulations have not got the force of law, I think the principle laid down by Justice Frankfurter in **Vitarelli v. Seaton** should govern the situation.....*”

16. The SOP is a tool designed to achieve the right guaranteed under Article 14 of the Constitution, even if the SOP is an administrative instruction the State is bound to follow the ethos of Article 14 of the Constitution to eliminate arbitrariness in the State action. In the case of **DR. AMARJIT SINGH AHLUWALIA (supra)** and in the case of **RAMANA DAYARAM SHETTY (supra)**, the Hon’ble Supreme Court has laid down the principle that *the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification,* the said principle is equally applicable in the facts and circumstances of the present case.

17. The Hon’ble Supreme Court in the case of **B.S. MINHAS (supra)** has laid down that the administrative authority is bound to adhere to the procedural standards fixed by it to avoid arbitrariness, failing which the action taken by it would be invalid. The Hon’ble Supreme Court in the case of **DARSHJIT SINGH GREWAL (supra)** has held that it is axiomatic that having enunciated a policy of general application and having communicated it to all concerned, the administration is bound by it. It can, of course change the policy but until that

is done, it is bound to adhere to it. The paragraph 14 of the said judgment is quoted below for ready reference:-

“14. It may be relevant to emphasise at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.”

18. The decisions cited on behalf of the State are not applicable in the present case for the following reasons:-

(i) An order of transfer is an incident of government service, in the backdrop of such settled proposition, the Hon’ble Supreme Court in the case of **S.L. ABBAS (supra)** and in the case of **GOBARDHAN LAL (supra)** has held that a transfer made even in transgression of administrative guidelines cannot be interfered with as they do not confer any legally enforceable right unless shown to be vitiated by mala fides or made in violation of any statutory provision, those decisions are distinguishable in facts.

(ii) The case of **R. SAI BHARATHI (supra)** though is factually distinguishable inasmuch as the matter relates to the Code of Conduct issued by the State Government under Article 162 of the Constitution for exercise of executive authority by Ministers, nonetheless the Hon’ble Supreme Court in the said decision has held that good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life

must perform their duties in spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self-imposed discipline.

(iii) In the case of **G. RATNAM AND OTHERS (supra)**, while dealing with an issue whether a disciplinary proceeding initiated against a railway employee would be vitiated for not following certain guidelines contained in the Vigilance Manual, the Hon'ble Supreme Court has held that such instructions do not have the force of statutory rules as such, do not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution. In contrast, the State, by the SOP has not issued mere administrative instructions to its servants, it lays down a complete procedure for engagement of the doctors to get their service for the bond period. The State is following the said procedure for deployment of a set of candidates but is denying to follow it for two candidates only, the arbitrariness of the State in the said action is on the face of it and such action offends Article 14 of the Constitution.

(iv) The case of **UPANANDA CHATTERJEE (supra)** is no pointer to the issue under consideration. The decision of the Hon'ble Supreme Court in the case of **LOHIA PROPERTIES (supra)** is misplaced in the facts and circumstances of the present case inasmuch as the issue falls for consideration relates to a pure question of law to be decided on the basis of the undisputed facts, therefore the doctrine of non-traverse has no manner of application here. The petitioner has not made out a case of mala fide, therefore the decision of the Hon'ble Supreme Court in the case of **RATNAGIRI GAS AND POWER**

PRIVATE LIMITED. (supra) has also no manner of application in the present case.

The Conclusion

Summing up the discussion made above, this Court holds that the decision of the State to deploy the petitioner at Raiganj Medical College and Hospital, Uttar Dinajpur clearly violates the Wednesbury principle, thereby the State has committed a serious wrong which demands intervention, accordingly the issue is answered in affirmative, as a result, the impugned notification dated May 27, 2025 and the list annexed thereto so far those documents relate to the deployment of the petitioner at Raiganj Medical College & Hospital, Uttar Dinajpur as SR are set aside. The Department is directed to deploy and/or engage the petitioner in the second vacancy of SR in the discipline of anaesthesiology at R.G. Kar Medical College and Hospital with immediate effect.

WPA 12496 of 2025 is allowed without any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)

Later

After delivery of judgment, Mr. Nag, learned Advocate for the State prays for stay of the operation of this judgment and order at least till October 07,

2025 enabling the State to prefer an appeal before the first available Vacation Bench.

Prayer is considered and is rejected.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)