

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.

with

WPA 12309 of 2025

Dr. Debashis Halder

Vs.

The State of West Bengal & Ors.

with

WPA 12310 of 2025

Dr. Asfakulla Naiya

Vs.

The State of West Bengal & Ors.

For the petitioner :
in **WPA 12496 of 2025**.

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

For the petitioner :
in **WPA 12309 2025**
& **WPA 12310 of 2025**.

Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Gulsanwara Pervin.

For the State :
in **WPA 12496 of 2025**
and
WPA 12310 of 2025.

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

For the State :
in **WPA 12309 of 2025**

Mr. Kalyan Bandopadhyay, Ld. Sr. Adv.,
Mr. Sirsanya Bandopadhyay, Ld.Sr.
Standing Counsel,
Mr. Pramiti Bandopadhyay,
Mr. Arka Kumar Nag.

For the Respondent Nos.2 & 3: Mr. Debayan Sen,
Mr. Niket Ojha.

For the Respondent No.7 : Mr. D.N. Maiti,
in **WPA 12496 of 2025** Mr. A. Santra.
& for the respondent no.5
in **WPA 12309 of 2025**
& **WPA 12310 of 2025**.

Heard on : 28.07.2025

Judgment on : 30.07.2025

Biswajit Basu, J.

1. The State, in all the matters, has taken a common objection that the petitioners since are holding civil posts in relation to the civil service under the State, they should have approached the West Bengal Administrative Tribunal (hereinafter referred to as the '**said Tribunal**' in short) *first*, instead of the High Court directly. On behalf of the State, it is suggested that to avoid unnecessary wastage of the Court's valuable time, the issue regarding maintainability of these writ petitions may be addressed first. The Court, accepting the said suggestion, proceeds to dispose of the said objection as the preliminary issue for all the writ petitions analogously.
2. The objection so raised though was expressly overruled by the Hon'ble Division Bench of this Court in the case of **THE STATE OF WEST BENGAL & ORS. vs. DR. RAHUL BANSAL & ORS.** reported in **(2018) 2 Cal LT 436(HC)** but the Learned Advocate General and Mr. Kalyan Bandopadhyay, learned senior advocate who is representing the State in *WPA 12309 of 2025* (**Dr. Debashis Halder vs. The State of West Bengal and Ors.**) submit that some of the relevant judgments of the Hon'ble Supreme Court and the High Courts and the relevant laws on

the issue were not placed before the said Hon'ble Division Bench, therefore, according to them, the issue needs a fresh look.

3. The facts necessary to deal with the said preliminary issue are thus; the petitioners, as non-sponsored candidates, had pursued M.D./M.S. courses in their respective disciplines from R.G. Kar Medical College, a Government Medical College upon execution of indemnity bonds, as required in terms of the Notification issued by the Department of Health & Family welfare (MERT) Branch, Government of West Bengal(hereinafter referred to as '***the said Department***' in short) bearing No. HF/O/MERT/912/ME/MISC-78-13 dated July 31, 2013 read with the Notification bearing No. HF/O/MERT/923/ME/MISC-78-13 dated June 10, 2014. The petitioners, by executing such bonds, had given an undertaking that after completion of the course, they shall serve the State for a period of three years, in default, would pay penalty of a sum of **Rs. 10,00,000/- (Rupees Ten Lakhs)** for each defaulting year to the State.
4. The petitioners have completed their respective M.D./M.S. courses from the said College. The said Department, thereafter, to engage the petitioners as senior residents at different Medical College Hospitals/Teaching Institutions under it, had notified the dates for counselling vide notice bearing No. HAD/12M-01-2025/M/549 dated March 06, 2025. The petitioners had participated in the said counselling and had opted for the preferred place of their posting on the basis of the vacancy list and had also submitted formal self declaration for Senior Resident (SR) Bond Engagement to the effect

that the option so exercised was final and not susceptible to future change.

5. The Department of Health & Family Welfare, MA(MES) Branch, Government of West Bengal by the notification bearing no. HF/O/MA(MES)/353/ME/MISC-161-2025 dated May 27, 2025 and the notification bearing no. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025 has engaged the petitioners as Senior residents in different departments of the Institutions mentioned in the list annexed thereto. The petitioners are challenging the said Notifications on the ground that the respondent authorities, in assigning posting to them, have arbitrarily deviated from the merit list as well as the option exercised by them during the said counselling process without any cogent reason thereby have rendered the counselling process and the merit list redundant.

Let me now consider the arguments of the learned counsel for the parties on the said preliminary issue.

6. The learned Advocate General argues as follows:-

(i) The petitioners are raising disputes in relation to the condition of their service, which being the 'affairs of the State', squarely comes within the definition of 'service Matters', as defined under Section 3(q) of The Administrative Tribunals Act, 1985 (hereinafter referred to as '**the said Act of 1985**' in short), besides, they are holding civil posts and the disputes sought to be raised in the writ petitions are in relation to their recruitment to the said post, consequently, by virtue of Section 15 thereof, the jurisdiction, power

and authority to decide the said disputes exclusively vests in the Tribunal.

(ii) The Hon'ble Supreme Court in the case of **STATE OF ASSAM AND OTHERS vs. SHRI KANAK CHANDRA DUTTA** reported in **AIR 1967 Supreme Court 884** and the decision of the Constitution Bench in the case of **STATE OF GUJRAT AND ANOTHER vs. RAMAN LAL KESHAV LAL SONI AND OTHERS** reported in **(1983) 2 Supreme Court Cases 33** has laid down the criteria to identify a 'civil post' under the State, the said criteria since are matching with the incidences of the posts which the petitioners are holding, the jurisdictional bar under the said Act of 1985 to entertain the writ petitions by the Single Bench of the High Court comes into play.

(iii) Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **UNION OF INDIA vs. M.A. CHOWDHARY** reported in **(1987) 4 Supreme Court Cases 112** to contend that even a contractual employee under the Government is holding a 'civil post' within the meaning of Article 311(1) of the Constitution.

(iv) Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **STATE OF WEST BENGAL AND ANOTHER vs. WEST BENGAL REGISTRATION COPYWRITERS ASSOCIATION AND ANOTHER** reported in **(2009) 14 Supreme Court Cases 132** to contend that the respondents though were found to be mere licensee copywriters but had to approach the Tribunal for redressal of their grievances as in view of the nature of jobs assigned to them, they are coming within the purview of 'affairs of the State'.

(v) The decision of the Hon'ble Supreme Court in the case of **RAJEEV KUMAR AND ANOTHER vs. HEMRAJ SINGH CHAUHAN AND OTHERS** reported in **(2010) 4 Supreme Court Cases 554** is cited for the proposition that the Tribunals will function as the *only* Court of first instance in respect of the areas of law for which they have been constituted.

(vi) The Hon'ble Supreme Court in the case of **ASSOCIATION OF MEDICAL SUPERSPECIALITY ASPIRANTS AND RESIDENTS AND OTHERS vs. UNION OF INDIA AND OTHERS** reported in **(2019) 8 Supreme Court Cases 607** has held that the petitioners are rendering a compulsory service to the State under the bond therefore, to resolve any dispute in relation to the said service, they are required to approach the Tribunal.

(vii) Heavy reliance is placed on the Judgment of the Hon'ble Division Bench of the Andhra Pradesh High Court in the case of **MOHAMMAD AZMAT ALI vs. DIRECTOR OF INTERMEDIATE EDUCATION, ANDHRA PRADESH, HYDERABAD AND OTHERS** reported in **2011 SCC OnLine AP 769** to contend that the person appointed by the Government on contract service holds a civil post under the State and the service matters concerning such a person falls within the ambit of Section 15(1)(a) and (b) of the said Act of 1985 thereby necessitating invocation of the jurisdiction of the Tribunal as the Court of first instance.

7. Mr. Kalyan Bandopadhyay, learned Senior advocate, argues as follows:-

(i) The Hon'ble Supreme Court in the case of **L. CHANDRA KUMAR vs. UNION OF INDIA AND OTHERS** reported in (1997) 3 Supreme Court Cases 261 has upheld the constitutional validity of the creation of the Administrative Tribunals therefore, when such a Tribunal is functioning, the petitioners are required to approach it as a Court of first instance.

(ii) Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **SHRI KANAK CHANDRA DUTTA (supra)** and in the case of **C.C.,C.E. AND S.T. BANGALORE (ADJUDICATION) AND OTHERS vs. NORTHERN OPERATING SYSTEMS PRIVATE LIMITED** reported in (2022)17 Supreme Court Cases 90 to contend that the relationship of master and servant between the employer and the employee can be inferred if all or some of the incidences of engagement exists e.g., when the employer has a right to control the manner and method of the work to be done by the employee and when there is payment of wages or remuneration by the employer to the employee. In the instant matters, the State controls the nature of jobs to be assigned to the petitioners and the manner in which the petitioners are required to discharge the said assignment, the remuneration would be paid to them from the head of salary account of the existing staff of same categories of the institution to which they will be attached, therefore, all these incidents of the engagement of the petitioners are indicative of existence of master-servant relationship

between the petitioner and the State, sufficient to attract the provision of Section 15 of the said Act of 1985, in consequence thereof, the Tribunal is vested with exclusive jurisdiction to deal with the issues sought to be canvassed in the present writ petitions.

8. Mr. Pratik Dhar, learned senior advocate for the petitioner in WPA 12496 of 2025 argues as follows:-

- i.** The object of creation of Tribunals as enshrined under Article 323-A of the Constitution is to establish Administrative Tribunals to adjudicate disputes with respect to recruitment and conditions of service of the persons appointed in public service. The legislature, to achieve the said object, has promulgated the said Act of 1985 to create such Tribunals. Section 15 of the said Act of 1985 vests exclusive jurisdiction, powers and authority upon the Tribunal to decide such disputes.
- ii.** The petitioners neither have been recruited in the civil service of the State nor have been appointed in a civil post under the State, they have been merely '*deployed*' as senior residents, as such, the dispute raised in the writ petitions cannot come within the meaning of 'service matters' as defined under Section 3(q) of the said Act of 1985 and the scope of Section 15 thereof cannot be enlarged so as to include the said disputes within its sweep.
- iii.** The phrase "*appointment*" or the phrase "*recruitment*" in relation to a civil post under the State or to any civil service of the State

postulates some procedures to be followed such as publication of proper advertisement inviting applications from eligible candidates, holding of a selection process by a body of experts, issuance of proper orders of appointment to the eligible person(s), to follow such procedures is the mandate of the Articles 14 and 16 of the Constitution but the same are absent in engaging the petitioners, reference in this context is made to the decisions of the Hon'ble Supreme Court in the case of **UNION PUBLIC SERVICE COMMISSION vs. GIRISH JAYANTI LAL VAGHELA AND OTHERS** reported in (2006) 2 Supreme Court Cases 482, in the case of **STATE OF ORRISA AND ANOTHER vs. MAMATA MOHANTY** reported in (2011) 3 Supreme Court Cases 436, in the case of **TAGIN LITIN vs. STATE OF ARUNACHAL PRADESH AND OTHERS** reported in (1996) 5 Supreme Court Cases 83 and in the case of **PRAFULLA KUMAR SWAIN vs. PRAKASH CHANDRA MISRA AND OTHERS** reported in 1993 Supp(3) Supreme Court Cases 181.

- iv.** Reliance is placed on an unreported decision dated March 17, 2025 of the Hon'ble Supreme Court passed in Special Leave Petition(Civil) NO. 19648 of 2023(**THE JOINT SECRETARY, CENTRAL BOARD OF SECONDARY EDUCATION & ANR. vs. RAJ KUMAR MISHRA & ANR.**) to contend that the master-servant relationship between the employer and employee cannot be inferred only on the ground that the employer has

supervisory and jurisdictional control over the employee, such approach is not only very simplistic but also erroneous under the law, a direct master and servant relationship has to be established on paper.

v. The petitioners have not been appointed or recruited in any civil post under the State, the Department of Health & Family Welfare, MA (MES) Branch, Government of West Bengal, by the impugned notifications bearing no. HF/O/MA(MES)/353/ME/MISC-161-2025 dated May 27, 2025 and bearing no. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025, has *only deployed* the petitioners as senior residents in the Medical Colleges or Institutions to discharge their obligation to serve the State for the bond period, the provision of Section 15 of the said Act of 1985 does not get attracted as there is no appointment and/or recruitment.

vi. The Hon'ble Division Bench of this Court in the case of **RAHUL BANSAL (supra)**, after considering all relevant judgments of the Hon'ble Supreme Court and all relevant laws holding the field had expressly overruled the identical objection taken by the State, holding *inter alia*, that the doctors who had executed the indemnity bonds in favour of the State to get admission in the State medical teaching institutions, were not appointed in the service of the State nor were holding a civil post, *they were deployed as contractual medical officers*, as such are not Government servants. The Hon'ble Division Bench, in coming to

the said conclusion had considered the decisions of the Hon'ble Supreme Court in the case of **SHRI KANAK CHANDRA DUTTA (supra)** and **RAMAN LAL KESHAV LAL SONI (supra)**.

vii. The Hon'ble Division Bench since has considered the issue in detail, there is no scope to take a different view. However, even in the case of disagreement with the said judgment of the Hon'ble Division Bench, the only course left open to this Court is to refer the issue to the Hon'ble The Chief Justice for constitution of a Larger Bench to examine it, as has been held by the Hon'ble Supreme Court in the case **LALA SHRI BHAGWAN & ANOTHER vs. SHRI RAM CHAND & ANOTHER** reported in **1965 SCC OnLine SC 73** and by the Hon'ble Division Bench of this Court in the case of **SUDIPTA KOLEY VS. M. BHOWMICK AND ORS.** passed in WP No. 84 of 2019 on July 10, 2019.

viii. *A decision is an authority for what it decides and not what can logically be deduced therefrom*, in support of such contention, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **COMMISSIONER OF CUSTOMS(PORT), CHENNAI vs. TOYOTA KIRLOSKAR MOTOR(P) LTD.** reported in **(2007) 5 Supreme Court Cases 371**. None of the judgments cited on behalf of the State qualifies the said test, they are all factually distinguishable and are irrelevant to the issue under consideration.

9. Mr. Samim Ahammed, the learned advocate for the petitioners in WPA 12309 of 2025 and WPA 12310 of 2025 argues as follows: -

(i) The petitioners have been engaged under indemnity bonds to serve the State for a fixed period, in view of the nature of their such engagement, it *cannot* be said that they are holding a ‘civil post’ under the State within the meaning of Article 311 of the Constitution, reference in this context is made to the decision of the Hon’ble Supreme Court in the case of **STATE OF KARNATAKA VS. AMEERBI & ORS.** reported in **(2007) 11 Supreme Court Cases 681.**

(ii) Selection and appointment by a competent government authority, payment of salary from public funds, control and supervision by the Government, though not individually exclusive but are determining factors in totality to decide as to whether a person holds a civil post. In the instant case, there is no selection process and in absence thereof, it cannot be said that the petitioners have been appointed in any post, rather they have been ‘deployed’ to serve the State during the bond period, therefore, by no stretch of imagination, such deployment can be said to be appointment in civil posts under the State. The Hon’ble Supreme Court, in the case of **SHRI KANAK CHANDRA DUTTA(supra)**, has clarified “what a civil post signifies”, which was also considered by the Hon’ble Division Bench in the case of **RAHUL BANSAL (supra).**

- (iii) Reliance is placed on the decisions of the Hon'ble Supreme in ***GIRISH JAYANTI LAL VAGHELA (supra)*** and in the case of ***KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ORS. vs. S.G. KOTTURAPPA AND ORS.*** reported in **(2005) 3 Supreme Court Cases 409** to contend that persons engaged on short term terminable contracts without recourse to statutory recruitment process do not hold 'civil post'.
- (iv) Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***ANDHRA PRADESH STATE ELECTRICITY BOARD AND ORS. vs. M.A. HAI AZAMI AND ORS.*** reported in **(1992) Supp(1) Supreme Court Cases 660** to contend that if the relief is unconnected with the public post and independent of service conditions thereof, the Tribunal has no jurisdiction to deal with such claim.
- (v) The Department of Health & Family Welfare, Health Services(Medical Administration) Branch, Government of West Bengal by an order bearing Memo no. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated February 16, 2023 has laid down the *Standard Operating Procedure* for dealing with different issues of non-sponsored candidates engaged as senior residents under indemnity bond, Paragraph 7A thereof though mentions the phrase '*appointment*' but the said phrase alone is not decisive to understand the nature of their engagement. The term '*appointment*' is context-specific, to buttress the said argument, reliance is placed on the decision of the Hon'ble Supreme Court

in the case of **STATE OF GUJARAT AND ORS. vs. P.J. KAMPAVAT AND ORS.** reported in **(1992)3 Supreme Court Cases 226.**

(vi) The petitioners have not been appointed in terms of *West Bengal Service (Appointment, Probation and Confirmation) Rules, 1979*, as such cannot claim the status of "Government employees" as defined under Rule 2(c) of the *West Bengal Services (Duties, Rights and Obligations of Government Employees) Rules, 1980*, it is therefore an absurd suggestion that the Tribunal would be an appropriate forum to adjudicate their grievances.

(vii) The State, before the Full Bench of this Court in the case of **TANMAY GHOSH AND ORS. vs. STATE OF WEST BENGAL** reported in **2015 (2) CHN (CAL) 461** took a specific stand that the civil defence volunteers were contractual appointees, as such cannot said to be holding 'civil posts', therefore, neither the said Act of 1985 applies to them nor they are entitled to the protection under Article 311 of the Constitution. The State, however is now contradicting its said earlier stand only to delay the disposal of the present writ petitions, though the said issue has been settled by the Hon'ble Division Bench in the case of **RAHUL BANSAL(supra)** with a caution as recorded in the paragraph 39 the judgment, therefore, the said objection may be overruled with exemplary costs.

10. Reply of the learned Advocate General

The petitioners have not explained the nature of their engagement in the Government hospitals, they are, at least, no longer students. The Hon'ble Supreme Court in the decision of **ASSOCIATION OF MEDICAL SUPERSPECIALITY ASPIRANTS AND RESIDENTS (supra)** has identified the engagement of the doctors like petitioners as service under the State. The dispute with regard to the condition of their such service, naturally comes within the purview of 'service matters', consequently the provision of Section 15 of the said Act, 1985, gets attracted.

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

11. In the case of **RAHUL BANSAL (supra)**, the Hon'ble Division Bench, in the backdrop of similar factual matrix, had overruled the identical objection of the State, nonetheless the State has once again invited this Court to decide the said issue on the ground that the relevant judgments of the Hon'ble Supreme Court and the High Courts so also the laws governing the field were not placed before the said Hon'ble Division Bench, had there been so, the decision would have been otherwise.

The task of this Court, therefore, is confined to the scrutiny as to whether in the said case, relevant judgments and laws were left out of the consideration of the said Hon'ble Division Bench.

12. On a close reading of the *paragraphs 13, 14 and 18* of the said judgment, it is apparent that the Hon'ble Division Bench has

extensively considered the meaning of ‘*government employee*’, the definition of ‘*service matters*’ as defined under Section 3(q) of the said Act of 1985, the scope and ambit of Section 15 thereof, therefore, I am unable to accept that the Hon’ble Division Bench was not apprised of the relevant provisions of the said Act of 1985 or the laws governing the field. To understand the extent of consideration of the relevant laws on the issue by the said Hon’ble Division Bench, the aforementioned paragraphs of the judgment of **RAHUL BANSAL (supra)** are reproduced below: -

“**13.** There seems to be little doubt that employment, whether private or public, has its origin in a contract. Ordinarily, two persons having entered into a contract with one party to the contract willing to serve the other on terms and conditions as agreed upon by and between them, the person employing is called the employer while the employee is the other party to the contract who agrees to render work for the employer. Insofar as employment under the State is concerned, i.e. public employment, although it is initially contractual, but the terms and conditions of service being regulated by statutory provisions, the employee upon accepting the terms and conditions of the offer of appointment earns the status of a Government employee. In terms of rule 2(c) of the West Bengal Services (Duties, Rights and Obligations of Government Employees) Rules, 1980 a Government employee means “a person appointed to a service or post in connection with the affairs of the State”.

14. Employment of a person for rendering services under the Union and the States is covered by Part XIV of the Constitution. While Article 309 relates to recruitment and conditions of service of person serving the Union or a State, Article 310 relates to tenure of office of persons serving the Union or a State. The control that can be exercised by the Union or a State over any one of its employees is, however, subject to the safeguards in Article 311. For the purpose of conducting

examinations for appointment to the service of the Union as well as the States, the Constitution in Article 320 has ordained that it shall be the Union Public Service Commission or the State Public Service Commissions, as the case may be, to conduct such examinations. These provisions of the Constitution have to be borne in mind while understanding the ambit and scope of section 15 of the 1985 Act.

.....

18. The definition of ‘service matters’ is wide enough to take within its fold any kind of dispute that could arise in relation to a person’s conditions of service in connection with the affairs of the Union or of a State. However, ‘civil post’ has not been defined in the 1985 Act.”

- 13.** The Hon’ble Division Bench, to trace the meaning of the term ‘civil post’, at first, had considered the case of **SHRI KANAK CHANDRA DUTTA (supra)** and at *paragraph 21* of the judgment has concluded as follows:-

“21. The decision in Kanak Chandra Dutta (supra) seems to be the first, where the meaning of the term ‘civil post’ was attempted to be traced by the Supreme Court. Let us now take a quick look at subsequent decisions of the Supreme Court, upon consideration of Kanak Chandra Dutta (supra).”

- 14.** The Hon’ble Division Bench, thereafter, had proceeded to consider the decision of the Constitution Bench of the Hon’ble Supreme Court in the case **RAMAN LAL KESHAV LAL SONI (supra)** with respect to laying down of *any distinctive test* to determine when can a person be said to hold a civil post under the Government and at *paragraph 23* of the judgment, has held that whether a person is a servant of the State or not, is a question of fact. The said paragraph of the said judgment is quoted below :-

“23. What follows from the aforesaid extract is that whether a person is a servant of the State or not, is a question of fact which is to be decided in each case depending on the circumstances of that case.”

15. The Hon’ble Division Bench, then, had proceeded to consider the decision of the Hon’ble Supreme Court in the case of **GIRISH JAYANTI LAL VAGHELA (supra)** on the issue as to whether a person working under the Government on a contract basis is a ‘Government servant’ and at *paragraph 25* of the said judgment, has held as follows:-

“25. The aforesaid decision, therefore, is an authority for the proposition that where the Government appoints a person on contract *de hors* the statutory rules for recruitment and violating the guarantee of equality enshrined in Article 16 of the Constitution, such a contractual appointee does not become a Government servant.”

16. The Hon’ble Division Bench, next, at *paragraph 26* of the judgment, had considered the decision of Hon’ble Supreme Court in the case of **AMEERBI (supra)**, in the said decision, the Hon’ble Supreme Court has held that the State, in terms of a scheme, may exercise control over a section of persons working but thereby only, they do not become entitled to protection under Article 311 of the Constitution. The said *paragraph 26* of the judgment of the Hon’ble Division Bench, is quoted below, for ready reference : -

“26. The Supreme Court, yet again, in the decision reported in (2007)11 SCC 681 (*State of Karnataka v. Ameerbi*), had the occasion to consider whether anganwadi workers hold civil posts and whether their application before the State Administrative Tribunal was maintainable under section 15 of

the 1985 Act or not. Upon consideration of various decisions, which included *Kanak Chandra Dutta* (supra) but not *Raman Lal Keshav Lal Soni* (supra) and *Girish Jayanti Lal Vaghela*(supra), it was held that the respondents in the civil appeal were not the holders of any civil post and, therefore, the tribunal had no jurisdiction to entertain the application. The tests laid down in *Kanak Chandra* (supra) were not accepted on the following reason:

“**20.** Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case.”

The decision reported in (1992) 4 SCC 432(*Union of India v. Deep Chanda Pandey*), wherein casual employees were found to come within the purview of Section 14(1) of the 1985 Act was distinguished on the ground that the employees were seeking temporary status and they had claimed a right to continue in employment; and, in view of the nature of the claim, the Supreme Court had opined that the application under section 14 of the 1985 Act was maintainable. Insofar as the other cited cases are concerned, it was noticed that the same centres around application of a statute, all the posts were statutory ones, and terms and conditions of services of the holder of the posts were governed by statutes. Considering that anganwadi workers were appointed under a scheme which is not of a permanent nature, although the same might have continued for a long time, and that the recruitment process was carried out through a committee, the Court observed that the same would not render the

incumbents as holders of civil posts. One of the questions raised before the Court was in regard to the right of an anganwadi worker to contest an election. It was held that they are indisputably free to do so” and further that a “holder of a civil post may not be entitled thereto”. Finally, it was held that the State in terms of a scheme may exercise control over a section of persons working but thereby only, they do not become entitled to protection under Article 311 of the Constitution.”

17. The Hon’ble Division Bench, to ascertain the nature of engagement of similarly placed doctors, thereafter had considered the Notification bearing No. HF/O/MA/1468/HPT/23T-35-16 dated July 26, 2016 issued by the Department of Health & Family Welfare, Medical Administration Branch for contractual engagement of upto 230 pass-out non-service Post Doctoral/MD/MS/Post Graduate diploma students from West Bengal University of Health Sciences by deploying them as Specialists in Multi/Super Speciality and Secondary Tier hospitals in West Bengal and at *paragraphs 28 to 31* of the judgment, has concluded its finding as follows: -

“28. The notification dated July 26, 2016 in its subject clearly makes a distinction. The notification is applicable to “non-service post-Doctoral/MD/MS/Post Graduate Diploma students from the West Bengal University of Health Sciences”. It refers to contractual engagement by deploying the students as specialists in the multi/super speciality hospitals and other hospitals in West Bengal after publication of their results at a consolidated monthly remuneration of Rs. 50,000/- for the period as per the bond executed by the incumbents during their entry in the courses under the West Bengal University of Health Sciences. As has been held in Raman Lal Keshav Lal Soni (supra), a single factor may not be considered as absolutely

essential for determining whether one is the holder of a civil post and, therefore, merely because the charge for paying consolidated monthly remuneration to the students is debitable under the existing head of account in respect of salaries of existing staff of same categories of institutions, it is not decisive. The other factors mentioned in Raman Lal Keshav Lal Soni (supra), as found from the passage that we have extracted above, would be necessary to be examined but in the absence of the relevant data, it would be difficult for us to embark on such an exercise. Even in terms of the decision in Girish Jayanti Lal Vaghela, a person appointed by the Government on contract basis without following the rules does not become a Government servant.

29. However, even in the absence of the necessary data to examine the claim on the anvil of the decision in Raman Lal Keshav Lal Soni (supra), what is interesting to note is that the writ petitioner does not appear to have been appointed either in the services of the State or on a civil post. The writ petitioner, along with other doctors, was merely deployed to act as a contractual medical officer. The dictionary meaning of the word deploy, relevant for our purpose, is to use something or someone, especially in an effective way.

30.We have no doubt in our mind that the word 'deploy' has been used consciously instead of 'appoint' so as not to make available to the pass out non-service Post-Doctoral/MD/MS/Post Graduate Diploma students from the West Bengal University of Health Sciences the protection that is normally available to a Government servant under Article 311 of the Constitution. Once the Government has consciously decided against appointment of such non-service students in the services of the State or on civil posts, for whatever reason it might have had in mind, it is not open to it at this stage, to overcome the rigours of the directions contained in the impugned judgment and order, to contend that the writ petitioner ought to have moved the tribunal.

31. Assuming that the writ petitioner was appointed and not merely deployed, his appointment is no more than a contractual one for a period of 2(two) years on a monthly remuneration. There are no terms and conditions of service mentioned in the notification dated August 07, 2017. Applying the law laid down in *Girish Jayanti Lal Vaghela* (supra), the conclusion is inescapable that the writ petitioner is not a Government servant.

18. In **RAHUL BANSAL's(supra)** case, the Department of Health & Family Welfare, Medical Administration Branch, Government of West Bengal by the notification bearing No. HF/O/MA/1060/HPT/32M-77-17 dated August 07, 2017 had *deployed* the respondent (Dr. Rahul Bansal) to an Institution mentioned in Column 'E' in the list annexed with the said Notification to serve the State as '**Contractual Medical Officer(Specialist)**' for the bond period.

The identical notifications of the Department dated May 26, 2025 and May 27, 2025 whereby the petitioners have been *deployed* to serve the State for the bond period are under challenge in the present writ petitions.

A comparison between these two sets of notifications would clearly show the similarities in terms of the object sought to be achieved by the said notifications inasmuch as all the above notifications aim to *deploy* pass-out Non-sponsored post graduate doctors to serve the Medical Institutions in the State as per the bond executed by them, moreover the common source notification is the Notification issued by the Department bearing No. HF/O/MERT/923/ME/MISC-78-13 dated June 10, 2014, *only the terminology associated therewith differs*, the aforesaid Notification

dated August 07, 2017 refers to the doctors so deployed as **‘Contractual Medical Officer(Specialist)’** whereas in the impugned Notifications, such doctors are referred to as **‘Senior Residents’**, therefore the purport of the aforesaid Notifications cannot be inflated to entertain the possibility that posts were created and that the doctors so deployed in the service of the State were *appointed in the posts* of **Contractual Medical Officer(Specialist)** or **Senior Residents**.

19. The Hon’ble Division Bench, in the case of **RAHUL BANSAL (supra)** has extensively analysed the meaning of the word ‘deploy’ and the nature of engagement of persons deployed to serve the State during the bond period in terms of the aforesaid Notifications, as such the said decision is the **authority** for the *ratio decidendi* that such engagement cannot be equated to appointment in a civil post and that the persons so engaged are not ‘Government servants’ this Court, therefore, is bound by the said *ratio* and is not inclined to take any other view.

20. It is clear from the above discussion that in the decision of **RAHUL BANSAL(supra)**, the Hon’ble Division Bench had considered all the relevant provisions of the said Act of 1985 and the relevant judgments of the Hon’ble Supreme Court in coming to a conclusion that the objection regarding maintainability of similar type of writ petition before the High Courts is not sustainable and has accordingly overruled it.

21. Even an independent scrutiny to the issue by this Court would inevitably result in same conclusion regarding the nature of engagement of the petitioners inasmuch as by no stretch of imagination, such engagement and/or deployment can be equated with the appointment or recruitment in a public office, suffice to quote *paragraph 12* of **GIRISH JAYANTI LAL VAGHELA**(*supra*).

“**12.** Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The word “employment or appointment” cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.”

22. *A decision is an authority for what it decides and not what can logically be deduced therefrom, as has been held by the Hon'ble Supreme Court in the case of **TOYOTA KIRLOSKAR MOTOR (supra)**. The judgments cited on behalf of the State fail to qualify the said test of relevancy. However, this Court, to allay the objection raised by the State, shall venture an extra mile to hold that the judgments relied on by the State are no pointer to the issue inasmuch as those are distinguishable on facts.*

In the case of **WEST BENGAL REGISTRATION COPYWRITERS ASSOCIATION (supra)**, the issue was whether the copywriters are entitled to regular appointment under the State, obviously, for such relief, one has to approach the Tribunal.

The case of **M.A. CHOWDHARY (supra)** is a case of appointment and re-employment of a person, which is not the situation here.

In **RAJEEV KUMAR (supra)**, the Hon'ble Supreme Court did not approve addition of a party in the High Court for the first time in a case which was originated from the Tribunal, the said case stands on a different factual footing and is not remotely related to the issue under consideration.

In the case of **ASSOCIATION OF MEDICAL SUPERSPECIALITY ASPIRANTS AND RESIDENTS (supra)**, the Hon'ble Supreme Court has decided the constitutional validity of the bond, as such, the said case is no pointer to the issue under consideration.

In the case of **MOHAMMAD AZMAT ALI (supra)**, the issue before the Hon'ble Division Bench of the Andhra Pradesh High Court was

whether a dispute raised by a person appointed by the State on contract basis under the relevant rules of the State would fall under the ambit of Section 15 of the said Act of 1985, in the present case, there is no question of appointment, therefore, the ratio of law laid down in the said decision is not applicable here.

There is no dispute with the proposition of law laid down in **L. CHANDRAKUMAR (supra)** but this decision is of no help in deciding the present issue, so the decision in **C.C.,C.E. AND S.T. BANGALORE (ADJUDICATION) (supra)**.

23. The Hon'ble Division Bench, at *paragraph 39* of the judgment, which is quoted below, had cautioned the State against pursuing unmeritorious appeals: -

“**39.** Before parting, we wish to record that the controversy that we were called upon to resolve in this writ appeal has bared once again the strange ways of functioning of the Government machinery. Unmeritorious appeals like this not only clog the docket but precious judicial hours are lost in hearing and disposal of the same, when the time taken therefor could have been put to better use by us for the overall benefit of the State and its people. We hope and trust that the State Government would be more careful in the future in deciding whether to unnecessarily prolong the life of a litigation by presenting such an appeal which is thoroughly unmeritorious.”

In an ideal scenario the State, keeping the said caution in mind, should have done due diligence and should have taken care and caution before re-agitating the identical objection which has already been overruled by the Hon'ble Division Bench of this Court in the case of

RAHUL BANSAL (supra) but in the present case, such care and caution have not been taken, however, this Court still reposes confidence on the State that in future, same would not be overlooked.

Summing up the discussion made above, this Court decides the preliminary issue in favour of the petitioners overruling the objection of the State.

The writ petitions are now taken up separately on merits.

Parties to act on the server copy of the judgment duly downloaded from the official website of this Court.

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

(BISWAJIT BASU, J.)

LATER

After delivery of judgment Mr. Arka Nag, learned Advocate for the State prays stay of operation of it, the prayer is considered and refused.

A prayer for adjournment of the hearing of the writ petitions is made on behalf of the State.

On July 28, 2025, when the judgment was reserved, it was made clear to the State that in the event the objection is not sustained, the hearing would commence immediately after delivery of judgment.

Learned Advocate General submits that the State intends to assail the judgment delivered today in appeal, for which some time is necessary.

The State, of course, has a right of appeal, but the prayer of the petitioner for interim protection is equally justified.

The respondents, therefore, are restrained from taking any coercive step against the petitioner in *WPA 12496 of 2025* till the disposal of the matter.

The writ petitions would be taken up for hearing on merit separately at the first sitting of the Court on August 05, 2025, list the matters accordingly.

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

(BISWAJIT BASU, J.)