
(2015) 12 JH CK 0014
In the Jharkhand High Court
Case No : W.P.(S) No. 5653 of 2015

Aditya Narnoly and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Constitution of India, 1950 — Article 19, 254

Citation : (2016) 1 JLJR 531

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Shivani Verma, J.C to A.A.G, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. Petitioners herein are interested in appointment to the post of Lecturer, Reader and Professor in their respective cases under Advertisement No. 7581 dated 7.11.2015 (Annexure-1). Petitioner No. 1 and 2 are interested in applying in the discipline of Orthodontics and Dento-facial Orthopaedics for the post of Lecturer and Reader respectively. Petitioner No. 3 is interested in applying for the post of Professor in the discipline of Oral and Maxillofacial Surgery and Oral Implantology

3. It is relevant to indicate herein that Rajendra Institute of Medical Science, Ranchi (hereinafter referred to as RIMS for short) has set up a Dental College by virtue of the decision of the State Government under the provisions of the RIMS Act, 2002 vide notification dated 13.5.2015 (Annexure-9) having the capacity of 100 seats. The infrastructure is already ready, clearance certificate has been granted by the State Government and affiliation is granted by the Ranchi University. The Dental Council of India (hereinafter referred to as DCI for short) has also granted recognition to the college with 100 seats in different subjects. Approval of the Cabinet on 115 teaching as well as non-teaching posts has also

been granted as is referred to in the resolution dated 11.5.2015 notified in the extraordinary gazette of the State (Annexure-9).

4. Petitioners however are aggrieved as the eligibility criteria prescribed under the advertisement, specifically relating to the teaching experience has rendered them ineligible and is not also in consonance with the DCI guidelines, which is enclosed as Annexure-2 and 3 i.e., for Graduate course and Post Graduate course. According to them, there is no teaching experience required under the DCI guidelines for the post of Lecturer. For the post of Reader and Professor, 4 years teaching experience after Post Graduation and 5 years teaching experience as Reader is prescribed respectively. The impugned advertisement prescribes 3 years teaching experience as Tutor/Senior Resident in concerned subject for the post of Lecturer; 7 years after MDS from recognized Dental Institution for the post of Reader; 12 years after MDS from recognized Dental Institute/College is prescribed for the post of Professor, which is in teeth of the DCI Regulations and norms. It is urged by the petitioner that the State Government or RIMS cannot lay down experience qualification above what is prescribed under the DCI guidelines/norms.

5. This issue however need not detain us any further as it is well settled by the judgment rendered by the Hon"ble Supreme Court in the case of Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, . The opinion of the Apex Court on the issue as contained at para 11, 12 and 14 of the report is quoted hereinbelow:-

"Para 11. In Preeti Srivastava (Dr.) v. State of M.P., a Constitution Bench of this Court held: (SCC p. 154, paras 35-36)

"35. ... Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254 .

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact

on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education." (emphasis supplied)

Para 12. In *State of T.N. v. S.V. Bratheepa* three-Judge Bench of this Court followed *Preeti Srivastava* and explained *Adhiyaman* thus: (*Bratheep case*, SCC pp. 519-20, paras 9-10 & 12)

"9. ... If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. ... The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in *Preeti Srivastava (Dr.) case*. It is no doubt true, as noticed by this Court in *Adhiyaman case* that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. ... Excellence in higher education is always insisted upon by a series of decisions of this Court including *Preeti Srivastava (Dr.) case*. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including *Preeti Srivastava (Dr.) case* that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. ...

* * *

12. One other argument is further advanced before us that the criteria fixed by

AICTE were to be adopted by the respective colleges and once such prescription had been made, it was not open to the Government to prescribe further standards particularly when they had established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognising the colleges or granting affiliation, like AICTE or [the] university. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed."

(emphasis supplied)

Para 14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, paras 41(v) and (vi) of *Adhiyaman* would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in *Preeti Srivastava (Dr.)* and the decision of the larger Bench in *S.V. Bratheep* which explains the observations in *Adhiyaman* in the correct perspective. We summarise below the position, emerging from these decisions:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of *Adhiyaman* to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions,

keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations".

The object of the State or University in fixing the eligibility criteria higher than those fixed by the regulating body is to maintain excellence in higher education. The ratio laid down in para 14 of the judgment (*supra*) squarely applies to the instant issue and any challenge on those grounds is untenable in law.

6. The second ground urged by the petitioners is that there is no sanction of the State Government in laying down higher qualification. Petitioners by way of supplementary affidavit have stated that Regulations of RIMS has not been followed in enhancing the qualifications, as prescribed under the impugned advertisement. On this point detailed submission have been made by learned counsel for the petitioner as well as learned counsel appearing for the RIMS. Provisions of the RIMS rule 2002 framed by the State Government vide notification No. 518(1) dated 12.8.2002 in exercise of powers under Section 31 of the Act and RIMS Regulations notified by the Department of Health, Medical Education and Family Welfare vide gazette notification dated 22.9.2014 in exercise of powers under Section 32 of the Act of 2002 upon recommendation of the RIMS governing body have been placed.

7. Learned counsel for the respondent-RIMS in answer to the challenge made on the aforesaid issue has referred to the relevant provision of Section 5(iii), 6(vi) and 31 and 32 of the Act of 2002. He has also referred to the provisions of Rule 8 which relates to creation of the post. Learned counsel has also placed the provision of Regulation 2014, specifically regulation 6B(b)(ii) and 9(B). Learned counsel for the RIMS has submitted that constitution of Dental Institute/College is within the aim and object of the RIMS Act, 2002. Under the provisions of Rule 31, the State Government has framed the Rules in 2002 itself. Rule 8 provides for creation of the post by the Governing Body of the RIMS at par with the pay scale under the State Government, if any pay is to be increased of such post, the prior approval of the State Government is necessary. While creating post the norms and guidelines of the Medical Council of India (MCI), DCI and any other constitutional body should be kept in mind. Learned counsel for the RIMS has relied upon the provisions of Regulation 6(b)(ii) and 9B(b) and the note at the end of the rules and submitted that qualification of the post would be in the pattern of All India Institute of Medical Science(AIIMS). He has placed the advertisement issued by AIIMS at Annexure-A to their counter affidavit where under certain posts including that of Assistant Professor in the Center of Dental Education and Research were notified. It prescribes teaching experience of 3 years for the post of Assistant Professor which is equivalent to the post of Lecturer. It is submitted that if the pattern of AIIMS has been followed in the

fixation of teaching experience under the impugned advertisement for the post of Lecturer, the teaching experience required in respect of the post of Reader and Professor would automatically follow as per the DCI guidelines itself relied upon by the petitioner at Annexure-2 i.e. 4 years for the post of Reader added thereto and 5 years added there to for the post of Professor as teaching experience on the post of Reader. It therefore, comes to 3 years, 7 years and 12 years respectively for the post of Lecturer, Reader and Professor, which has been rightly laid down under the impugned advertisement. Learned counsel for the RIMS has stated on the basis of averments contained in the counter affidavit that various posts have been created as per the requirement of DCI after due approval of the State Government and roster clearance has also been granted as per the reservation policy of the State. Requirement of the qualification and experience, as prescribed by AIIMS, keeping in mind the requirement of DCI, has been made while issuing the impugned advertisement dated 7.11.2015. It is the submission of learned counsel for the RIMS that the respondents are well within their jurisdiction to prescribe better qualification and experience under the DCI guidelines for the pursuit of excellence in education.

8. Learned counsel for the respondent - State has also relied upon the provisions of the Regulation 9B and reiterated their stand as canvassed by the learned counsel for the RIMS. According to them the Department has sanctioned the posts and granted roster clearance. Fixation of the qualification, publication of advertisement, selection of suitable candidate and appointment is the responsibility of RIMS Governing Body for which no approval of the State Government is needed.

9. Learned counsel for the petitioner has also referred to the provisions of the RIMS Act, Rules framed thereunder and the Regulations. He has relied upon Rule 12(v), 31 and 32 of the Act of 2002. He has referred to Rule 11(ii) of the 2002 Rules, which relates to the creation of the post and submitted that it requires the laying down of same teaching experience qualification as laid down by the DCI, which has been derogated from. He has referred to Regulation 8 of the RIMS Regulation, 2014, and submitted that sanction of the Departmental Minister in the matter of creation of the posts which has not been obtained in the instant case. Learned counsel for the petitioner has placed reliance upon the judgment rendered by the Apex Court in the case of Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, , para 31 and 32 in support of his submission that the rules are silent on the particular aspects and no Executive orders have been issued by the State Government to fill up the gap on the question of enhancement of qualification. Learned counsel for the petitioner has also placed reliance upon the same judgment in the case of Visveswaraiah Technological University and another Vrs. Krishnendu Halder and others (supra) to buttress his submission.

10. In order to deal with the second aspect of the matter relating to the contention that sanction for enhancement of teaching experience has not been

granted by the State Government in terms of the Act and Rules of 2002 and Regulation of 2014 framed there under, it would be proper to refer some of these provisions. Under the aim and object of the RIMS Act, 2002, constitution of Dental Institute/ College is duly conceived, as is evident from Section 5(iii) and 6(vi) of the Act of 2002. The provision of Section 5(i) also shows that Acts intends to achieve excellence in the field of Medical education and other related subject. Section 12 refers to the RIMS Governing Body; sub-section (v) thereof provides for creation and abolition of post by the RIMS Governing Body in accordance with the Rules framed by the State Government. The State Government is empowered to frame rules in order to give effect to the aims and purpose of the Act under Section 31. Section 32 deals with the power of framing of Regulations. The RIMS Governing Body is empowered to frame regulations with the prior approval of the State Government in order to achieve the aims and objects of the Act. Regulations framed there under are to be laid before the House of Legislature and are subject to any amendment as carried out by the Legislature. Relevant provisions of the RIMS Act, 2002 are extracted here in below:-

11. The relevant provision which relates to the creation of the post are provided under Rule 8. Rule 8(1) specifically provides that the Governing Body of RIMS would create posts subject to the condition that necessary sanction has been made in the budget and the pay scale fixed there in are same as the equivalent post under the State Government. In case of any enhancement of scale of any such post, prior approval of the State Government is necessary. Rule 8(2) prescribes that for creation of posts, the standard laid down by the MCI/DO or any other such Council would be kept in mind. Rule 11 provides procedure for appointment to the different post in the teaching cadre. It also prescribes that teaching qualification and experience for such post would be as laid down by MCI, DCI, Indian Nursing Council. As it appears, in exercise of the powers under Section 32 of the RIMS Act, on the basis of the recommendation of the RIMS Governing Body, the Department of Health, Medical Education and Family Welfare has notified the Regulations of the RIMS in 2014 vide notification dated 8.9.2014 published in the extra-ordinary gazette of the State on 22.9.2014.

12. Perusal of Regulation 6B(ii) of the Regulation, 2014 indicates that appointment to the teaching cadre through open advertisement by a selection body is to be undertaken, as per the AIIMS pattern.

Regulation 9(B) relates to the appointment of Director and other teaching posts and matters relating to their promotion. Subsection (b) thereof also provides that the qualification of the teaching cadre as enumerated in Schedule III would be in the AIIMS pattern.

13. On the forensic scrutiny of the relevant provisions of the Act, Rules and Regulations quoted herein above, there are two issues which need to be addressed. The first relates to the creation of post in the Dental College which has been set up under the RIMS. It is not in question that post has been

sanctioned by the State Government as per the notification at Annexure-9, while constituting the Dental College. The State government accorded roster clearance as per reservation policy. Ranchi University has granted affiliation and recognition of the DCI has also been obtained. This is fully in consonance with the provisions of the Act and Rules, specifically Rule 8.

14. The second aspect relates to the enhancement of qualification and teaching experience. Much emphasis has been given by learned counsel for the petitioner on the requirement of approval of Minister of the Department or the State Government before enhancement of qualification and creation of the said post while placing reliance upon the Regulation 8, which relates to creation of post. However, the said provision has to be read in the context of the other provisions of the regulations. While notifying the Regulation of 2014 on the recommendation of the RIMS Governing Body, it has been consciously provided under Regulation 6B(ii) and also 9B(b) and the notes quoted above that the qualification and eligibility criteria for appointment to the teaching posts would be done on the pattern of AIIMS. The State Government in its affidavit has also clearly stated that decision relating to enhancement of qualification, selection etc are to be undertaken by the RIMS Governing Body in terms of the provisions of the Rules and Regulations framed under the Act of 2002.

15. It has been seen from the enclosed annexures, referred to hereinabove that in the matter of appointment of Assistant Professor in the discipline of Dental Education, 3 years of teaching experience has been provided by the AIIMS in the exercise conducted under advertisement No. 1/14 (Annexure-A to the counter affidavit). The respondent - RIMS has therefore followed the AIIMS pattern while laying down the requirement of 3 years of teaching experience for the post of lecturer, which is equivalent to the post of Assistant Professor in the impugned advertisement. By that yardstick, the teaching experience of 7 years and 12 years prescribed for the posts of Reader and Professor under the impugned advertisement are fully in tune with the DCI guidelines, as relied upon by the petitioner himself at Annexure-2, which requires 4 years teaching experience after Post Graduation and 5 years teaching experience as a Reader. Adding 4 years and 5 years against each of the posts of Reader and Professor, it would come to 7, 12 years which has been laid down in the impugned advertisement. There is no legislative deficit for the State to issue an executive instruction to fill up the gap, as made by learned counsel for the petitioner relying upon the judgment in the case of Dr. Krushna Chandra Sahu & others Vrs. State of Orissa & others (supra). The provision of the Regulation, read in the light of the enabling Act and also the Rules clearly show that the impugned advertisement is in consonance thereof. Laying down of an enhanced teaching experience in the matter of recruitment in Dental College being set up under RIIMS with the aim and object of achieving excellence in Medical education, cannot be questioned for the aforesaid reasons. If the impugned exercise purported to achieve the said purpose is in line with the provisions of the Act, Rules and Regulations framed there under, challenge on the ground urged by the petitioner, has to fail.

16. In view of the issues dealt upon in the foregoing paragraphs and the reasons recorded herein above, no infirmity is made out in the impugned advertisement on the part of the petitioner. Writ petition being devoid of merit is dismissed accordingly. The interim order dated 30.11.2015 stands vacated.