
(1982) 08 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 1025 of 1977

Bishnu Charan Panda and Others	Vs	APPELLANT
State of Orissa and Another		RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Land Reforms Rules, 1966 — Rule 13(3)

Citation : (1982) 54 CLT 337

Hon'ble Judges : P.K. Mohanti, Acting C.J.; B.N. Misra, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—This petition for a writ of mandamus arise in the following circumstances. All the Petitioners are doctors serving under the Government. With a view to obtaining post-graduate degrees, they took admission between 5th July and 1st. August, 1976 in the subjects as indicated hereunder for the post-graduate courses for the year 1976-77.

Petitioners Nos. 1, 11, 12 and 13 in Obstetrics and Gynaecology; Petitioner No. 2 in Medicine; Petitioners Nos. 3, 4 and 9 in E.N.T. Petitioners Nos. 5, 6, 7, 8 and 15 in Surgery; Petitioner No. 10 in Orthopaedics; Petitioner No. 14 in Paediatrics; and Petitioner No. 16 in T.B. and Respiratory Diseases.

2. The Petitioners have contended that for the year 1973-74 the in-service post-graduate students were paid their basic pay during the course and for the years 1974-75 and 1975-76 the in-service doctors undergoing post-graduate training were paid a consolidated monthly stipend of Rs. 500 00 irrespective of the subjects of post-graduate study. For the first time, for the session 1976-77, the Government brought in a scheme of rationalisation vide Resolution No. VII Med-IIID-17/72-23085/H. dated 5th July, 1976 - Annexure A. It is relevant to quote

the second paraigraph of the said Resolution:

In the past, there was dearth of qualified Medical Officers to man various posts in the Medical Colleges and in the periphery. In course of years, with the deputation of a number of Medl. Officers for postgraduate and higher specialised training inside and outside the State, the situation has improved and the paucity of qualified Medical Officers in almost all the disciplines has unfairly been eliminated. This has necessitated rationalisation of terms and conditions for admission of medical officers to post-graduate courses inside the State and for deputation for higher specialised training outside the State.

In item (vi) of the third paragraph of the said Resolution it is provided:

In-service doctors who will be sponsored by Government for P.G. study/Higher Specialised Training Advanced training inside and outside the State, but within India, will be treated as on duty and will get their usual pay and allowances and others will continue their P.G. study at their own cost but they will be paid stipend at the rate of Rs. 400/- p.m. The period of training for such candidates will be treated as extraordinary leave as admissible under, Rule 13(3) of the O.L.R. 1966.

The Petitioners and the other in-service doctors who had joined the 1976-77 post-graduate course took admission into their respective post-graduate subjects and continued their studies until the end of March, 1977 without any intimation as to who from amongst them would be treated as State-sponsored candidates. Government orders which finally came on 30-3-1977 indicated that the in-service doctors who were undergoing post-graduate studies in Anatomy, Physiology, Bio-chemistry, Pharmacology. F.M.T., Anaesthesiology, Radiology and S.P.M. were to be treated as State-sponsored candidates, their period of study would be treated as on duty and they would be paid their full pay and allowances and that the in-service doctors other than the State-sponsored candidates would get a stipend of Rs. 400/- per month, vide Annexure-I. It is this Government order which is assailed by the Petitioners on the grounds of hostile discrimination and denial of equality guaranteed under Articles 14 and 16 of the Constitution of India.

3. In its counter the State Government has taken the stand that it has the right to sponsor some subjects of postgraduate studies as State-sponsored subjects and that the Government policy in the matter had been indicated in the policy Resolution dated 5th July, 1976 (Annexure-A) and therefore the Petitioners could not claim ignorance of the same. Government action is justified as being in strict compliance with the Government policy and the charges of hostile discrimination and denial of equality are denied.

4. During the hearing of this case, proceedings of the meeting of the Post-graduate Selection Committee held on 4-1-1977 were placed before us. The members present at this meeting were the Director of Medical Education and Training, Orissa and the three Principals of the three Medical Colleges at Cuttack, Berhampur and Burla. The proceedings of the Committee in so far as they are

relevant for the purpose of this case are extracted hereunder:

In accordance with the Clause (vi) of the Government Resolution No. 23085 H. dated 5-7-1976 rationalising the term and conditions for admission of Medical Officers to Post-graduate courses in the Medical Colleges of the State and deputation for such courses and higher specialised training outside the State, the Committee decided that the in-service Medical Officers admitted to Post-graduate course in three Medical Colleges of the State during the academic session 1976-77 in the following specialities may be treated as State sponsored candidates and their period of deputation for P.G. Study may be treated as on duty and they are allowed to draw their usual pay and allowances:

1. Anatomy
2. Physiology
3. Bio-chemistry
4. Pharmacology
5. F.M.T.
6. Anaesthesiology
7. Radiology
8. S.P.M.

5. Annexure-A, the proceedings of the Selection Committee meeting held on 4-1-1977 and Annexure-1 do not disclose any reasons as to why from out of the in-service doctors only those studying the subjects of Anatomy, Physiology. Bio-chemistry, Pharmacology, F.M.T., Anaesthesiology, Radiology and S.P.M. were to be treated as State-sponsored candidates with full pay and allowances and their period of post-graduate study was to be treated as on duty while the other in-service doctors were to get stipends of Rs. 400/- only per month and their period of study was not to be treated as period spent on duty. In course of his arguments the learned Additional Government Advocate submitted that as sufficient number of post-graduate candidates were not available in the subjects of Anatomy, Physiology. Biochemistry, Pharmacology, F.M.T., Anaesthesiology, Radiology and S.P.M., it was decided by Government to give preferential treatment to the candidates studying those subjects. This justification for the classification does not find any mention either in Annexure-A, or in the proceedings of the Selection Committee meeting held on 4-1-1977, or in Annexure-1. Even the counter filed on behalf of the State is silent on this point. It is also worthy of note that in the policy Resolution (Annexure-A) it is clearly stated:

In course of years, with the deputation of number of Medical Officers for post-graduate and higher specialised training inside and outside the State, the situation has improved and the paucity of qualified Medical Officers in almost all

the disciplines has nearly been eliminated.

This policy statement runs counter to the argument of the learned Additional Government Advocate that in the disciplines of Anatomy, Physiology, Biochemistry, Pharmacology, F.M.T., Anaesthesiology, Radiology and S.P.M. there was paucity of qualified personnel justifying preferential treatment to candidates studying those subjects.

6. Another cause of grievance of the Petitioners is that the Government orders as per Annexure-1 came eight months after their admission and by then it was too late for them to withdraw from or change their subjects of studies. The grievance of the Petitioners on this score appears to be genuine.

7. In *The General Manager, Southern Railway Vs. Rangachari*, the Supreme Court observed that in construing Article 16(1) of the Constitution a technical or pedantic approach must be avoided. It held:

...We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age or superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression "matters relating to employment" in Article 16(1).

8. It is now well settled that the State in exercise of its administrative jurisdiction must act in accord with Articles 14 and 16 of the Constitution. The mandate of these two Articles is applicable to administrative orders relating to employment under the State so as to invalidate discriminatory orders. An order will be discriminatory if a classification made by it is not reasonable. In *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, it was observed:

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey - "Law of the Constitution" - Tenth Edn., Introduction cx). "Law has reached its

finest moments", stated Douglas, J. in *United States v. Wunderlich* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 4 Burr 2528 at p. 2539 "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful.

9. Admittedly all the in-service doctors who joined the post-graduate courses in their respective disciplines in the year 1976-77 belonged to one common class. There can be no dispute that the candidates in the disciplines of Anatomy, Physiology, Biochemistry, Pharmacology, F.M.T., Anaesthesiology, Radiology and S.P.M. have been treated differently from the candidates undergoing post-graduate studies in the other disciplines. The candidates sponsored by the State were to receive full pay and allowances and their period of study was to be treated as on duty while the other candidates have been denied their full pay and allowances as they were to receive stipends of Rs. 400/- per month and their period of study was not to be treated as on duty. The expression "discrimination" indicates an unjust, unfair or unreasonable bias in favour of one and against another. In the present case there can be no doubt that the Petitioners have been unjustly and unreasonably discriminated against. Annexure-A, the proceedings of the Selection Committee meeting held on 4-1-1977 and Annexure-1 do not provide any reasonable basis for classification of State-sponsored candidates for the purpose of special treatment. We are, therefore, led to hold that there has been hostile discrimination in the treatment of the Petitioners as the distinction made in Annexure-1 is hit by Articles 14 and 16 of the Constitution.

10. We would accordingly allow this writ application, quash the Government order as per Annexure-1 and direct the opposite parties to treat the Petitioners in the same manner as the State-sponsored candidates and pay them their full pay and allowances admissible to them in accordance with law and the period spent by the Petitioners for their post-graduate study shall be treated as on duty as in the case of State-sponsored candidates. There shall be no order as to costs.

P.K. Mohanti, A.C.J.

11. I agree.