
(2015) 08 OHC CK 0045
In the Orissa High Court
Case No : Writ Petition (C) No. 11645 of 2015

Deepak Bansal

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 32

Citation : (2016) 121 CLT 477

Hon'ble Judges : I. Mahanty, J;Durga Prasanna Choudhury, J

Bench : Division Bench

Advocate : U.C. Behera and P. Dutta, for the Appellant

Final Decision : Allowed

Judgement

Dr. Durga Prasanna Choudhury, J—The captioned writ petition seeks remedy to issue a mandamus directing the opp. Parties to permit the petitioner to take admission in Super Specialist Course for the academic session 2015-16.

FACTS:

2. Succinctly the case of the petitioner is stated below:--

"The Hon"ble Supreme Court in Writ Petition (Civil) No. 306 of 2004 along with Writ Petition (Civil) Nos. 308 and 345 of 2004 in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, AIR 2005 SC 666 : (2005) 1 CTC 764 : (2005) 2 ESC 198 : (2005) 1 JT 340 : (2005) 2 SCC 65 : (2005) 1 SCR 380 : (2005) AIRSCW 471 : (2005) 2 Supreme 658 decided on 12.1.2005 that for Super Specialist admission the last date for joining the College is 31st July and the academic session is to commence on 1st August, but if for any other reason the admission is delayed, in order to fill up those vacancies the last date for admission can be extended up to 30th September only."

3. In 2012 Satyabrata Sahoo and others who appeared in the entrance examination in open category for the admission to P.G. Medical Course in the

Government College, challenged clause 11.2 of the Prospectus for selection of candidates for P.G. Medical Course. In the High Court of Orissa Satyabrata Sahoo and others did not get favourable order, for which the matter went to the Apex Court. It is alleged inter alia that 72 in-service candidates and 111 direct candidates were selected through first round of counseling for admission to P.G. Medical Course which was scheduled to be commenced on 2.5.2012 for the academic session 2012-13. The petitioner has applied and got selected in the subject General Surgery for admission in M.K.C.G. Medical College, Berhampur. The Government of Odisha vide its order dated 30.4.2012 directed the District Medical Officer and Chief Medical Officer to relieve the Government Medical Officers to join in Medical Course to be commenced on 2.5.2012 vide Annexure-1. Accordingly the petitioner who was working as medical Officer, P.H.C. (New) Badkhilapadar under C.H.C. Kolnara was relieved and he being selected in the entrance test got him admitted to P.G. Course at M.K.C.G. Medical College, Berhampur on 2.5.2012. It is further averred that the Hon"ble Supreme Court vide its order dated 3.8.2012 decided the case filed by Satyabrata Sahoo and others vide Civil Appeal Nos. 5705-5706 of 2012 directed the State of Odisha and other respondents to take urgent steps to rearrange the merit list and to fill up the seats of direct category excluding the in-service candidates to get admission in open category within one week therefrom. In compliance to the order the re-counseling was conducted and the petitioner got the same subject of General Surgery as direct candidate in general category in the same Medical College where he was studying, but formally he has to give his joining in compliance of the counseling dated 9.8.2012 and gave his joining letter on 10.8.2012 vide Annexure-3. For the Super Specialist post the petitioner became one candidate for admission of such course at S.C.B. Medical College, Cuttack for the academic year 2015-16. When the merit list was prepared and the name of the petitioner was at sl. No. 3 in the M.Ch. Course as direct candidate. Such merit list is annexed as Annexure-5. The criteria for selection of Super Specialist in Medical Course is completion of three years as a P.G. student by the time of admission into the Super Specialist Medical Course. It is the further case of the petitioner that the selection list (Annexure-5) was again revised on 23.6.2015 deleting the name of the petitioner vide Annexure-6. It is alleged inter alia by the petitioner that he has in fact joined the P.G. Course on 2.5.2015, but for re-scheduling the joining of P.G. Course by the opp. Parties the joining of the petitioner was re-scheduled formally as on 9.8.2012. Since the name of the petitioner was deleted vide Annexure-6, he had to approach the Hon"ble Supreme Court vide Writ Petition (Civil) No. 3571 of 2015 under Article 32 of the Constitution of India. The Hon"ble Apex Court asked the petitioner to challenge the matter of merit list in this Court. So he filed the present writ application challenging the arbitrary action by the opp. Parties by not considering the right to admission in the event of his selection. On the other hand, it is alleged by the petitioner that his fundamental right guaranteed under the Constitution has been violated and he was deprived in taking admission to Super Specialist Course although he was selected, for which he prayed to direct the opp. Parties to

permit the petitioner to take admission in Super Specialist Course (M.Ch.) in the academic session 2015-16.

4. Learned counsel for the petitioner supporting the case of the petitioner submitted that the action of the opp. Parties is absolutely perverse, illegal and harassment to the petitioner. He further submitted that the order of the Hon''ble Supreme Court has not been properly complied by the opp. Parties and instead committed illegality by deleting the name of the petitioner from the merit list vide Annexure-6. He fairly submitted that in *Satyabrata Sahoo and others v. State* the Hon''ble Apex Court have categorically directed to take urgent steps to rearrange the merit list and fill up the seats of direct category excluding the in-service candidates. But the State Government illegally and improperly cancelled the entire merit list and published another merit list vide Annexure-6 by deleting the name of the petitioner without any reason or rhyme. He submitted that without hearing the petitioner, deletion of his name amounts to violation of fundamental right of the petitioner and also same tantamounts to denial of natural justice to the petitioner. He submitted that while the petitioner joined on 2.5.2012 but due to no fault of him, later his joining was re-scheduled to be from 9.8.2012 which is illegal. Practically he has attended the P.G. course right from 2.5.2012 and completed three years as on 2.5.2015, purportedly to have got completion of three years in attending the P.G. course which is the basic criteria for admission in Super Specialist Course by 31.7.2015. According to him in fact the petitioner has qualified in test being in the merit list vide Annexure-5 and there is no reason to delete him in Annexure-6 by following dubious methods. So he submitted to quash Annexure-6 and to approve Annexure-5 by issuing a writ of mandamus.

5. Learned counsel for the intervener submitted that the intervener namely Sumanta Kumar Mishra was in the merit list at sl. No. 6 vide Annexure-5 now vide Annexure-6 his position has become sl. No. 5. It is submitted by him that the intervener having qualified in the examination should in no way be eliminated by the order of this Court in this writ petition. According to him the intervener has only intervened for the disposal of the matter in his presence without affecting his right.

6. After receiving notice D.M.E.T., Member Convener and Coordinator of the Super Specialist Selection Committee remained present in Court. They produced the documents. Of course none of them filed any counter, but submitted in support of their action taken in publishing Annexure-6.

7. Learned Addl. Government Advocate supporting the stand taken by the opp. Parties submitted that deleting the name of the petitioner from the list dated 15.6.2015 and republishing the merit list on 23.6.2015 vide Annexure-6 are correct and proper. He submitted that the judgment passed by the Hon''ble Apex Court in *Satyabrata Sahoo and Others Vs. State of Orissa and Others*, AIR 2012 SC 2977 : (2012) 7 JT 500 : (2012) 8 SCC 203 : (2012) AIRSCW 4630 : (2012) 5 Supreme 296 has been properly implemented and the opp. Parties have no any

mala fide intention in re-arranging the merit list. He further submitted that the petitioner having not completed three years by the time 31.7.2015 has not qualified to take admission in M.Ch. Medical Course as his joining has reckoned from 9.8.2012 instead of 2.5.2012 as per the prospectus vide Annexure-4. He further submitted that the interpretation of clause-3.1 defines direct category and under that category the petitioner has not qualified, for which his name has been rightly deleted from the merit list vide Annexure-6. He submitted that there were five seats in M.Ch. under direct category and now it has been extended to seven seats. Although 14 persons including the petitioner were selected under Annexure-5, but total revised merit list became 13 excluding the name of the petitioner without affecting the right of the intervener. According to him the petitioner has no any right to take admission as he has not qualified as per Annexure-4 and as such, the action of the opp. Parties is justified and the writ petitioner has no cause of action to succeed in this writ petition.

POINTS FOR CONSIDERATION

"(i) Whether the petitioner has qualified to be direct candidate under the Super Specialist Course?

(ii) Whether the opp. Parties have violated the fundamental right of petitioner by deleting the name of the petitioner in the merit list dated 23.6.2015?"

POINT No. (I)

8. We have heard respective counsels on the issues. It is admitted by both parties that the petitioner was serving as Medical Officer under C.H.C., Kalanara and he joined the P.G. Course on 2.5.2012 at M.K.C.G. Medical College, Berhampur under the General Surgery discipline. It is also the admitted fact that Satyabrata Sahoo and others had approached this Court and this Court rejected the claim of the petitioners in W.P.(C) No. 909 of 2012 (Single Bench) and W.A. No. 220 of 2012 (Division Bench). It is also the admitted fact by the parties that the Hon"ble Apex Court in Civil Appeal Nos. 5705-5706 of 2012 set aside both the judgments of this Court and directed in the following manner at paragraph-35:--

"We are, therefore, inclined to allow this appeal and set aside the judgment of the Division Bench as well as the learned Single Judge by quashing the proviso to Clause 9(2)(d) of the MCI Regulations to the extent indicated above as well as Clause 11.2 of the prospectus issued for admission to the Postgraduate Medical Examination, 2012 in the State of Odisha. The State of Odisha, the Medical Council of India and Respondents 1 to 4 are directed to take urgent steps to rearrange the merit list and to fill up the seats of the direct category, excluding in-service candidates who got admission in the open category on the strength of weightage, within a period of one week from today and give admission to the open category candidates strictly on the basis of merit."

9. Thus, the Hon"ble Apex Court has been pleased to direct to fill up the seats of

the direct category. Annexure-4 of the writ petition enshrines about the prospectus for admission in the Super Specialist Course at S.C.B. Medical College, Cuttack for the year 2015-16. Clause 3.1 defines direct candidates in the following manner:--

"3.1. Direct Candidates:

Direct Candidate is one who at the time of application has passed qualifying examination and is not employed in any type of temporary or permanent jobs under Govt. of Odisha/Govt. of Odisha undertaking or if in service under the State Govt. or State Govt. Undertaking, have not completed 3 years of service by 31.7.2015."

Clause-3.2 also defines the in-service candidate in the following manner:--

"3.2. In-Service Candidates:

In-service Candidate is one, who, at the time of application, is in the employment of Govt. of Odisha/Govt. of Odisha undertaking and either have completed 3 years of service or will complete three years by 31.7.2015 (excluding at a stretch leave of 30 days or more). The maternity leave will not be counted for this purpose. The employment includes all category of employment under Govt. of Odisha/Govt. of Odisha undertaking like Adhoc/Temporary/Contractual and/or Regular appointments. In-Service candidates are required to furnish the service certificate as per Appendix-III. The candidates under employment of Public Sector Undertaking should furnish service certificate along with certificate of sponsorship from the employer as per Appendix-III & IV of the prospectus.

Candidates who are in service shall apply with intimation to their employer. The copy of such intimation letter is to be produced at the time of document verification.

Candidates under employment in Public Sector undertakings are to furnish a "No objection" certificate from the employer in the enclosed proforma (vide Appendix-1)."

10. After perusing both the clauses it is clear that the direct candidate or in-service candidate have to qualify as per definition by 31.7.2015 under respective category. Since the petitioner has claimed as a direct candidate even if he has served at the Kalnara C.H.C., the matter is to be tested with the touch stone of the definition as available above. It is clearly mentioned that the direct candidate is one who has passed the qualifying examination and such candidate has neither completed three years in-service in State Government/State Government undertaking nor employed in any Government temporary or permanent job for three years by 31.7.2015, whereas the in-service candidates must have completed the service in employment of Government of Odisha or Government of Odisha undertaking for three years by 31.7.2015. So the distinction is very clear. It is the admitted fact that the petitioner has not completed three years service

under the State Government by cutoff date. But it is found from Annexure-5 that he has qualified having retained his position at sl. No. 3 in the merit list for M.Ch. course. Thus, taking into consideration of the definition and Annexure-5, we are of the view that petitioner is a direct category candidate and he is covered by the decision of the Hon"ble Apex Court in the case of Satyabrata Sahoo and others. Any other interpretation to the definition of clause 3.1 will be repugnant to the guidelines of M.C.I. because it is the settled law that as per the guidelines of the M.C.I. all the seats available in the Medical Colleges are to be filled up. Be that as it may, we are of the view that the petitioner has qualified to be direct candidate for admission to Super Specialist Course at the S.C.B. Medical College, Cuttack for the academic session 2015-16. Point No. I is answered accordingly.

POINT No. II

11. It is the contention of the petitioner that he has completed three years as a P.G. student by 31.7.2015 as per clause 6.1 of Annexure-4, whereas the learned Addl. Government Advocate and D.M.E.T. submitted that Annexure-5 has been issued wrongly inasmuch as the petitioner actually got admitted to P.G. Course on 9.8.2012 and has not qualified in terms of clause 6.1 of Annexure-4 as he has not completed three years P.G. Course by 31.7.2015. It is submitted by learned counsel for the M.C.I. that M.C.I. has recommended seven seats for M.Ch. direct candidates for their admission into such course during the academic session 2015-16. It is also admitted by the opp. Parties that 14 candidates as per Annexure-5 qualified to get admission subject to minimum qualification as per clause 6.1 of Annexure-4. When the name of the petitioner finds place in sl. No. 3 of Annexure-5, no doubt he has qualified under clause 3.1, but it has to be seen whether he has qualified as per the criteria under clause 6.1 of the prospectus (Annexure-4).

12. The petitioner filed additional affidavit stating that he joined on 2.5.2012 and by virtue of the decision of Satyabrata Sahoo and others the list was re-arranged on 10.8.2012, for which he has completed three years effectively by 31.7.2015 for having minimum qualification under clause 6.1 of the prospectus to get admitted in M.Ch. course. He drew our attention to Annexure-7 which was issued by the Dean & Principal of M.K.C.G. Medical College which is placed below:--"

"CERTIFICATE

This is to certify that Dr. Deepak Bansal was admitted to P.G. course in M.S. (General Surgery) at this Medical College during 1st round counselling held on 23-04-2012 and joined the course on 02-05-2012 and continued till cancellation of the admissions in pursuance to Orders of the Hon"ble Supreme Court of India in Civil Appeal No. 5705-5706 of 2012 arising out of SLP (C) No. 16301/16202 of 2012 on 08-08-2012. The period spent from 2-5-2012 to 8-8-2012 has been regularized and treated as duty and allowed to draw pay and allowances duly deducting the stipend amounting Rs. 91,654 (Rupees Ninety-One Thousand Six Hundred Fifty Four) only already paid vide Govt. Order No. 28206/H., dated

01-11-2012 of the Govt. of Odisha, Health & F.W. Department.

This certificate is being issued on his own request in connection with regularisation of his services."

13. From the aforesaid certificate it appears that petitioner has got admitted in P.G. course in M.S. (General Surgery) in M.K.C.G. Medical College on 2.5.2012, but his admission was cancelled on 8.8.2012 because of the decision of Satyabrata Sahoo and others (supra). On the other hand the opp. Parties filed the records where proceeding of the meeting of Super Specialist Committee held on 20.6.2015 is available. The Committee considered some complaints received with regard to Annexure-5 and there they observed that petitioner although placed in sl. No. 3, but as per the completion certificate submitted by the petitioner, he has not completed three years of P.G. study by the cutoff date 31.7.2015 for which the Committee decided to reject his candidature and accordingly issued the impugned merit list vide Annexure-6. The opp. Parties produced the complaint of one Dr. Pankaj Kumar Swarnakar to support their plea. We are of the view that Dr. Pankaj Kumar Swarnakar was already in the merit list at sl. No. 4. Since there are seven seats, there is no point for Dr. Swarnakar to make complaint against the petitioner who is in sl. No. 3. Rather we find some foul play on the part of the opp. Parties to make out a case by collecting such complaint from Dr. Swarnakar to revise the list, obviously to delete the name of the petitioner from the merit list. However, we refrain from commenting more as we have to follow the directive of the Hon'ble Apex Court which has been quoted in their minutes of proceeding.

14. It is further found from Annexure-B attached to the Misc. Case arising out of Writ Application filed by the present petitioner that the Dean & Principal of M.K.C.G. Medical College has furnished the certificate of completion of course of P.G. students admitted during the session 2012. On going through such list it appears that name of the petitioner finds place at sl. No. 34 and the date of completion of the course has been indicated as 9.8.2015, purportedly completing for three years since 9.8.2012 in the P.G. course under General Surgery. The Hon'ble Apex Court in the case of Satyabrata Sahoo and others (supra) have been pleased to observe in paragraph-35 categorically to rearrange the merit list of direct category candidates and such judgment was published on 9.8.2015. We have already held in the aforesaid paragraph that the petitioner undoubtedly a direct category candidate and his P.G. course was started on 2.5.2012. It is admitted by the opp. Parties that he continued his course up to 8.8.2012 and his candidature was cancelled on 8.8.2012 as per Annexure-7 because of the above judgment of the Hon'ble Apex Court. We fail to understand as to how the Medical Authorities interpreted the judgment of the Hon'ble Apex Court and cancelled the candidature of the petitioner on 8.8.2012. In paragraph 35 of the judgment it has been clearly mentioned that the merit list has to be rearranged by excluding the in-service candidates and at nowhere it has been stated to cancel the merit list. On going through the Oxford Dictionary the word "rearrange" is to arrange

again in different way. Thus, the definition does not indicate that rearrangement would make the original entire list to be cancelled. Also the Hon''ble Apex Court has not directed for cancellation of the list and to publish fresh list. On the other hand, the opp. Parties have interpreted the judgment which is not permissible as it is well settled that no judgment can be interpreted by the authorities, but to comply the same with letter and spirit. If there is any doubt, they can seek for clarification, but cannot twist the judgment of the Court. We are of the considered view that the action on the opp. Parties by way of cancellation of merit list is not desirable to follow the directive of the Hon''ble Apex Court. Also the proceeding of the Committee does not indicate under what provision of law they have cancelled the merit list as to re-admit the petitioner with effect from 9.8.2015.

15. In the decision of State of Punjab and others Vs. Renuka Singla and others, AIR 1994 SC 595 : (1993) 6 JT 524 : (1993) 4 SCALE 564 : (1994) 1 SCC 175 : (1993) 3 SCR 866 Supp : (1994) 1 UJ 119 , where their Lordship observed that the High Court or the Supreme Court cannot be generous or liberal in issuing such direction which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations in respect of admission of students. Technical education, including Medical education requires infrastructure to cope with the requirement of the proper education to the students. Thus, technical institution be Government or non-Government should be very much cautious about the following the rules and regulations as well as the directive of the Hon''ble Apex Court strictly. In Satyabrata Sahoo and others (supra) their Lordships have categorically observed at paragraph-15 that clause 9(1)(a) of the M.C.A. Rules clearly stipulates that student for P.G. Medical course shall be selected strictly on the basis of inter se academic merit. Relying upon such ratio of the Hon''ble Apex Court, we are of the view that the petitioner since has been selected in the merit list and has admittedly entered to admission in P.G. course on 2.5.2012 and because of the misinterpretation of the judgment by the opp. Parties without any rhyme and reason, but for the reason best known to them, his continuance in P.G. course must be counted from 2.5.2012 for a period of three years which concludes on 2.5.2015. Since he has already completed three years P.G. Course by 31.7.2015 and he has qualified in the merit test as per clause 6.1 of Annexure-4, the proceeding dated 20.6.2015 of the meeting of Super Specialist Selection Committee is held to be not in consonance with the prospectus and same is liable to be struck down. Consequently Annexure-6, the rearrangement of the merit list deleting the name of the petitioner being found against the Annexure-4 and contrary to the M.C.I., guidelines, same is illegal. On the other hand right to get admission into M.Ch. Medical Course which petitioner is entitled to get, has been violated by the opp. Parties by deleting his name from the merit list dated 23.6.2015. Thus his fundamental right as guaranteed under Articles 14, 19 and 21 of the Constitution of India has been violated. Issue No. II is answered accordingly.

CONCLUSION

16. In view of the aforesaid analysis we are of the view the petitioner has qualified to be direct candidate under Super Specialist Course and the opp. Parties have illegally deleted his name while publishing Annexure-6. Hence the proceeding of the meeting of the Super Specialist Committee dated 20.6.2015 as well as the merit list prepared on 23.6.2015 vide Annexure-6 are all quashed being dehors to Annexure-4 and the fundamental right of the petitioner guaranteed under the Constitution. We hereby direct the opp. Parties to give admission to the petitioner strictly as per the merit list prepared vide Annexure-5. All original documents filed by the State be returned to learned Addl. Government Advocate.

Accordingly we allow the writ petition.

I. Mahanty, J.

I Agree.