
(2012) 02 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) No. 32976 of 2011

Dr. Abhay Kumar Ojha and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Citation : (2012) 114 CLT 281

Hon'ble Judges : Sanju panda, J

Bench : Single Bench

Advocate : Budhadev Routrav, D. Routray, P.K. Sahoo, S. Das, S. Jena and S.K. Samal, for the Appellant; Rajani Chandra Mohanty, K.C. Swain and S. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Sanju panda, J.—The Petitioners, who are serving as Senior Medical Officers in different Public Sector Undertakings of the Central Government & joint venture of Central Government with the State Government, have filed this Writ Petition praying for issuance or a mandamus to the Opp. Parties directing them to consider their candidature as In-service candidates in the Post Graduate (Medical) Selection, 2012 & for a declaration that Clauses 6.2 & 6.2.1 of the Prospectus for selection of candidates in Post-Graduate (Medical) Selection, 2012, Odisha, (in short, "Prospectus, 2012") are illegal & arbitrary. The Petitioners after completion of the MBBS course acquired MBBS degrees from the Government Medical Colleges of the State of Odisha. They were selected as Medical Officers on contractual basis by the Government of Odisha in the Health Department & posted within the State for about two years. Petitioner No. 1 was selected & appointed -Under Nilachala Ispat Nigam Limited which is a Public Sector Undertaking formed by the joint venture of Central Government & State Government. Petitioner No. 2 joined as Medical Officer in Steel Authority of India Limited which is a Central Government Public Sector Undertaking & continued there till 2007. At present, he has joined at Ispat General Hospital, Rourkela

under Steel Authority of India Limited. Petitioner No. 3 joined as Asst. Surgeon in P.H.C. (New), Birikot in the district of Gajapati & he is continuing in the Employees State Insurance Corporation Model Hospital, Rourkela under the Ministry of Labour, Government of India since June, 2005. The Petitioners, who are serving in the above hospitals, contended that they have completed their MBBS Course from the Government Medical Colleges of the State of Odisha & after completion of their course, they served the people of the State as Medical Officers, but they are being treated differently in the Prospectus, 2012 issued by the Convenor of P.G. (Medical) Selection Committee, 2012. Though they are coming under in-service candidates, their candidature is not included as In-service candidates under Clauses 6.2 & 6.2.1 of the Prospectus, 2012. It is further contended that till the academic year 1987-1988 the State Government allowed the doctors, who were serving under Public Sector Undertakings of the Central Government, on completion of five years of service to be considered as In-service candidates & their application for selection into PG (Medical) Courses were accepted as against the in service seats. But, for the first time in the year 1988-1989, the doctors serving under Public Sector Undertakings were excluded from the definition of "In-service candidates" for which some of the candidates filed Writ Petition challenging the action of the Government. This Court allowed the said Writ Petition declaring the note appended to paragraph 1.2 of the Prospectus, in so far as that excluded the category of doctors as the Petitioners, as invalid referring to the law laid down by the Apex Court. It is further contended that till 2005, the prospectus issued by the Selection Committee included the candidates who were serving in the Public Sector Undertakings as in-service candidates but for the first time in the year 2007, the Prospectus was modified by the Opp. Parties without application of mind & no such decision was taken in the matter as enshrined in law excluding the candidates like the Petitioners from the zone of consideration as in-service candidates. The same is continuing from 2007 till date i.e. for the current year of 2012. Therefore, the Prospectus issued by the Opp. Parties excluding the Petitioners from in-service candidates under Clauses 6.2 & 6.2.1. is liable to be struck down as illegal & arbitrary & the Petitioners are ready to give an undertaking as required to be given by the candidates under the category of "In-service candidates" to serve the State at least for five years or more in case of their selection & the financial burden will be borne by their employers & they are entitled to get the benefits as in-service candidates.

2. In support of his contention, Learned Counsel for the Petitioners cited the decisions of this Court in the case of Dr. Jagannath Behera & ors v. State of Orissa & ors, 1989 (II) OLR 185, Dr. Deepak Kumar Singh v. Convenor, P.G (Medical) Selection Committee, 2007, S.C.B Medical College, Cuttack & ors, 103 (2007) CLT 724 & Dr. Sri Kumar Mohanty Vs. State of Orissa and Others

3. A counter affidavit has been filed by the Opp. Parties traversing the contentions of the Petitioners.

4. Learned Counsel for the Opp. Parties submitted that the Prospectus of Post-Graduate (Medical) Selection, 2012 contains Courses & the Relaxations made thereunder in respect of different categories of students. Two main categories of candidates, i.e., Direct candidates & In-service candidates, as per Clauses 5.1 & 5.2 respectively, have been taken into consideration in respect of the seats allotted to the State Quota for admission of Post Graduate Medical Courses. As per the Prospectus, an In-service candidate is who at the time of application is in the employment in Government of Odisha & has completed five years of service in Odisha which includes all categories of employment like contractual/temporary/ad hoc/regular by 31st December, 2011. The admission to the P.G (Medical) Courses is made in accordance with the Guidelines/Regulations of the Medical Council of India the Prospectus made thereunder is approved by the Government of Odisha, Department of Health & Family Welfare.

5. It is further submitted by the Learned Counsel for the Opp. Parties that as the Medical Council of India Guidelines/Regulations are mandatory, admission made contrary thereto may not be recognized by the Medical Council of India. The Opp. Parties have issued Prospectus as per the decisions rendered by this Court on 22.3.2011 in WP(C) No. 5778 of 2011 (Dr. Pitambar Behuria & others v. State of Odisha & others) which was confirmed by a Division Bench of this Court by Order Dated 23.3.2011 passed in Writ Appeal Nos. 270, 271 & 278 of 2011. As such, the inclusion of the category of the Petitioners in "Direct Candidates" in the Prospectus, 2012 need not be interfered with.

6. From the rival submissions of the parties & after going through the Prospectuses of the years 2005 & 2012, it appears that in the two Prospectuses, there are a tot of differences, so far as In-service candidates are concerned.

7. For better appreciation, Clauses 5.2 & 6.2.2 of the Prospectus for Post-Graduate (Medical) Entrance Examination, Orissa, 2005 & Clause-5.2 & 6.2.1 of the Prospectus of Post-Graduate (Medical) Selection, 2012, Odisha, are extracted below:

6. CATEGORY OF CANDIDATES:

6.1. xxx xxx xxx

6.2 An In-service candidate is one who at the time of application.

6.2.1 xxx

6.2.2 Is in the employment of Government of India & at the time of application is posted in Orissa or in a Public Sector Undertaking of Government of India located in Orissa & has completed five years of service in Orissa by 31.12.2004.

Note 3: In-service Medical Officers are advised to submit their applications along with the connected documents directly to the Convenor, P.G (Medical) Selection Committee-2005, MKC. G. Medical College, Berhampur under intimation to their employers.

6. CATEGORY OF CANDIDATES:

6.1. to 6.1.3 xxx

6.2 An In-service candidate is one who at the time of application

6.2.1 Is in the employment in Government of Odisha & has completed a length of 5 years of service which includes all categories of employment like contractual/temporary/ad-hoc/regular by 31st December, 2011, excluding at-a-stretch leave of any kind, of 30 days or more. However, the maternity leave is exempted from this exclusion & shall be counted towards the length of five years of service.

Note: In-service & Direct candidates in employment under Government of Odisha at the time of application are advised to submit their applications along with the required documents directly to the Convenor, P.G (Medical) Selection Committee -2012, under intimation to their Employer. Copy of such intimation is to be attached.

8. It is not disputed at the Bar that the Guidelines/Regulations of the Medical Council of India are mandatory & to be followed during the admission to the medical course. The Post-Graduate (Medical) Education Regulations, 2000 was amended in 2009 vide notification dated 17.11.2009. The Medical Council of India prescribes three years P. G. (Medical) Courses for all categories of candidates. Therefore, the decision cited by the Learned Counsel for the Petitioners in. Dr. Jagannath Behera's case (supra) is on a slightly different context. At that time, three categories of doctors admitted in PG (Medical) Courses had to undertake 2 years & 3 years P.G. Courses & the percentage of reservation of seats was also different.

9. The Apex Court in the case of N. Vasundara Vs. State of Mysore and Another, observed as follows:

The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object & purpose of providing broad-based medical aid to the people of the State & to provide medical education to those who are best suited for such education.

& it was of the view that the object of the State Government in making reservation based on residence requirement was to impart medical education to the best talent available out of the classes of persons who are likely, so far as it could reasonably be foreseen, to serve as doctors, the inhabitants of the State. However, the Apex Court permitted the reservation of certain percentage of seats after considering the pleas urged by the various States where facilities are not adequate & which have lagged behind that national main-stream in development & directed throwing open 25 per cent of seats for selection of candidates through All India Entrance Examination.

10. After Medical Council of India prescribes three years P.G Course, it also

indicated that 50% of the seats available in the State shall be allotted for selection of candidates through All India Entrance Examination & the rest 50% of the seats shall be available for the Direct Candidates & In-service Candidates who belongs to the State. From 2006 onwards, the State Government issued Prospectus indicating the above two categories of candidates & the matter was earlier also challenged in W.P(C) Nos. 31 of 2007 & 978 of 2007 which was disposed of on 12.4.2007. In those Writ Petitions, the doctors working in the Public Sector Undertakings of the Central Government as well as the State Government claimed benefit of In-service candidates on the ground that they adhered to the parameter of "rural service" & simply because of their employment under Public Sector Undertakings, the State Government cannot discriminate them which was turned down by this Court on the grounds that the doctors serving under the State Government & the doctor serving under the Public Sector Undertakings are not under the same terms of employment with same service benefits. The doctors serving under the Public Service Undertakings are not within the control of the State Government. Their position to compete as direct candidates, therefore, cannot be found to be an act of discrimination. In view of the fact that the Division Bench of this Court has already decided the said issue, there is no scope to re-open the same, No doubt, the doctors who are, serving under the State Government, are not only rendering service in remote rural areas but also deprived of the basic facilities for human beings, i.e., road, water, electricity etc. which are not available there, whereas the doctors, who are serving in Public Sector Undertakings, are rendering service in better condition with all the above facilities as those areas are industrial-based areas. Therefore, the benefits given by the State Government to those doctors who are serving under the State Government categorized them as In-service candidates are reasonable. Hence, no discrimination has been made to the Petitioners who are serving under Public Sector Undertakings as per the Prospectus, 2012 issued by the Convenor of P.G. (Medical) Selection Committee, 2012.

Accordingly, the Writ Petition is dismissed.