
(2003) 02 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4858 of 2002

Dr. Anubha Vidyarthi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Rajendra Institute of Medical Sciences Act, 2002 — Section 14
Rajendra Institute of Medical Sciences Rules, 2002 — Rule 19

Citation : (2003) 2 JCR 42

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Anwar, A. Hussain and Rajendra Mishra, for the Appellant; Shamim Akhtar, S.C. II, A.K. Mehta, J.C. to S.C. II, Delip Jerath and Krishna Murari for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The State Government issued impugned Notification No. 318(4) dated 23rd August, 2002, whereby the petitioner who was posted in Rajendra Institute of Medical Science, Ranchi (R.I.M.S.) was transferred as Medical Officer, Urban Planning Centre, Jamshedpur. Similarly, the 5th Respondent who was posted in Additional Primary Health Centre, Dudhkhundi (West) Singhbhum was transferred and posted in place of petitioner at R.I.M.S., Ranchi by the same Notification dated 23rd August, 2002.

2. The question arises whether the State Government can transfer or post an officer/employee from or at R.I.M.S., Ranchi or not.

3. Admittedly, the petitioner was posted in P.S.M. Department of Rajendra Medical College and Hospital Ranchi (R.M.C.H.). It was made autonomous and converted as Rajendra Institute of Medical Sciences (R.I.M.S., Ranchi) w.e.f. 15th August, 2002 in pursuance of "Rajendra Institute of Medical Sciences Act, 2002" (Act 10 of 2002). On the date, the Institute was made autonomous, admittedly, the 5th respondent was not posted in the Institute, but in the

Additional Primary Health Centre.

4. The State Government framed rule, known as "Rajendra Institute of Medical Sciences Rules, 2002" (Rules 2002 for short). As per Rule 19 of the Rules, the employees/officers posted in R.I.M.S. at the time of conversion can submit option for their absorption within one year i.e. by 15th August, 2003.

5. There is provision to make direct appointment but till it is made to ensure proper functioning of R.I.M.S., Ranchi, provisions have been made under Sub-section (V) to Section 14 of Act, 2002, English translated version of which, reads as follows :--

Rajendra Institute of Medical Science Act, 2002 : Act 14 (V) of 2002.-

"The Institute shall utilize the services of officers and employees of the Rajendra Medical College and Hospital including the Nursing College and Nursing School as their strength existed prior to the conversion of the Rajendra Medical College and Hospital into the Rajendra Institute of Medical Sciences. These employees of the Institute shall be civil servants of the Government of Jharkhand unless they exercise the option to be absorbed in the Institute within such time period as provided in the rules."

6. From the aforesaid provision, it will be evident that the Institute has a right to utilize the service of the officers and employees of R.M.C.H., Ranchi though they remain Government servants of the State of Jharkhand, The power of utilizing the services having entrusted with R.I.M.S., till a decision is taken in respect to absorption of one or other officer/employee, the State Government cannot act against the aforesaid statutory provisions of the Act, 2002. The Institute (R.I.M.S.) having made autonomous, transfer and posting by the State Government, in normal course, in such Institute does not arise.

Though, it is open to the State Government to recall the services of a Government officer/employee from the Institute (R.I.M.S.), on administrative exigency, but it cannot be made without consultation of the Governing Council of the Institute (R.M.I.S.), nor can be made affecting the right of consideration of case of such officer/employee for absorption as per the provisions aforesaid.

Recall of such services cannot be made affecting the functioning of the Institute (R.I.M.S.) which has a right to utilize the services of officers and employees of erstwhile R.M.C.H. as per Section 14(V) of the Act, 2002, till they fill up the posts by direct recruitment or by absorption of Government employees who were posted in R.M.C.H., Ranchi and working on the date of conversion.

The Institute (R.I.M.S.) having made autonomous since 15th August, 2002, the State has no right to post any person in such Institute (R.I.M.S.), there being no such provision to fill up any post by posting of the Government officer/employees.

7. In the present case, while the respondents issued impugned Notification No. 318 (4), dated 23rd August, 2002 so far as it relates to petitioner and the 5th

respondent, it failed to notice its power, as discussed above.

The non-application of mind of the respondents is also evident from the fact that though the Institute become autonomous, known as R.I.M.S., Ranchi, still the respondents treated it as a Medical College i.e. R.M.C.H., Ranchi for the purpose of transfer and posting, as shown in the order of transfer and posting of petitioner and the 5th respondent.

8. For the reasons aforesaid, the Notification No. 318 (4) dated 23rd August, 2002, so far as it relates to petitioner and the 5th respondent cannot be upheld and is, accordingly, set aside.

9. The writ petition is allowed.