
(1999) 07 OHC CK 0031

In the Orissa High Court

Case No : Original Jurn. Case No's. 6036 and 8601 of 1999

Dr. Anurag Mishra and Others, etc.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Ori 85 : (1999) 88 CLT 573

Hon'ble Judges : A. Pasayat, Acting C.J.; B.P. Das, J

Bench : Division Bench

Advocate : B. Routray, B. Parida, A.K. Baral, P.K. Dash and D.K. Mohapatra, J. Patnaik, A.A. Das, R. Rath, B. Mohanty, T.K. Patnaik, S. Das and P.K. Nayak, for the Appellant; Additional Government Advocate, D.P. Handa, R. Sharma and P.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, Ag. C.J.

1. As both these writ petitions involve identical issues, they are being disposed of by this common order,

2. When the judgment in Dr. Pranab Mohapatra v. State of Orissa (1999) 1 Ori LR 292, was pronounced, a pious wish was expressed by this Court that litigations emerging year after year will not be repeated. But Shakespeare's classic expression in Othello "Chaos is come again", has again surfaced.

3. The present dispute relates to selection of candidates for undergoing the 1999 Session of Post-Graduate studies in the Government Medical Colleges of Orissa. Two examinations for 1998 and 1999 Sessions were held simultaneously. Large number of writ petitions were filed making a grievance that there were either incorrect questions and/or incorrect answers in respect of large number of questions. To test correctness of the assertion, a committee was constituted appointing Dr. Gopal Chandra Das, a retired Professor of S.C.B. Medical College

Hospital, to examine the questions and the model answers indicated by the examining body and the material placed by the candidates, both successful and unsuccessful. An exhaustive report was received from Dr. Das indicating the following position:--

1998 1999 "1. Disputed questions re- 75 60 ceived (Inclusive of those repeated by parties) (Minus) Repeated questions 23 10 52 50 2. Correct answers 11 04 3. Ambiguous answers, wrong questions and/or inappropriate answers 41 45"

4. After receipt of the report from Dr. Das, the writ petitions were disposed of, inter alia, with the following observations :--

"On the basis of report of Dr. G. C. Das, the conclusion is that in respect of 1998 examinations 41 questions/model answers are wrong, and in respect of 1999 examinations the number is 45. After having come to the above conclusion, the Important question is regarding the course to be adopted. Learned counsel for unsuccessful candidates have prayed that in view of large number of defective questions/model answers involved, the entire examination in each of the years has become a mockery and needs to be declared invalid. On the other hand, learned counsel for State submitted that it would not be proper to do so. Similar is the stand of learned counsel for successful candidates. It is pointed out by the learned counsel for State that in view of the norms laid down by the Medical Council of India (In short, "MCI") the process of selection has to be over by 31-12-1998, and time is running out. This is certainly an important factor to be taken note of. The best course according to us would be to make a fresh valuation on the basis of report submitted by Dr. Das, and a fresh list be prepared and follow up action be taken by the, examining body so as to meet the date-line fixed by the MCI. This shall be done in respect of the Session 1998-99. So far as the Session 1999-2000 is concerned, same will not be a hurdle. Considering large number of questions which have been found to be either wrong or carrying incorrect key answers, it would not be desirable to adopt the procedure to be followed in the peculiar situation for 1998-99 session. It would be wholesome to direct a fresh examination. Let the examining body take steps for conducting the examination afresh, as expeditiously as practicable. Due care and caution should be taken to make it defect-free. It does not be-fit an examining body for Post-Graduate candidates to present such poor state of health so far as its academic adequacy is concerned. It is to be noted here that some of the questions which were found to be wrong or to be carrying incorrect key answers in the previous years have been repeated again. That itself shows non-application of mind, to say the least. There has to be proper diagnosis to find out where the malady lies and to remove it. That would need surgical precision which is highly desirable."

The petitioners in both these cases submit that by now they have acquired the eligibility criteria and when directions was given to hold the examination afresh, they should also be permitted to take the examination.

5. Learned counsel for the State and the interveners in O.J.C. No. 6036 of 1999 pointed out that this Court had not said anything about the eligibility criteria, and had only permitted those who had appeared at the 1999 examination to take the examination again. Such direction was given considering the fact that Dr. G. C. Das had found substantial inaccuracy in the questions and/or in the model answers indicated by the examining body. Therefore, the zone of consideration was restricted to those who had taken the examination originally. Learned counsel for the State with reference to the notice issued relating to the examination which is to be held on 1st of August, 1999, submitted that the same is restricted only to those candidates who had appeared earlier in the examination held on 6-9-1998 and there was no intention to extend the benefit of examination to any other persons; otherwise, the question of making the candidates who had appeared at the earlier examination on 6-9-1998 and had been issued admit cards to produce the same for the purpose of entry to examination would have arisen. Obviously, admit cards were issued for 1999 examination held earlier. Clear intention apparent on a bare reading of the judgment in Dr. Pranab's case (1999 (1) Ori 292) (supra) was to hold the examination for only those who had appeared earlier.

6. Learned counsel for the petitioners submitted that the purpose of holding an examination is to choose the more meritorious students from amongst the available candidates by extending the benefit to those who had already acquired the eligibility criteria and there shall not be any loss so far as the State is concerned; on the other hand, more meritorious candidates shall be included in the zone of consideration.

7. It has been indicated by the learned counsel for the State that the next examination for the 2000 session shall be held shortly and those who have acquired eligibility criteria after the last date of eligibility for 1999 session in terms of the earlier prospectus, can appear at those examinations.

8. Eligibility has to be considered on the basis of criteria fixed at the time of making application. Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot set contrary to it. The Apex Court observed that the view expressed in *Ashok Kumar Sharma v. Chander Shekhar* 1993 SCC 857 to the effect that by allowing more candidates to appear in the interview the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is an impermissible justification. The view was partly overruled on the aforesaid point of law in a subsequent judgment on the review petitions filed in the selfsame case. (See *Ashok Kumar Sharma v. Chander Shekhar* 1997 SCC 913.

It has to be noted that in Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, it was held that the date of selection is invariably uncertain. Even where a fixed date has not been indicated in the advertisement only certain date for scrutiny of qualification will be last date for submission of application for a particular post as may be specified in the advertisement. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in presenti even to make applications for the posts.

9. The purpose of directing the examination afresh is clearly spelt out in para 14 of the judgment in Dr. Pranab's case (supra) quoted above. It was never intended to enlarge the zone of consideration, and was restricted to those who had taken the examination earlier. The direction was given, as rightly pointed out by the learned counsel for the State and the interveners, because of the large number of mistakes noticed by Dr. G. C. Das in his report. That being the position, we are not inclined to accept the prayer of the petitioners to allow them to take the examination. It goes without saying that for the next examination, if the petitioners or any one are eligible, their cases shall be duly considered.

The writ petitions are accordingly dismissed.

B.P. Das, J.

10. I agree.