

(1991) 04 SC CK 0055

In the Supreme Court Of India

Case No : Civil Appeal No's. 2069-2070 of 1991

Dr. Arun Kumar Agrawal

APPELLANT

Vs

The State of Bihar and others
State of Bihar and
others Vs Dr. Chandra Mohan Jha and others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Citation : AIR 1991 SC 1514 : (1991) 2 BLJR 801 : (1991) 62 FLR 821 : (1991) 2 JT 352 : (1992) 2 LLJ 321 : (1991) 2 PLJR 58 : (1991) 1 SCALE 812 : (1991) 1 SCC 287 Supp : (1991) 2 SCR 491 : (1991) 2 UJ 224

Hon'ble Judges : N. M. Kasliwal, J;M.M. Punchhi, J

Bench : Division Bench

Advocate : Kapil Sibal, Ranjit Kumar, B.B. Singh, Harish N. Salve and L.R. Singh, for the Appellant;

Final Decision : allowed

Judgement

N.M. Kasliwal, J.—Special leave granted.

2. These appeals by Dr. Arun Kumar Agrawal (appellant) and the State of Bihar are directed against the Judgment of the Patna High Court dated 20th December, 1990. The dispute relates for an appointment on the post of Assistant Professor in Neurosurgery in the Patna Medical College and Hospital, Patna in pursuance to an advertisement dated 19.12.1987. The Selection Committee prepared a panel on 4.7.1988 which was approved by the State Government on 26.9.88. In the aforesaid panel the appellant was placed at No. 1, Dr. Chandra Shekhar Kashyap at No. 2, Dr. Shankar Bhuwan Prasad at No. 3 and Dr. Chandra Mohan Jha at No. 4. Dr. Chandra Mohan Jha filed a writ petition in the High Court challenging the above panel on grounds inter alia that Dr. Agrawal, Dr. Chandra Shekhar and Dr. Shankar Bhuwan Prasad placed above him in the panel did not fulfil the minimum eligibility criteria laid down in the advertisement for appointment to the post of Assistant Professor, Neurosurgery. His contention was that he ought to have been placed at No. 1 and he alone was eligible for being appointed as Assistant

Professor, Neurosurgery in terms of the advertisement. It may be mentioned at this stage that the controversy before us is between the appellant and Dr. Chandra Mohan Jha, respondent No. 5. In order to appreciate the controversy it would be proper to reproduce the relevant provisions of the advertisement as translated in English and extracted in the Judgment of the High Court:

Clause 2(C):

For the post of Assistant Professor and Registrar it will be essential for the candidate to have obtained in the same speciality for which the application is being made, M.D., M.S., F.R.C.S. (U.K.), M.R. C.O.G. (U.K.) or American Board of speciality or any other post graduate qualification, considered by the Medical Council of India as equivalent to the aforesaid degrees. Post graduate qualification obtained from the U.K. after November 11, 1976 shall not be granted recognition.

Clause 3

For Assistant Professor: (a) Resident/Registrar in the same speciality or officers having worked on the two posts in an educational hospital, having worked on the two posts in an educational hospital, having obtained recognition from the Medical Council of India for conducting M.B.B.S. course, alone can apply, (b) Service on any other accepted/ acknowledged teaching post (Jr. Surgeon/Jr. Physician) in the same subject for which the application is being made shall be considered equivalent to Registrar/Resident. (c) In addition to the other conditions Resident/Registrar in the concerned subject or medical officers having a minimum of three years experience on the two posts shall alone be eligible to apply. This, however, shall not be essential for Radiology, Skin & V.D., Anaesthesia, Neurology, Neuro-surgery, Plastic Surgery or any speciality to be constituted in future, nor shall it be essential to obtain the prescribed minimum of 15 points for being posted in these subjects. In these subjects, however, in case one or more than one such candidates are available who have obtained three years' teaching experience in the concerned speciality, then in that situation, the Medical Officers having such experience shall be entitled to foremost consideration for appointment and they shall be appointed although they might have obtained less points than those candidates who do not possess three years teaching experience .

Clause 3(f) (Cha):

It is essential to obtain 15 points for appointment to the post of Assistant Professor, however, for the specialities enumerated in the aforesaid Clause 3 the minimum point shall be 6. In case, candidates obtaining the aforesaid points are not available in the desired number then the Government, in order to fill up the vacancies, shall have the right to relax the minimum points.

Clause 18:

For the post of Registrar and Resident Doctor in the units (specialities) of

Cardiology, Cardiothoracic Surgery, Neuro Surgery, Gastro Entrology, Paediatric Surgery and Kidney in addition to the necessity of fulfilling the conditions, contained in Clauses 4 and 6 respectively, preference shall be given for working experience in the concerned subject.

Clause 19:

For appointment to the post of Assistant Professor in the aforesaid major super specialities, the degree and the teaching experience in the related basic (parent) subject as enumerated in Sub-clause 3 will be essential. However, those having degrees, research work or working experience shall be given preference.

The appellant passed his M.B.B.S. in 1977, did his internship in all subjects in 1977-78, one year's housemanship in general surgery in 1978-79 and another term of one year paid housemanship in Neuro-surgery. The appellant opted for M.Ch. five years degree course in 1980. He passed M.Ch.-Part I University examination in General Surgery in 1982, M.Ch. Part-II University Examination in Basic Neuro Science in 1984 and M.Ch. Part III University Examination in Clinical Neurosurgery in 1985. He entered the State Health Services in 1983 and was posted on study reserve post in the department of Neurosurgery at Ranchi Medical College, He was posted at Hilsa block in 1985 and deputed to do full work as Resident Casualty Neuro Surgeon in September, 1987.

3. Dr. Chandra Mohan Jha passed his M.B.B.S. in 1974 and M.S. (General Surgery) in 1979. He joined Bihar Health Services through Public Service Commission on 20th April, 1978 and remained in rural services upto 1983. He worked as Resident Surgical Officer (General Surgery) including Neurosurgery at DMCH Lahera Sarai from 23.8.83 to 26.9.86. He was then posted as Resident Surgical Officer (Neuro Surgery) at Patna Medical College Hospital, Patna from 27.9.86 till the last date of making application, i.e., 31.1.1988. It is not necessary to mention further postings as we are concerned only upto the date of making application.

4. The State Government in its counter affidavit filed in the High Court inter alia stated that the appellant had post-graduate qualification of M.Ch. in Neurosurgery and research work and working experience in Neurosurgery and, therefore, he got preference vide Clause 19 of the advertisement. Dr. Chandra Mohan Jha, Respondent No. 5 neither had post-graduate degree, nor three, years teaching experience in the subject, i.e., Neurosurgery and, therefore, he was placed at Sl. No. 4 of the merit list. It was also stated that the course of M.Ch. in Neurosurgery was being run only in the Rajendra Medical College, Ranchi, which the State Government recognised, and, therefore, the allegations of the writ petitioner (respondent No. 5) that the degree obtained by the appellant was not recognised, was baseless and incorrect.

5. The High Court held that according to the various clauses of the advertisement the requirements for the post of Assistant Professor in Neuro Surgery could be broadly classified under three heads. The first related to the group to which the

applicant must belong and that was confined to the cadre of the Medical Officers of the State Health Service and Junior Teachers and Medical Officers working in the erstwhile private medical colleges. The second condition related to the academic qualification required and according to that the candidate must have a post graduate degree in the same clinical subject, in which he had applied for the post of Assistant Professor. The High Court illustrated that a candidate for Assistant Professorship in Medicine must have a M.D. Degree in Medicine; a candidate for Assistant Professorship in general surgery must have a M.S. degree in general surgery and a candidate for Assistant Professorship in Neuro Surgery must have in Neurosurgery a post graduate degree. The third condition related to experience and called for a careful consideration. The High Court came to the conclusion as per Sub-clause (c) of Clause 3 that with the exception of Neuro Surgery and six other clinical subjects, a candidate in all other subjects had to have three years minimum teaching experience in the same clinical subject. Further, in the clinical subject of Neurosurgery and six other subjects, there was no minimum period of time attached to it but the only condition was that he ought to have working as a Resident/Registrar in the subject of Neurosurgery or the other six, as the case may be. While construing the two provisos of Sub-clause (c) of Clause 3, the High Court found that a candidate for Neurosurgery having teaching experience for three years would receive the foremost consideration and shall be offered appointment. The High Court further held that Clauses 2 & 3 of the advertisement were to be understood without involving any distinction of speciality, parent speciality and super speciality. The said clauses treated all the clinical subjects at par and the requirements contained therein applied to each subject. The High Court found the appellant eligible for the post of Assistant Professor in terms of the Advertisement. However, it held that the appellant secured 14 points while the respondent No. 5, 28 points and as such the appellant was not entitled to any preference.

6. In order to appreciate the controversy, it would be proper to explain the courses of M.Ch. degree possessed by the appellant and the M.S. (General Surgery) degree possessed by respondent No. 5. M.Ch. course was initiated in the Rajendra Medical College, Ranchi by the State Government. M.Ch. Part I examination consists of General Surgery and it is held after a period of two years. Part II and III courses of the M.Ch. degree consist of specialisation in Neuro Surgery. During the course of examination for Neuro Surgery in Parts II and III a candidate has to undergo viva voce test by experts in Neuro Surgery. While the M.B.B.S. is a basic degree, its classification in different branches can be labelled as parent specialities like Orthopaedics, General Surgery, Medicine etc. The parent specialities are manned by those who are recipients of post graduate degree in that particular speciality like M.S. (General Surgery), M.S. (Orthopaedics), M.D. (Medicine). Further growth of medical sciences resulted into more and more super specialities as for example Neuro Surgery, Paediatrics, Surgery, Plastic Surgery, Neurology, Cardiology, etc. The candidates who complete the course of super specialities are conferred with the degree of M.Ch.

(Master of Chirurgery) in case the super specialities relate to Surgery, and the degree of D.M. (Doctor of Medicine) if the same relates to Medicine. Now, so far as the post graduate degree courses in parent specialities called M.S., or M.D. are concerned are of two years duration, whereas those for super specialities conferring degrees like M.Ch. and D.M. are of five years duration after internship. In many universities for obtaining degree of M.Ch. in the particular super speciality, one has to be M.S. in the related parent speciality and the course is of three years for such post graduate degree holders.

7. The Ranchi University kept the duration of M.Ch. course of five years and it was provided that if a person having basic degree of M.B.B.S. joined such course, he would have to pass M.Ch. Part I examination after devoting two years to General Surgery and only after passing the said M.Ch. Part I examination in General Surgery, he would be promoted to M.Ch. Part II and then M.Ch. Part III course, to be completed in three years. This includes specialisation and research in basic Neuro Sciences and Clinical Neuro Surgery, to qualify for appearing at the university examination of M.Ch. Part II and Part III. The University, however, also kept the doors open for M.Ch. (Neuro Surgery) course, having a span of three years for those who were already holders of M.S. degree in General Surgery/Orthopaedics Surgery and they were directly admitted for M.Ch. Part II course and they had to study only for three years for M.Ch. Part II and Part III course. Initially M.Ch. courses were started by All India Institute of Medical Sciences only but later on other universities also followed the same. The Government of Bihar started M.Ch. (Neuro Surgery) five years degree course in Rajendra Medical College, Ranchi in the year 1980 and only one seat was confined for this course every year in the whole State of Bihar. Since admission to the M.Ch. Course in Neuro Surgery was made only after completion of one full year as house surgeon in Neuro Surgery, the course remained of four years duration thereafter.

8. The controversy has been raised before us that the M.Ch. degree course in Neuro Surgery awarded by Rajendra Medical College, Ranchi University is not yet recognised for the purposes of Indian Medical Act, 1956 and a letter of Medical Council of India dated 27.2.1991 has been placed on record in this regard. Learned Counsel for the respondent No. 5 has tried to contend that M.Ch. degree obtained by the appellant was of no value as the same has not been recognised so far by the Medical Council of India. We find no force in this contention, as this course was started by the Ranchi University in 1980 with the consent of Medical Council of India and the State of Bihar has recognised such degree imparted by the Ranchi University and even before this Court learned Counsel appearing for the State of Bihar has admitted this position. We are not concerned in this case about the value of such degree for places outside State of Bihar, but so far as the present case is concerned which relates to the post of Assistant Professor in Patna Medical College and Hospital, Patna which post is under the Bihar Government, no such objection can be maintained by the respondent No. 5.

9. Before advertizing to the various clauses of the advertisement it would be worth mentioning that the Medical Council of India in its recommendations published in 1983 for the posts in the department of Neuro Surgery has laid down as under:

Post Academic Qualification Teaching/Research Experience

- a) Professor M.Ch. Neurosurgery i) As Reader in Neurosurgery for 5 Years in a medical college
- b) Reader do ii) As Lecturer in Neurosurgery for 5 years in a medical college.
- c) Lecturer do iii) Requisite recognised postgraduate qualification in the subject.
- d) Tutor Registrar. Resident

Thus for the post of Lecturer in Neuro Surgery a degree of M.Ch. in Neuro Surgery is necessary. Admittedly, the post of Assistant Professor in question before us is a teaching post in the subject of Neuro Surgery and it is beyond our comprehension as to how the respondent No. 5 who is only M.S. (General Surgery), can teach candidates for the degree of M.Ch. (Neuro Surgery), which is a much higher degree than M.S. and even a person having M.S. degree has to further pass M.Ch. Part II and Part III examinations before obtaining M.Ch. degree in Neuro Surgery.

10. The appellant is holding a degree of M.Ch. in the super speciality of Neuro Surgery itself as well as research work and working experience in the super speciality. Respondent No. 5 is M.S. (General Surgery). None of these persons is having more than three years teaching experience in order to get an over-riding preference. It is not in dispute that the Selection Committee consisting of experts in Neuro Surgery considered the appellant more meritorious and he was placed at No. 1 in the panel and the State Government also approved the same.

11. A reading of exceptions in Sub-clause (c) of Clause 3 goes to show that for a person having a super speciality in the subjects mentioned therein which included Neuro Surgery, it was not necessary to have experience but if there was a candidate available with such super speciality and three years experience, then he would be given preference. Sub-clause (f) of Clause 3 provided that for appointment to the post of Assistant Professor the minimum number of points required was 15 but for super speciality, as aforesaid, the minimum required points were six only. The Government of Bihar who issued the advertisement has also put the same interpretation to the Clauses of the advertisement. Though the High Court at one stage held that a candidate for Assistant Professorship in Neuro Surgery must have a post graduate degree in Neuro Surgery and having held that the degree of Neuro Surgery of the appellant was recognised and valid, yet committed a serious error in giving preference to respondent No. 5, who was having a degree of M.S. in General Surgery over the appellant who was holding much higher degree of M.Ch in the super speciality of Neuro Surgery itself. The High Court further committed an error in holding that Clauses 2 and 3 of the advertisement did not evolve any distinction of speciality, parent speciality and

super speciality. A mere perusal of the said clauses would show that Clauses 2(c) and 3(c) does talk of parent speciality and super speciality and the finding of the High Court in this regard was clearly erroneous. Clause 3(c) carved out an exception in favour of super speciality vis-a-vis experience and, therefore, Clause 3 clearly speaks about super speciality. The High Court in our view committed a further error in not appreciating Clause 19 in its correct perspective. Clause 19 envisaged that preference would be given to a person who had a degree in super speciality along with research or working experience. Thus the appellant having a degree in super speciality and also having research work or working experience has been rightly given preference in the matter of appointment to the post of Assistant Professor in Neuro Surgery over respondent No. 5 who did not have a degree in super speciality.

12. The State Government has also taken a clear stand that there was an acute shortage of qualified Neuro Surgeons in the State and therefore in order to induct qualified Neuro Surgeons, the Government had provided certain relaxations and priorities in the criteria for appointment to junior teaching posts in various medical colleges of Bihar, so that such candidates could be appointed. The appellant had been given preference by virtue of his having M.Ch. degree in Neuro Surgery with research work and working experience. The State Government has further stated that appellant is a qualified Neuro Surgeon and has been rightly appointed as Assistant Professor of Neuro Surgery vide Notification No. 1144(17) dated 28.12.1990 and the appellant joined the said post on 28.12.90 itself.

13. Thus taking in view the entire scheme of the degree of M.Ch. and the relevant clauses of the advertisement, we are clearly of the view that the appellant was rightly put in the Select Panel at No. 1 and the Government of Bihar rightly appointed him on the post of Assistant Professor of Neuro Surgery.

14. In the result, we allow the appeals, set aside the order of the High Court of Patna dated 20.12.1990 and dismiss the writ petition filed by Dr. Chandra Mohan Jha, respondent No. 5.

15. In the facts and circumstances of the case, there would be no order as to costs.