
(1983) 09 OHC CK 0011

In the Orissa High Court

Case No : O.J.C. No"s. 1569 and 1679 of 1983

Dr. Ashok Kumar Mishra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-09-1983

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1984 Ori 121 : (1984) 1 OLR 248

Hon'ble Judges : D. Pathak, C.J;G.B. Patnaik, J

Bench : Division Bench

Advocate : L. Rath, in O.J.C. No. 1569/83 and S.C. Dash, B.K. Patnaik and Pranita Mohanty, in O.J.C. No. 1679/83, for the Appellant; A.G., for the Respondent

Judgement

G.B. Patnaik, J.—These two writ petitions filed by some doctors already in Government service seeking admission to the R. H. S. Course for the current year raise common questions of fact and law and as such are being disposed of by this common judgment.

2. In O. J. C No. 1569 of 1983, there are five petitioners out of which the case of petitioner No. 5 stands on a slightly different footing and, therefore, bis case will be considered separately. In O. J. C. No. 1679 of 1983, there are eleven petitioners. All these petitioners in both the writ petitions were appointed as Assistant Surgeons in the State Medical and Health Services Cadre on ad hoc basis for a period of six months with effect from the date of their joining or till the recommendations of the Orissa Public Service Commission for appointment as regular Assistant Surgeons are received or until further orders whichever is earlier. The appointment orders of the petitioners have been annexed to the writ petitions as Annexures 2 and 2/a in O. J. C. no. 1569 of 1983 and Annexure I in O. J. C. No. 1679 of 1983. The prospectus for selection to R. H. S. and admission into Post-Graduate Course in the three medical colleges of Orissa was approved by the Government of Orissa in the Department of Health and Family Welfare in

Government Order No. 17053-H, dated 3-6-1983. Under Clause 8.3.1 of the prospectus, an inservice candidate is not eligible to apply for R. H. S. Course. Clause 7.2 defines the term "inservice doctor". The challenge in these two petitions is in regard to Clause 8.3.1 as being discriminatory and violative of Articles 14 and 16 of the Constitution and further it is contended that Clause 7.2 does not bring within its sweep the ad hoc appointees like the petitioners.

3. Before adverting attention to the contentions of the petitioners, it would be profit, able to note the scheme of the prospectus in the content of post-graduate studies in medical science in the State of Orissa. It appears that there are three medical colleges within the State of Orissa and admission to the Post-Graduate Courses is made centrally for all the three colleges by a Selection Committee. The duration of the course is three years after full registration out of which one year should be as R. H. S. and this is in consonance with the criteria fixed by the Medical Council of India. Those who have completed five years of service are not required to undergo the R. H. S. Course for one year and they are admitted to the 2 years post-graduate course. The admission to the post-graduate course is made from two independent sources, namely, the fresh graduates who are not in the employ of the State Government and the inservice doctors who are in the employ of the State Government; so far as the fresh graduates are concerned a competitive entrance test is held and on the basis of the marks obtained in the said test, admission is made to the R. H. S. Course. On completion of one year satisfactory R. H. S. Course, they are automatically admitted to the next stage, namely the 2 year postgraduate course. So far as the inservice doctors are concerned, their admission to the 2 year post-graduate course is made also on the basis of merit, namely, the marks obtained by them in the final M. B. B. S, examination. Of course, in case of inservice doctors, certain weightage is provided for those who have rendered service in rural areas, as contained in Clauses 12.3.4 and 12.3.5 of the prospectus. As far as allotment of seats are concerned, out of the total seats available in the post-graduate course, fifty per cent seats are reserved for those fresh graduates who have completed their one year R. H. S. Course and other fifty per cent for the inservice doctors. This is in essence the broad scheme of admission into the R. H. S. and post-graduate course under the prospectus in question.

4. After issuance of prospectus for, the current session, namely, 1983-84, petitioners submitted their applications, but as they were found to be in the employ of the State Government as provided in Clause 7.2, they were not eligible to apply and, therefore, they were not permitted to sit for the competitive entrance test for the R. H. S. Course and hence they filed these two writ petitions.

Petitioners in O. J. C. 1569 of 1983 by an interim direction of this Court dated 5-8-1983 were permitted to appear at the R. H. S. Entrance Examination which was held from 6th Aug., 1983, but it was stipulated in the said order that the results would not be published until the final orders in the case. Subsequently by

another order dated 17-8-1983, this Court directed that the answer papers of the five petitioners be valued. By yet another order dated 8-9-1983, this Court directed that if seats were still vacant, they would be kept vacant for the petitioners till Monday (12-9-1983) and it was also directed that the Standing Counsel should product the merit list of candidates including the petitioners on Monday. The interim order has been extended till the disposal of the writ application. Thus, the petitioners in O. J. C. No. 1569 of 1983 have appeared at the Entrance Examination under the interim direction of the Court, whereas the petitioners in the other case (O. J. C. 1679/83) have not appeared at the Entrance Examination.

5. Mr. L. Rath, the learned counsel for the petitioners in O. J. C. No. 1569 of 1983, strenuously urged that Clause 7.2 of the prospectus should be construed as not to" include the category of ad hoc employees like the petitioners whose services are of a precarious nature and it could not have been the intention of the Government to include them within the ambit of Clause 7.2 of the prospectus. He further contended that an interpretation to include the ad hoc employees within the ambit of Clause 7.2 would cause manifest injustice and, therefore, the Court should avoid the said interpretation and find out as to what was the true intention of the Government. According to Mr. Rath, the true intention of the Government must be only to include those categories of Government servants who are in regular employ of the State Government having at least some amount of certainty in service and not those ad hoc appointees like the petitioners whose tenure of service is so precarious that they cannot be said to be in Government service for all practical purposes. In support of his submission, the learned counsel for the petitioners placed reliance on three decisions reported in (1981) 1 SLR 359 : (1979 Lab IC 1097). (A.V. Sharma v. State of Him. Pra., (1979) 2 SLR 164 : (1979 Lab IC 575) (FB), (S. K. Verma v. State of Punjab) and (1976) 1 SLR 686 , (Arun Kumar v. Union of India).

The decision in (1981) 1 SLR 359 : (1979 Lab IC 1097), is a Bench decision of the Himachal Pradesh High Court, where the question for consideration was whether an ad hoc appointment conferred any right of seniority or other benefits of service on the post or not and the Court repelled the submission of the petitioner on this score on the ground that to keep the wheels of administration going on in cases where proper incumbents are not available, it is open to the department to make ad hoc appointment and when such ad hoc appointments are made, it would technically mean that the post in question is still vacant for the person who is found eligible to occupy the same on regular basis and, therefore, it is not open for an ad hoc appointee to claim the benefits of the service on the post.

The decision in (1979) 2 S LR 164 : (1979 Lab IC 575) is a Full Bench decision of the Punjab and Haryana High Court where the question for consideration was whether the services of an ad hoc public servant could be terminated and another ad hoc employee could be appointed in his place and in that context

their Lordships held that Article 311 of the Constitution had no application where the termination of services of an ad hoc employee was made in accordance with the terms of appointment and it was further held that having regard to the ordinary meaning of the term, no distinction could be reasonably drawn between a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc.

The decision in (1976) 1 SLR 686, is a single Judge decision of the Delhi High Court, where the question for consideration was whether reversion of ad hoc appointees to make room for regular appointees was punitive in nature or not. While answering the said question in the negative, the learned single Judge also observed that an ad hoc appointee or promotee had no right to the post because by its very nature, it was a stopgap arrangement until a regular appointment or promotion was made and, therefore, in that sense, the incumbent was holding a very precarious tenure and would, therefore, be liable to be reverted to make room for a regular appointee or promotee pending which appointment or promotion, the ad hoc arrangement was reset to.

Thus in all these decisions, the precarious tenure of an ad hoc appointment has been emphasised, but in no case it has been held that it is not an "employment" under the Government. Clause 7.2 of the prospectus does not refer to the nature of employment of the inservice doctor, namely, ad hoc, temporary, substantive or permanent, but it refers to all those who are in the "employ of the State Government". In interpreting Clause 7.2 of the prospectus, therefore, the aforesaid decisions on which reliance has been placed by the learned counsel for the petitioners are of no assistance.

6. It is the accepted principle of the rules of construction that the words; phrases and sentences of a statute are ordinarily to be understood in their natural ordinary, popular and grammatical meaning unless such a construction leads to an absurdity or the context or the object of the statute suggests a different meaning. In *John Grey v. William Pearson* (1857) 6 HLC 61, Lord Wensleydale, stated:--

"In construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless the (sic) would lead to absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case, the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency; but no further."

This passage was quoted with approval by Lord Blackburn in the case of *Caledonian Railway Company v. North British Railway Company* (1881) 6 AC 114. In this view of the matter, we have to find out what is the ordinary meaning of the term "one who is in the employ of the State Government" used in CI. 7.2 of the prospectus.

7. The ordinary meaning of the word "employ" as given in *Biswas Encyclopaedic Law Dictionary* is to occupy advantageously; to use or engage the services of; to

provide with a job that pays wages or a salary to devote to or direct towards a particular activity or person. "Employed" means, "engaged or occupied". In 5 Stroud's Judicial Dictionary (Fourth Edition), the word "employ" conveys the meaning to retain and pay a person.

The appointment letter itself shows that the petitioners have been appointed as Assistant Surgeons in the State Medical and Health Services Cadre. Even taking a literal meaning of the words used in Clause 7.2 of the prospectus and looking at the appointment orders of the petitioners, there cannot be any doubt that the petitioners are in the employ of the State Government and, therefore, squarely came within the ambit of Clause 7.2 of the prospectus. We also do not find that such an interpretation leads to any absurdity or repugnance or inconsistency with the rest of the clauses of the prospectus requiring any modification to the grammatical and ordinary sense of the words used in Clause 7.2. The language used in Clause 7.2 of the prospectus is unambiguous. We, therefore, reject the submissions of Mr. Rath for the petitioners and hold that petitioners do come within the ambit of Clause 7.2 of the prospectus.

At this stage it would be appropriate to note the contention of Dr. Dash, the learned counsel for the petitioners in O. J. C. No. 1679 of 1983 simply to be rejected in view of our interpretation given to Clause 7.2 of the prospectus. According to Dr. Dash, unless and until a doctor in service becomes eligible to be considered for post-graduate course in accordance with Clause 9.5.5 of the prospectus, namely, unless he completes five years of service after full registration, he should not be debarred from appearing at the Entrance Examination for R. H. S. and Clause 7.2 of the prospectus should be interpreted in that line. The submission is wholly untenable in view of our earlier finding that Clause 7.2 embraces all doctors who are in the employ of the State Government bereft of the fact that the period for which they are employed or the purpose for which they have been employed. Accordingly we reject the submission of Dr. Dash on this score.

8. The next submission of Mr. Rath, the learned counsel for the petitioners, is with regard to the validity of Clause 8.3.1 of the prospectus. The said clause makes inservice candidates ineligible to apply for R. H. S. Course. According to the learned counsel for the petitioners, the clause is wholly discriminatory, inasmuch as, there is no reasonable classification and even if a classification can be found out, yet, there is no reasonable nexus or object for which the classification can be sustained and therefore, the provision is wholly discriminatory and violative of Article 14 of the Constitution. In aid of his said submission, the learned counsel further contends that the main object in imparting post-graduate education being to raise the standard of medical profession, the elimination clause in the prospectus debarring inservice candidates from appearing at the competitive test brings down the standard of efficiency, as the meritorious candidates are usually taken in as ad hoc appointees and, therefore, entrance examination of direct candidates is only a

competition amongst the less meritorious or third-rate persons. According to the learned counsel, in the process, merit is being given a go-by.

The learned Advocate-General appearing on behalf of the State, on the other hand, has contended that the provision cannot be said to be discriminatory as there are two identifiable sources from which admission to the post-graduate course is being made, namely, the fresh graduates who are not in any service and the graduates who are already in service. Both the groups are not similarly situated. In either case, the selection is made on the basis of merit and, therefore, efficiency has not been given a go-by. The learned Advocate-General has also contended that there is a wholesome policy behind allotting fifty per cent of the seats for the doctors who are in Government service, as under the recruitment rules prevalent in Orissa, doctors serving in the periphery cannot get promotion after a certain stage unless they hold a post-graduate qualification and the policy of the Government is to have specialists even in remote corners of the State so that large number of poor villagers will be able to get the treatment of a specialist nearby their village.

9. Article 14 of the Constitution does not take away from the State the power to classify on a reasonable basis having regard to the peculiar circumstances and characteristics of each problem. Reasonable classification based on intelligible differentia for purpose of special treatment is not prohibited. While Article 14 of the Constitution guarantees equality before law and equal protection of the laws to any person within the territory of India, it does not forbid reasonable classification. The only restriction which the law provides is that in order that a classification may be reasonable, it should be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved. Colleges being controlled by the Government, Government has a right to choose the source from which selection is to be made. The applicability of Article 14 of the Constitution with regard to admission to different institutions had come up for consideration before the Supreme Court on several occasions. The learned Advocate-General in support of his submissions placed reliance on the decisions of the Supreme Court in *R. Chitralekha and Another Vs. State of Mysore and Others*, ; *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, ; and *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, .

In *R. Chitralekha and Another Vs. State of Mysore and Others*, , a Constitution Bench was examining the validity of the Government order prescribing interviews for regulating admission to colleges in the context of Article 14 of the Constitution. The Court observed :--

"...The Government runs most of the medical and engineering colleges. Excluding the State aided colleges for a moment, the position is as follows: The colleges run by the Government, having regard to financial commitments and other relevant considerations can only admit a specific number of students to the

said colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a college will have, and the Government which runs its own colleges cannot be denied that power."

In para 12 of the said judgment, their Lordships further observed :--

"..... It is, therefore, clear that the Government by its order not only laid down a clear, policy and prescribed definite criteria in the matter of giving marks at the interview but also appointed competent men to make the selection on that basis. The order of the Government does not in any way contravene Article 14 of the Constitution."

In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, , another Constitution Bench was also examining the validity of the college prospectus with regard to admission to medical college vis-a-vis Article 14 of the Constitution. Grover, J., speaking for the Constitution Bench observed :--

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification." (Underlining is ours)

In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , the Supreme Court was considering whether University-wise distribution of seats in Government Colleges is violative of Article 14 of the Constitution or not. The Court observed :--

"Since the Government has set up these colleges and maintains them, it has prima facie the power to regulate admission in its own institutions"

The Court upheld the rules which provided distribution of seats University-wise and held :--

"..... Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own

colleges and to decide the sources, from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged In our view, the rules lay down a valid classification. Candidates, passing through the qualifying examination held by a University from a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14."

10. Mr. L. Rath, the learned counsel for the petitioners, however, in support of his contention that Clause 8.3.1 of the prospectus is violative of Article 14 of the Constitution placed reliance on the decision of the Supreme Court in the case of Dr. Jagdish Saran and Others Vs. Union of India (UOI), , and laid emphasis on the observations of Krishna Iyer, J., in paras 36 and 39 of the judgment. According to the learned counsel for the petitioners, in the prospectus in question, there has been a blanket ban for the inservice candidates to appear at the Entrance Examination for R. H. S. which is nothing but a constitutional heresy. The learned counsel placed reliance on the following observations of Krishna Iyer, J., in the aforesaid decision in support of his contention :--

"A blanket ban which is the indirect result of a wholesale reservation is constitutional heresy. There must be substantial social justice as *raison d'être* for a high percentage of alumni reservation. If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. In advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage"" (Quoted from the headnote)

We fail to understand how the aforesaid observations of Krishna Iyer, J., have any application to the facts of the present case. There is no doubt that under the prospectus in question, merit is the criteria of selection from both the sources. There is no blanket ban as is being contended by the learned counsel for the petitioners. On the other hand, the scheme of selection is that whereas the fresh graduates on being selected at the competitive entrance test will prosecute studies for three years out of which one year as Resident House Surgeon, the inservice candidates are required to undergo two years of post-graduate course and are exempted from doing the R. H. S. Course, This is in consonance with the

principles laid down by the Indian Medical Council. Therefore, a candidate will have to decide from the beginning whether he would prefer to join the post-graduate course by appearing at a competitive entrance test or would like to join the service and then try for doing his post-graduate course after completion of five years service. The inservice doctors are eligible to do their post-graduate course only after completion of five years of service and are not being debarred from doing the postgraduate course. On a fair reading of the prospectus, we find the scheme of selection is wholly justified and in our view is not discriminatory in nature.

11. The classification of the candidates for admission as inservice candidates who are in the employ of the Government is a reasonable classification in the circumstances of the case and bears a just relation to the object which is sought to be achieved, It is well known that in a poor State like Orissa large number of persons in need of medical aid are compelled to seek medical aid in Government Hospitals where they can get free medical aid or medical aid on payment of nominal charges. Doctors who are in the employ of the State Government and who are employed in the Government hospitals are undoubtedly instrumental in rendering medical aid to a great majority of the people. It is, therefore, essential that they should be given scope to become more competent to render medical assistance by increasing their knowledge in a specialised field. As has been rightly pointed out by the learned Advocate-General, under the rules in force, no surgeon can occupy a specialised post in any of the hospitals unless he holds a post-graduate degree. Such a rule undoubtedly helps the Government policy of giving efficient medical aid to millions of people staying in villages by more competent hands and for that purpose it is obviously necessary to give admission to those particular persons in the post-graduate class. It is further found that even while giving admission to those inservice doctors, merit has been the consideration. We, therefore, find that admission to the post-graduate course under the prospectus from two different sources, namely, the fresh graduates and those who are in employ of the Government, is reasonable and has a just relation to the object sought to be achieved. Accordingly, we hold that Clause S.3.1 does not suffer from the vice of Article 14 of the Constitution and is *intra vires*.

12. In view of our aforesaid conclusion, both the writ petitions are devoid of merits except the case of petitioner No. 5 in O. J. C. No. 1569 of 1983 whose case would be discussed hereafter, Petitioner No. 5 in O. J. C. 1569 of 1983 was no doubt under the employ of the State Government like the other petitioners on the relevant date, but it appears that he had tendered his resignation on 4-7-1983 so that he could appear at the entrance test for R. H. S. The last date for submission of application was 25-7-1983 and the entrance test was scheduled to commence on fifth of August, 1983. Though the petitioner No. 5 had submitted this resignation on 4-7-1983, well in advance the last date of submission of application for entrance test to R. H. S., it was accepted by the State Government on 1-8-1983. Petitioner No. 5 has filed an affidavit in this

Court on 4-8-1983 indicating that though he tendered his resignation on 4th July, 1983, the same was not attended to by the Director till 30th of July, 1983 and it was only on petitioner taking initiative at the Directorate, the same was forwarded to the State Government, which was ultimately accepted on 1-8-1983. It was further stated in the said affidavit in para 6 thereof that in case of several others like the petitioner No. 5 who were also ad hoc appointees and had resigned, their resignations had been accepted earlier and petitioner No. 5 had, therefore, been discriminated. There is no challenge to these averments made by petitioner No. 5. It appears that the Director of Medical Education did not take any action on the letter, of resignation. For the inaction of the appropriate authorities, petitioner No. 5 cannot be made to suffer. The learned Advocate-General appearing for the State has raised a technical plea that until and unless the resignation is accepted, petitioner No. 5 also must be held to be continuing in the employ of the State Government and, therefore, he was rightly debarred from appearing at the entrance test. In support of his contention, reliance has been placed on two decisions of the Supreme Court in *Raj Kumar Vs. Union of India (UOI)*, and *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, . Without focussing our attention to the said contention of the learned Advocate-General, on the peculiar facts and circumstances of the present case, we have no other alternative than to hold that petitioner No. 5 has been grossly discriminated. There is no doubt that petitioner No. 5 had tendered his resignation on 4-7-1983 much in ahead of the last date of submission of application for entrance test to R. H. S. in normal course, his resignation should have been accepted within that period and there is no reason as to why when resignations of others similarly situated were accepted, petitioner's letter of resignation did not receive any attention till 30th of July by the Directorate. Be that as it may, the resignation had been accepted ultimately on 1-8-1983 and, therefore, on the date when, the examination commenced, namely, on 6-8-1983, petitioner No. 5 was not in the employ of the Government. He has already appeared at the entrance test pursuant to the interim direction of this Court dated 5-8-1983 and we hope that his answer papers must have also been valued pursuant to the interim direction dated 17-8-1983. In this view of the matter, so far as petitioner No. 5 Dr. Bhartendu Swain is concerned, we issue a direction to the opposite parties to declare his results and if he has been otherwise found eligible, to admit him to the R. H. S. Course.

13. In the ultimate result, therefore, the petition of Dr. Bharatendu Swain (petitioner No. 5 in O. J. C. 1569 of 1983) is allowed and both the writ petitions with respect to all other petitioners are dismissed, but in the circumstances, there will be no order as to costs.

Pathak, C. J.

I agree.