(1993) 12 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10276 of 1992

Dr. Ashok Kumar Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Citation : (1994) 1 PLJR 327

Hon'ble Judges : S.K. Chattopadhyaya, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : S.B.N. Singh, Sunil Kumar Singh, Pramod Kumar Thakur, Kaushlash Singh, Manoj Kumar Ambastha and Brij Bhushan Prasad, for the Appellant; Ram Awadhesh Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—In this writ application, the Petitioner has prayed for a writ of certiorari for quashing the order dated 14.7.92, as contained in Annexure-1; a writ of mandamus commanding the Respondents to grant points to the Petitioner considering his work in the Tuberculosis and Chest Diseases Unit in the Patna Medical College Hospital (in short "P.M C.H.") from 13.3.1989 to 30.0.90; and also commanding the concerned Respondents to grant 6.5 points to the Petitioner considering his services rendered in the rural areas including at the Unit of T.B. and Chest Diseases at P.M.C.H.

2. In a nutshell, the Petitioner has prayed that the Respondents should be commanded to post the Petitioner in the post of Registrar (Medicine) in any Medical College and Hospital within the State fixing his merit in the panel of Registrar (Medicine) of the year 1990 by allowing him a total of 6.5 points.

3. The facts of the case in its brevity can be stated as follows:

The Petitioner was posted as Civil Assistant Surgeon in Chand Block in the district of Rohtas on the basis of Notification dated 12.3.79. The Petitioner joined the said post accordingly on 21.3.79. The Petitioner worked in the said block from

21.3.79 to 22.10.79, from 14.7.80 to 26.7.80 and from 16.10.81 to 1.5.83. As the Petitioner was on study leave doing Post Graduate Degree course, he was absent from his duty between 23.10.79 to 13.7.80 and again from 27.7.80 to 15.10.81. On 19.4.83, Petitioner was transferred from the said Block to Aurai Block in the district of Muzaffarpur and he joined at his transferred post on 5.5.83. By Notification dated 29.5.1985, Petitioner was transferred from Aurai Block to P.M.C.H. and was posted as Resident (Medicine). Subsequently, by Notification dated 29.9.88, he was posted as Administrative Officer in Respiratory Unit of P.M.C.H. and the Petitioner joined the said Unit on 30.9.88 and continuing his work thereafter in the said Unit.

It appears that an advertisement was published in the ''Hindustan Times'', a local daily, dated 29th May, 1990 inviting applications for the post of Assistant Professor, Resident, Registrar etc. in different subject. A cut off date was given in the advertisement for receiving applications which was 30th June, 1990. In the said advertisement, it was made clear that while computing the merit of a candidate, points was to be allotted for one year''s full experience at the Block Dispensaries in rural areas, except Chota Nagpur and Sanihal Parganas Divisions. It was further stipulated that for each one year of service rendered in the Malaria, Leprosy and Tuberculosis Scheme, computing upto the last date of application, 11/2 points were to be allotted. The aforesaid advertisement has been marked as Annexure-9 to the writ application. Along with the application, the Petitioner filed all testimonials showing therein that he had completed 4 years, 11 months and 11 days of service in the Block Dispensary and 1 year, 9 months and 1 day at T.B. and Chest Diseases Unit at the P.M.C.H. The Petitioner, pursuant to Annexure-9, applied for post of Assistant Professor (Medicine) as well as for the post of Registrar (Medicine). According to Petitioner, as he had completed four years of service in the rural services i.e. at Block Dispensaries, he was entitled for 4 points for that and for full completed period of one year''s service in T.B. and Chest Diseases Unit, he was entitled to 11/2 points. Further claim of the Petitioner was that he was entitled at least for 1 point for rendering services i.e. 9 months and 1 day at T.B. and Chest Diseases Unit at P.M.C.H. and 3 months and 11 days of services at Block Dispensaries.

It appears that while preparing the panel for the Registrar (Medicine) and Assistant Professor (Medicine), the Respondents allotted only 3 points for rural services rendered by the Petitioner. A photo copy of the provisional panel has been annexed as Annexure-10 series. The Respondents in the aforesaid provisional panel, invited objections and pursuant to that, Petitioner filed his objection contending, inter alia, that towards rural services and services rendered under the T.B. Scheme, the Petitioner was entitled for 6.5 points. It is stated that while deciding the merit of the Petitioner, Respondents concerned allotted 6.5 points to the Petitioner in respect of the panel of Assistant Professor (General Medicine) but refused to allot 6.5 points with respect to the panel of the Registrar (Medicine).

As the said objection of the Petitioner was not disposed of within a reasonable time, the Petitioner moved this Court by filing C.W.J.C. No. 6408 of 1991. By order dated 17.3.92, this Court, while disposing of the said writ application, directed the Respondents to take a decision with regard to the claim of the Petitioner positively within one month from the date of receipt of a copy of the said order. As the Respondents did not take any decision within the time fixed by this Court, a contempt petition, being M.J.C. No. 593 of 1992, was filed by the Petitioner. The contempt petition was filed on 11.5.92, but the impugned order, as contained in Annexure-1 rejecting the claim of the Petitioner, has been passed on 4.7.92. It appears that the representation/objection of the Petitioner was rejected by the Respondents on the ground that in the opinion of the Government, the Petitioner did not hold any post under the Scheme of Tuberculosis. Further ground of rejection of the Petitioner''s claim, as has been mentioned in the impugned order, is that the Petitioner was appointed in the P.M.C.H. on the post of Administrative Officer which is a non-teaching post. Taking into consideration, these two grounds, the claim of the Petitioner was rejected.

4. Counter affidavit has been filed on behalf of the Respondents which has been affirmed and verified by the Section Officer in the Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna. Subsequently, a supplementary counter affidavit was also filed in this case on behalf of the Respondents.

5. It appears that the averments of the Petitioner in Paragraphs 2 to 10 of the writ application have not been controverted by the Respondents. In Paragraph-3 of the counter affidavit, the Respondents have admitted that for his work in rural areas for 4 years, 3 months and 11 days, the Petitioner was entitled for 4 points for each completed year in rural Blocks. Case of the Respondents regarding Petitioner''s rendering services at T.B. and Chest Diseases Unit has been negatived on the ground that he was never asked to work in T.B. and Chest Diseases Unit and he did it in his sweet will without any direction from the Government. Stand has been taken in the counter affidavit that nomenclature of the Respiratory. Unit was changed from 12.11.90 and the said Unit was known as T.B. and Chest Diseases Unit from the said date and as the cut off date for receipt of the applications for the panel was 30.6.90, the Petitioner was not entitled to points for the work done by him in T.B. and Chest Diseases Unit. Interpreting the contents of the advertisement (Annexure-9), it has been asserted that as the T.B. and Chest Diseases Unit came into force from 12.11.90, the Petitioner was not entitled for the points for doing work in the said Unit in terms of advertisement/criteria. The case of the Respondents is that as prior to 12.11.90, separate unit for T.B. and Chest Diseases was not in existence and as such the Petitioner could not claim the points for working under the same Unit. The Petitioner was not posted against any teaching post in the P.M.C.H. rather he was posted against a non-teaching post of Medical Officer (Administrative Officer) in the Respiratory Unit of P.M.C.H. and as such even if he was carrying

out teaching work in the T.B. and Chest Diseases Unit, it is against the rules and regulations and the Petitioner is not entitled to claim the points as aforesaid.

6. In the supplementary counter affidavit, nothing new has been stated but only statements made in the counter affidavit have been clarified. It is stated that T.B. and Chest Disease Unit of P.M.C.H. formerly known as Respiratory Unit, does not come under the purview of Anti Tuberculosis Programme run in the joint venture of the State and the Central Government. The Unit of T.B. and Chest Diseases, it is stated, had been created to impart training and studies to the Under Graduates and Post Graduate curriculum approved by the Medical Council of India.

7. From the aforementioned statements made in the counter affidavit and supplementary counter affidavit, it appears that the stand of the State is that (A) the Petitioner was appointed against a non-teaching post of Administrator; (B) the cut off date for receiving the applications for panel was 30.6.90 and the Respiratory Unit came to be known as T.B. and Chest Diseases Unit from 12.11.90; (C) the Petitioner did not work in the T.B. Programme as the T.B. and the Chest Diseases Unit of P.M.C.H. is really not within the said Programme and as such the Petitioner is not entitled to get any point as claimed by him.

8. A rejoinder to the counter affidavit has been Tiled on behalf of the Petitioner.

9. Mr. S.B.N. Singh, learned senior counsel appearing on behalf of the Petitioner has firstly contended that whereas from perusal of Annexure-10, it will appear that without considering the case of the Petitioner, the Petitioner was allotted 3 points for his service rendered in the rural areas, but subsequently, in Paragraph-3 of the counter-affidavit, the Respondents have admitted that the Petitioner is entitled for 4 points for such rural services. This admission made by the Respondents, contended learned Counsel, will show that Annexure-10 was issued without application of any mind. Advancing his argument, he submitted that different Annexures annexed to the writ application will show that Respiratory Unit of the P.M.C.H. was renamed as T.B. and Chest Diseases Unit by Government Notification dated 12.11.90, as contained in Annexure-13 to the writ application. Referring to Annexure-14 dated 2.6.90, it is submitted that the Respiratory Unit of Medicine Department in P.M.C.H., in fact, is a Unit of Tuberculosis and Chest Diseases and Teaching and Training of Practical, Clinical and Theory Classes of Post Graduate students of Diploma in Tuberculosis and Chest Diseases (D.T.C.D. course) are carried out through this Respiratory Unit only. This Annexure further reveals that the Petitioner who is M.D., D.T.C.D., was working as Medical Officer-cum-Administrative Officer in the Unit of Tuberculosis and Chest Diseases i.e. Respiratory Unit in the Department of Medicine, P.M.C.H. from 30.9.1988 on the basis of Government Notification dated 29.9.1988.

10. Learned Counsel has drawn our attention to Annexure-15, the letter dated 21.11.89 of the Superintendent of P.M.C.H., Patna which reveals that after the Petitioner joined T.B. and Chest Diseases Unit (formerly known as Respiratory

Unit) on 30.9.1988, the Petitioner was dealing with outdoor, indoor and casually services to the patients suffering from Pulmonary tuberculosis, other chest diseases, Immunological diseases (Respiratory Allergic disorders) and different types of extra pulmonary tuberculosis diseases. It further appears that Petitioner was dealing with the management of Respiratory failure by the help of Respirator and Practical and Clinical classes of Post Graduate students of Diploma in D.T.C.D, were run by the Petitioner under the supervision of the Unit Incharge.

11. With reference to Annexure-16, it is submitted that the Incharge of T.B. and Chest Diseases Unit furnished in detail the information regarding teaching in Tuberculosis and Chest diseases, the strength of beds for holding clinical and practical classes as well as for demonstration, the present position of the teaching staff and the requirements according to the Regulations of the Medical Council of India. It further reveals from Annexure-16, the letter, that the work of teaching in the said Unit was being done by the Administrative Officer and the Director, Tuberculosis Demonstration Centre at part time.

12. On the basis of aforesaid uncontroverted facts, Mr. Singh has submitted that considering these aspects of the matter it can be very well said that the first ground mentioned in Annexure-1 for rejecting the claim of the Petitioner that as because the Petitioner was appointed on the non-teaching post, cannot be sustained. He has submitted that taking into consideration the letter as contained is Annexure-16, it is apparent that though the Petitioner was appointed as an Administrator cum-Medical Officer, he was also rendering his services as a teaching staff of the said Unit.

13. It is further submitted that the contention of the Respondents that the Respiratory Unit in which the Petitioner was initially appointed is not the same as the T.B. Programme is a frivolous one, inasmuch as, it has not been denied anywhere that the Respiratory Unit of the P.M.C.H. was renamed as T.B. and Chest Diseases Unit by the order of the Government itself. With this back-ground, it is submitted that when the Petitioner was working uncontrovertedly in the Respiratory Unit front 30.9.1988 which was renamed afterwards as T.B. and Chest Diseases Unit, it is futile for the Respondents to contend that the Petitioner was not working in the said Unit from the cut off date i.e. 42.11.1990.

Mr. Singh has drawn our attention to the guidelines issued by the Medical Council of India 1974 as well as 1983 and has submitted that the Department of Tuberculosis is said as Tuberculosis and Chest Diseases Unit.

From a comparison of these two guidelines, it is apparent that for appointment to the post of (a) Professor, (b) Reader, (c) Lecturer, (d) Tutor/Registrar/Resident, more or less similar criteria have been laid down for Tuberculosis Department as well as Tuberculosis and Chest Diseases Unit. This clearly goes to show that there is no difference between T.B. and Chest Diseases Unit and the Tuberculosis Department.

14. Referring to Annexure-9, Mr. Singh has submitted that the Respondents have

misinterpreted the advertisement, inasmuch as, the advertisement (Annexure-9) does not stipulate that the person who is working in the T.B. and Chest Diseases Unit in the P.M.C.H. will not be allotted 11/2 points. On the other hand, it is submitted that Clause-4 of Annexure-9 mentions about rural services. Sub-clause (e) of Clause-4 does not mean that T.B. Programme means only working in the rural areas. It is submitted that the T.B. and Chest Diseases Unit of the P.M.C.H. also comes under T.B. Programme, inasmuch as, this Unit also doing the work of eradication as well as curing of T.B. and other chest ailments of patients.

15. Learned Counsel for the State, on the other hand, has submitted that from the advertisement itself, it is clear that the person must be working in the T.B. Programme in a rural area. Continuing his argument, it is stated that this T.B.. Programme was sponsored with the joint venture of Central and State Governments under the direction of UNICEF and only those persons who are working under this Programme in the rural areas for eradication of T.B. are only entitled to get 11/2 points. As the Petitioner admittedly was not working under this Programme, his claim is not justified.

16. Learned Counsel for the State, however, conceded that a person must work in the eradication programme of T.B. whether in urban or rural areas but has submitted that T.B. Programme is quite different from T.B. and Chest Diseases Unit of P.M.C.H.

17. Referring to Annexure-11, learned Counsel for the State has submitted that it is apparent that similar to rural services, Medical Officers who are working under T.B. Programme are entitled for 1.5 points for every year. It is, however, fairly conceded again on behalf of the Respondents that the advertisement does not stipulate the teaching experience of a person for appointment to the post of Registrar (Medicine).

18. In order to resolve the controversies, in my opinion, the real import of the advertisement, as contained in Annexure-9, has to be looked into.

19. The relevant clause of the Advertisement is Clause-4 which deals with the appointment to the post of Registrar. It is not controverted on behalf of the Respondents that the Petitioner is tacking in any way the basic qualification, as contained in Sub-clause (ka) of Clause-4 of the advertisement. Other clauses of the advertisement which relate to allotting of points on rural services are not much relevant for consideration because the Respondents have admitted that the Petitioner is entitled to 4 points for rendering services in the rural areas.

20. As noticed above, Clause-4 relates to rural services. We are concerned for the purpose of this case mainly with Sub-clause (e) of Clause-4. Sub-clause (e) inter alia, stipulated that on the last date for presenting application, the person working as Medical Officer in Malaria, Fileria, Leprosy and T.B. Programme will get 11/2 points for each completed year of service, It is pertinent to mention that the term "T.B. Programme" has not been defined anywhere in the advertisement. The Respondents have conceded that if a person works in the T.B.

Programme either in urban or rural area, he is entitled to get allotted points i.e. 11/2 points.

21. The argument advanced on behalf of the State is that the term "T.B. Programme" means eradication of contagious (Mahamari) diseases like T.B., Leprosy etc. which naturally suggests that this Programme is meant for rural areas. Referring to Clause-4, it is submitted that because Sub-clause (c) comes under Clause-4 wilt naturally mean that this T.B. Programme is specified for rural services only.

22. In my considered opinion, the argument of learned Counsel for the State is devoid of any merit. It overlooks other clauses, namely, Clause-C ?l? and Clause-D ?n?, which stipulate allotment of points to persons who are working in the post of Demonstrator/Tutor/Medical Services. These two Clauses, in my opinion, by no stretch of imagination, can be equated with rural services.

Moreover, the case of the Petitioner is that he was working in the T.B. and Chest Diseases Unit and while discharging his duty, he was imparting teaching also, has not been controverted by the Respondents. The relevant Annexure shows that the Petitioner is engaged in treating the patients suffering not only from Tuberculosis but also from other chest ailments. His experience in such a sphere cannot be doubted and very correctly has not been done so by the Respondents.

23. It is a common knowledge that the T.B. and Chest Diseases Unit of the P.M.C.H. is one of the oldest Centres in the State of Bihar which is serving the people who are suffering from dreadful disease like Tuberculosis. Uncontrovertedly, the Petitioner is one of the persons who is serving in this Unit which is serving the people suffering from this disease. If the person who is working since long in this oldest Unit for such a long time i.e. since 30.9.1988, when he joined in the Respiratory Unit of the P.M.C.H., which was renamed subsequently as T.B. and Chest Diseases Unit is not eligible for the points so provided in the advertisement, I fail to understand how a person who is working in the rural areas for the same job for even one complete year only will get the said points. Can it be said that T.B. and Chest Diseases Unit of the P.M.C.H. by treating the T.B. patients is not helping in eradication of this disease like T.B. and Chest ailment? My answer to this question will be in negative.

I may usefully refer to the "Text Book of Tuberculosis" (2nd Revised Edn.) edited by an Editorial Board of renowned doctors of the country. In Page-11 of the said Book, a paragraph has been given with the heading "Tuberculosis Control Programme in Independent India".

This paragraph reads, as follows:

With the end of the Second World War in 1945 and the attainment of independence in 1947, there has been a revolution in the rising expectations of the people and the Government was pledged to help in the betterment of the people''s health and the improvement, of social development. The first step

taken by the Central Government in Independent India was to establish in 1947 a Tuberculosis Division in the Directorate General of Health Services of the Ministry of Health, with an Adviser in Tuberculosis as the head. Planning and execution of Tuberculosis Control Programmes were greatly facilitated by the creation of this new Division. Tuberculosis is given a prominent place in planning. International Union Against Tuberculosis considered tuberculosis as a World problem and started mobilising the world opinion for the conquest of this disease. These organizations have taken a keen interest in the problem in India and have given appreciable assistance in the introduction of BCG vaccination programme in this country. Three Training and Demonstration Centres were established for the training of personnel. A number of fellowships for training tuber-culosis workers abroad were also given. Later, the Colombo Plan and TCM now known as United States Agency for International Development (USAID) have helped in some of the schemes.

At Page-519 of the said Rook, the term "Control of Tuberculosis" has been defined. It reads thus, "Reduction of the problem of Tuberculosis to such a low level that there is no infection or disease in the country or community would mean complete eradication of a disease." Similarly, the World Health Organisation has defined Tuberculosis Control as "Reduction of the problem of tuberculosis to so low a level that there is less than 1 per cent prevalence of natural (specific) reactors to standard tuberculin among children in the 14 age group."

24. From the aforesaid Book, it is apparent that Tuberculosis Association of India has advised that T.B. Programme should be oriented and education and proper motivation are absolutely necessary when the patient first is detected with the diseases so that he feels and appreciates the need for continuous and long treatment. It also advises that tuberculosis services should be available throughout the year on a long term basis/Patchy services here and there or sporadic efforts in mass case-finding campaign or provision of treatment of a few detected cases in some areas will not be effective in reducing the problem of tuberculosis. Cases continue to develop all the time in all areas and a permanent service at not too inconvenient a distance from the homes of the symptomatic person must be available so that the patients can be detected and treated there at once. According to the advise of the Tuberculosis Association of India, the reduction of cases of tuberculosis can be achieved by imparting education to medical students of the tuberculosis and other related diseases of chest, by treating patients and by educating people of the preventive measures of tuberculosis and also by research work. At page 594 of the said Book, it has been observed, as follows:

The Technical Committee has been reviewing questions relating to the teaching of tuberculosis at various stages of medical education. An important recommendation made by the Committee is that in view of the current emphasis on chemotherapy and the heavy load of the practice on the profession, training

in TB at the undergraduate and post-graduate levels should include teaching of the essentials of services in the homes of patients and institutional practice also. To man the services, the standard of education should be at level of diploma courses and to prepare teachers the standard should be at the level of degree courses. The Committee has made certain recommendations to bring about uniformity in the conduct of TDD/DTCD courses in the various universities and also in regard to the curriculum, syllabus and examinations.

25. Having dealt with the aforesaid paragraphs of the authoritative Text Book on the subject, one can very easily presume that for eradication of diseases like T.B., Leprosy, Malaria etc., serious thought was given on these aspects. It is to be found that the Tuberculosis Association of India has advised various method and means for eradication of this contagious disease like T.B. From this Book, I find that a wide meaning has been imparted to the term "T.B. Programme" as well as "Control of Tuberculosis". This definition, in my considered opinion, includes both i.e. rendering services in the urban areas as well as in rural areas for eradication of this disease. Thus only because the Petitioner did not work in a rural area for one complete year in T.B. Programme, in my view, the Petitioner cannot be denied 11/2 points for his rendering services in the T.B. and Chest Disease Unit at the P.M.C.H.

26. In the facts and circumstances, I therefore, hold that the Petitioner is entitled to get 4 points for his services in the rural areas, which has been admitted also by the Respondents in their counter affidavit and 11/2 points for continuously working in the T.B. and Chest Disease Unit since 30.9.1988, when he joined in the Respiratory Unit of the P.M.C.H. The Respondents are hereby directed to allot the Petitioner a total marks of 51/2 points taking into account his services in the rural areas as well as in the T.B. and Chest Diseases Unit.

27. As regards the prayer of the Petitioner for grant of at least 1 (one) point for his experience of work in the T.B. and Chest Diseases Unit from 29.9.89 to 29.5.90, in my opinion, the same cannot be allowed, inasmuch as, the Petitioner admittedly did not work for a full complete year i.e. 29.9.89 to 29.9.90. This point cannot be allotted to him as this will be against the criteria laid down in Annexure-9.

28. In the result, this writ application is allowed. Let a writ of mandamus be issued to the concerned Respondents directing to allot a total of 51/2 points to the Petitioner for consideration of his appointment to the post of Registrar (Medicine) in any Medical College and Hospital within the State of Bihar. However, the prayer for allotting 1 (one) more point on the basis of his experience for working in the T.B. and Chest Diseases Unit for less than one year is refused.

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

B.N. Agrawal, J.

30. I agree.

