

(2012) 10 PAT CK 0005
In the Patna High Court
Case No : LPA No. 1246 of 2012

Dr. Bibhuti Anand

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2013) 3 PLJR 430

Hon'ble Judges : Vikash Jain, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Y.V. Giri and Ashish Giri, for the Appellant; Ataul Haque, for the Respondent

Judgement

Shiva Kirti Singh, J.—Heard the parties. Learned counsel for the District Magistrate-cum-Chairman and Civil Surgeon-cum-Secretary, District Health Society, Rohtas has pointed out that a supplementary affidavit has been filed in this Letters Patent Appeal to bring on record certain informations obtained under the Right to Information Act and if those materials are to be considered, he may require further instructions in the matter. On perusal of the supplementary affidavit filed in this appeal we find that the materials do not require consideration because necessary averments were made in paragraphs 16, 18 and 19 of the writ petition and at the writ stage a counter affidavit was filed on behalf of the concerned respondents.

2. This Letters Patent Appeal is directed against the judgment and order dated 27.6.2012 reported in 2013 (1) PLJR 622 whereby writ petitions filed by the appellant and some others were dismissed.

3. Since the issues raised on behalf of the appellant included issue of inequality in the matter of appointment of Dental Doctors in different Districts, by our earlier order dated 17.9.2012 we permitted the appellant to implead the Bihar State Health Society, which is the Apex Society controlling various District Health Societies and gave an opportunity to answer on that issue. Learned counsel

appearing for the State Health Society has appeared today and has submitted that the State Health Society has left the matter of appointment of Dental Doctors under the control of various District Health Societies and it has nothing to say in the matter.

4. The materials on record show that the District Health Society, Rohtas required services of 21 Dental Doctors in that District and hence issued an advertisement for selecting suitable candidates for appointment on contract basis. Only 17 Dental Doctors as per select list contained in Annexure-2 were found suitable. In the panel the name of the appellant is at Sl. 10. Only first three candidates from the general category and two other candidates from reserved categories at Sl. Nos. 13 and 16 of the select list were offered appointment on account of lack of Dental Chairs at the places where the selected candidates have to be posted. In such a situation, by resolution dated 17.9.2011 (Annexure-4) the District Health Society, Rohtas noticed the request made by selected Dental Doctors that if they are posted, they will make arrangement for Dental Chairs at their own cost and unanimously the Society decided to obtain affidavit from the concerned Dental Doctors that they would make arrangement of Dental Chairs so that they may be posted.

5. A careful look of Annexure-4 discloses that it was communicated to the Health Secretary, Government of Bihar, Divisional Commissioner, Patna and the Executive Director, State Health Society, Bihar through Memo No. 883 dated 12.10.2011. There is nothing to indicate that the selected Dental Doctors were formally given any communication requiring them to file affidavit within specified time.

6. The appellant appears to have approached the Secretary of the District Health Society who is also the Civil Surgeon of Sasaram (Rohtas) through letter dated 17.10.2011 (Annexure-5) intimating that he was ready to arrange his own Dental Chair and join at any place which may be specified. He also furnished an affidavit dated 11.1.2012 in support of his aforesaid stand. It appears that some other selected Dental Doctors also were willing to join by providing their own Dental Chairs and made representation to the higher authorities of the Health Department. When the District Health Society, Rohtas did not appoint the appellant, the connected writ petition was filed and through Annexure-A to the counter affidavit, the District Health Society made its stand clear that the earlier resolution of the Society dated 17.9.2011 to permit appointment and posting of selected Dental Doctors on their making arrangement of Dental Chairs had been recalled by resolution dated 10.1.2012 contained in Annexure-A. That resolution was also communicated only to the three concerned officers through Memo No. 83 dated 1.2.2012.

7. Learned counsel for the appellant has submitted that the Writ Court should not have dismissed the writ petition only on the ground that persons in a select panel have no right of appointment and should not have been influenced by the fact that affidavit was filed by the appellant on 11th January, 2012 after the

resolution contained in Annexure-A dated 10.1.2012. According to him, no doubt a person in a select panel has right only to be considered for appointment, but the appointing authority cannot ignore the select panel or decline to make appointment on its whims. The Government or State instrumentality has a constitutional obligation to act fairly in such matters. As per judgment of the Supreme Court in the case of *Dr. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran*, each case has to be decided on the basis of its own peculiar facts keeping in view the aforesaid general principles in mind which have been indicated in paragraphs 13, 14 and 18 of the said judgment. He has submitted that the learned Writ Court placed reliance only on certain observations in paragraph 16 of that judgment to the effect that the selected has no legal right in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. According to the learned counsel for the appellant in this case mala fide in law and arbitrariness were apparent in view of statements in paragraphs 16, 18 and 19 that in several other Districts selected Dental Doctors were appointed and posted even in absence of adequate number of Dental Chairs and in Nalanda those Doctors who provided their own Dental Chairs were given appointment in similar circumstances.

8. The Counter Affidavit filed before the Writ Court no doubt contains Annexure-A, the later resolution of the District Health Society, but neither the resolution nor the relevant paragraph of the counter affidavit discloses reason for such a resolution. The counter affidavit also does not meet the allegations made in paragraphs 16, 18 and 19 of the writ petition regarding appointment of selected Dental Doctors by other District Health Societies even in absence of Dental Chairs or on such chairs being supplied by the selectees.

9. The law laid down by the Apex Court in the case of *Director, SCTI for Medical Science & Technology and Another vs. M. Pushkaran* (supra) is based upon several earlier judgments of the Supreme Court, relevant extracts whereof have been noticed in that case. Of course, dependant upon the facts of case, a writ petitioner can raise a grievance that his right to be considered for appointment on the basis of inclusion in a select panel has been ignored on whims or arbitrarily. There is a corresponding obligation in the State agency to act fairly. A grievance on the basis of Article 14 that a particular District Health Society is acting arbitrarily and differently from other District Health Societies also may furnish a good cause of action.

10. In the present case, the decision of the District Health Society contained in Annexure-4 was a fair decision. The selected Dental Doctors should have been intimated about that decision and if time was of essence, a time limit should also have been communicated for filing of required affidavit. But obviously no such communication was made with the selectees. When the interested selectees like the appellant were ready to provide Dental Chairs for their posting and working, and when such a system was accepted and implemented in some other districts, there is absolutely no justification or reasons available on record in support of

subsequent resolution of the respondent District Health Society contained in Annexure-A which was communicated only to three officials on 1.2.2012, much after the appellant had already furnished the required affidavit. Even after hearing the parties we are at a loss to understand why the select panel of 17 Dental Doctors has to be treated as ineffective when the need for Dental Doctors is still subsisting and against the requirement of 21 Dental Doctors only 17 could be found suitable. The decision contained in Annexure-A with regard to recall of earlier resolution in respect of appointment and posting of Dental Doctors, in our considered view is arbitrary, not supported by any reasons and lacks fairness.

11. The decision contained in Annexure-A discussed above has been brought before the Court through a Counter Affidavit filed on behalf of some of the respondents and hence there is no formal prayer for setting aside the relevant part of that resolution/decision adversely affecting the appellant. However, in the facts of the case, this Court has no hesitation in declaring the relevant resolution contained in Annexure-A to be bad in law and that it is not a valid defence for not implementing the decision of the District Health Society contained in Annexure-4. We direct the concerned authorities of District Health Society, Sasaram (Rohtas) to act on the basis of Annexure-4 and the select list and consider the case of the appellant and similarly situated other selectees for appointment and posting keeping in view the availability of Dental Chairs with the Society and also the offer on affidavit by the selectees to provide such Dental Chairs. For such affidavit, each of selectees should be given reasonable time and only if a particular selectee fails to provide necessary affidavit within the stipulated time, his/her case may not be considered favourably in the light of resolution contained in Annexure-4. In the interest of justice, we would like to suggest that if the Society has Dental Chairs available with itself, those chairs should first be made available to candidates of reserved categories because they may have genuine difficulties in arranging their own Dental Chairs. Such consideration in the light of this order for offering appointment and posting to the selectees must be completed at the earliest and in any case within six weeks from the date of production communication of a copy of this order. The order under appeal is set aside and the appeal is allowed to the extent indicated above. There shall be no order as to costs.