
(1995) 09 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 4845 of 1994

Dr. Bidhan Chandra Roy

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 1 PLJR 872

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—This application under Articles 226 and 227 of the Constitution of India is on behalf of the Petitioner for a direction to the Respondents to allot rural points for the services, rendered by him Assistant Director, Kalazar, with effect from 7.5.1985 to 11.5.1988.

2. I have heard learned Counsel for the Petitioner and the State as well as the intervener, therefore, with consent of the parties this application is being disposed of at the stage of admission itself.

3. It appears for appointment to the post of Registrar, Orthopaedics, an advertisement was published on 25.7.92 in a daily newspaper. The Petitioner while holding a post of Resident Surgical Officer, Orthopaedics, also applied for appointment. After considering the claims of different candidates, the Respondents published a parasol wherein, the name of the Petitioner has been placed at serial No. 34 and that of intervener Respondent at serial No. 7.

4. Although the Petitioner had worked as Assistant Director, Kalazar, but no rural point was allotted since Clause 4 (Ang) of the advertisement provides rural points only for those Medical Officers, who had worked under Malaria, Filariasis, Leprosy and Tuberculosis programmes. There was no provision for allotment of Rural point for the Medical Officers, working in Kalazar units.

5. The claim of the Petitioner is that at the time of his appointment as Resident Surgical Officer, the Respondents had allotted rural points for his service rendered as Assistant Director, Kalazar during such period i.e. 7.5.1985 to 11.5.1988.

6. That apart there were several Medical Officers, namely, Dr. Binod Kumar Singh and Dr. Yashwant Singh, detailed in paragraph No. 8 of the writ application, who were given rural points, treating Kalazar cell as unit of Malaria Eradication Programme. It is stated that the benefit to allot additional points for working in Kalazar unit has been prevailing since 1984 but this year the Respondents have deliberately withheld.

7. On behalf of the State as well as the intervener Respondent, a common stand has been taken that in absence of any provision in the advertisement to allot rural points to the Medical Officers for their services rendered in Kalazar unit, it would not be possible to grant such relief to the Petitioner. According to them, admittedly Kalazar cell is not a part of Malaria Eradication Programme. It is stated that while preparing 1992 panel, no Medical Officer was allotted rural points for the services rendered in Kalazar Unit.

8. It appears as per Clause 4 (Ang) of the advertisement only provision for rural point is available to the Medical Officers, working in Malaria, Filariasis, Leprosy and Tuberculosis Programme. According to the Respondents apart from the fact the Malaria control or Malaria Eradication Programme are quite different to that of Kalazar Programme, yet there is another difference that Malaria Eradication is a national programme, whereas Kalazar is limited to certain districts of the State.

9. On the other hand, according to the Petitioner, Kalazar Unit is directly under the control of Malaria Department and persons working on Kalazar side, are appointed by the Chief Malaria Officer. The functions and other affairs of Kalazar Unit is also looked after and controlled by the Malaria Department. Therefore, having regard to the facts, noticed above until the preparation of last panel, benefits of rural point should be extended to the Medical Officers working in Kalazar Units.

10. The State Government has taken a stand that Kalazar is a different unit from the Malaria Eradication Programme but it is not clear under what circumstances till preparation of the last panel benefits of additional points was given to the Medical Officers. Because the main object in making such special provision for granting additional points if examined, it would be difficult to hold that Medical Officers working in a rural area to execute Kalazar Eradication Program are performing less arduous duties to that of Medical officers, working in Malaria Eradication Programme. It is a matter of common knowledge that to perform duties as a Medical Officer in Kalazar Eradication Programme is not less important and difficult to that of Malaria Programme. Therefore, there should be no difficulty in holding that such discrimination with the Medical Officers, working in Kalazar Eradication Programme is unreasonable and arbitrary.

11. But a question arises whether the Petitioner, having worked as Assistant

Director, Kalazar and being posted all through at Patna is entitled for rural point and whether Patna Municipal area can be treated as Rural area in terms of the particular circular. In my view, the plain and simple meaning of this word would include such area which are not within the jurisdiction of Municipal Corporation or Municipality.

12. In this connection a reference can be made to a copy of the Bihar Gazette dated 29th July, 1992, contained in Annexure-A to the counter affidavit, filed on behalf of the State. Clause 4 of this circular defines "rural services". A bare reference to such clause would indicate that Medical Officer, posted in Municipal Areas as well as the District Headquarters are not entitled for rural points. This is not the case of the Petitioner that while working as Assistant. Director, Kalazar, he was ever posted in a rural area.

13. Therefore, having regard in the facts noticed above, in my view, the Petitioners cannot maintain the present writ application for a mandamus against the Respondents to allot rural points for his posting as Assistant Director, Kalazar, at Patna.

14. But before parting with this order, however, I must observe that because of vacillating and arbitrary decision of the State authorities from time to time, Medical Officers working under these programmes are compelled to face unnecessary harassment and litigation. As I have noticed that for some time the State Government had extended the benefits of rural points to the doctors, working under Kalazar Eradication Programme therefore, it is really unimaginable if said programme still continues and there are certain Medical Officers, who had worked in rural areas for execution of Kalazar Eradication Programme, why such persons can be deprived. Therefore, such arbitrary decision of the authorities has to be deprecated. If a policy is taken by the State Government, any benefit under it may be made available to those for whom it was adopted.

15. In result subject to observations made above this writ petition is dismissed. But the parties are left to bear their own costs of litigation.