
(2003) 03 OHC CK 0068

In the Orissa High Court

Case No : O.J.C. No. 3196 of 2002 and W.P. (C) No. 6740 of 2002

Dr. Brahmananda Pradhan and Dr. Durga Charan Dash and
Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 373

Hon'ble Judges : P.K. Mohanty, J;L. Mohapatra, J

Bench : Division Bench

Advocate : B. Routray, A.K. Baral, P.K. Samantasinghar, D. Routray and B. Singh in OJC 3196/2002 and Milan Kanungo, P.K. Rath, S. Kanungo, Y.S.P. Babu and S. Satpathy in W.P. C 6740/2002, for the Appellant; Additional Government Advocate, Manoj Mishra, P.K. Das, D. Mishra and P.K. Nanda in OJC 3196/2002 and Additional Government Advocate in W.P. (C) 6740/2002, for the Respondent

Judgement

L. Mohapatra, J.—The petitioners in both the writ applications have prayed for quashing the letter No. 2230 dated 17.1.2002 issued by the Under Secretary to Government in the Department of Health and Family Welfare in which the decision of the Government to the Director of Indian Medicine and Homeopathy, Orissa, Bhubaneswar that the Demonstrators of the Government Ayurvedic Colleges appointed on regular basis shall be considered eligible for taking admission into P.G. Course against the supernumerary seats if they secure minimum qualifying marks in the entrance examination, as well as the order rejecting the representation for consideration of their case for admission into the P.G. Course against the supernumerary seats,

2. The petitioners are working as Ayurvedic Medical Officers under the State Government. An advertisement was published inviting applications from eligible candidates for admission to Post Graduate courses in different subjects in Gopabandhu Ayurveda Mahavidyalaya for the session 2001 -2002. The prospectus issued along with the application form provides that one seat in each

P, G. Course will be available for supernumerary, category of the P. G. Training of the employees of Government of Orissa provided they secure the minimum qualifying marks in the entrance examination. Their further claim is that they having obtained the minimum qualifying marks amongst the inservice, candidates were eligible to be considered for admission into P.G. Course as per Clause 7 of the prospectus which provides that one seat in each P. G. course will be available for supernumerary employee of the Government of Orissa.

The case of the petitioner in O.J.C. No. 3196 of 2002 is that amongst the inservice candidates he had secured the highest mark. However, after appearing in the entrance examination the petitioner came to know that a proposal has been submitted on 23.11.2001 by the Director, Indian Medicines and Homeopathy, Orissa to the State Government for relaxing the conditions for admission to P.G. Course for inservice. Demonstrators of the Government Ayurvedic Colleges and accordingly the State Government in its letter dated 17.1.2002 which is impugned before this Court informed the Director that only the Demonstrators of Government Ayurvedic Colleges appointed earlier shall be considered eligible for taking admission into P.G. Course against the supernumerary seats if they secure minimum qualifying marks in the entrance examination. Coming to know about such a decision the petitioners in both the cases made representations individually for consideration of their cases on the ground that they had the minimum qualifying marks and, therefore, they deserve admission into P. G. Course against the supernumerary seats made available under the prospectus in each subject. The said representations having been turned down, which are impugned before this Court, the present writ applications have been filed.

3. Shri Routray, the learned counsel appearing for the petitioner in O.J.C. 3196 of 2002 as well as the learned counsel appearing for the petitioners in the other writ application submitted that since Clause 7 of the prospectus clearly provides that apart from the regular seats one seat in each P.G. Course will be available to supernumerary category of the P.G. training of the employees of Government of Orissa provided they secure the minimum qualifying marks in the entrance examination, the same amounts to reservation of seats for inservice candidates and, therefore, the subsequent decision of the state Government in its letter dated 17.1.2002 to restrict admission into the supernumerary seats only for the Demonstrators working in different Ayurvedic Colleges amounts to reservation within reserved category. Shri Routray further contended that even for appointment to the post of Demonstrators as per decision of the Government in its letter No. 25339 dated 30.7.90 a candidate must have post-graduate qualification in the subject and the opposite parties 5 to 7 did not have the post-graduate qualification even for appointment as the Demonstrators and the said deficiency is sought to be regularised by way of taking a decision in reserving the supernumerary seats for the inservice Demonstrators. The further submission of the learned counsel for the petitioners in both the cases is that the said opposite parties did not have even requisite qualification for appointment as

Demonstrators and, therefore, to regularise their appointments, the impugned decision in the letter dated 17.4.2002 could not have been taken.

4. The learned counsel appearing for the State referring to the counter affidavit filed by it submitted that there are eleven Demonstrators in the taken over Ayurvedic College at Ankuspur who have been absorbed in the Government service without having post-graduate qualification. Unless these persons acquire postgraduate qualification, they cannot be promoted to the post of Lecturer and consequently there will be stagnation in the base level post of Demonstrators and consequent vacancies will be created in higher posts. To avoid this bottle neck, the Government in the Health and Family Welfare Department decided to create supernumerary seat in P. G. classes of Gopabandhu Ayurveda Mahavidyalaya, Puri so as to give scope to these persons to acquire P. G. qualification. It is also submitted by the learned State Counsel that this arrangement has been made since 1998-99 and only four Demonstrators of K.A.T.S. Ayurvedic College, Ankuspur, Ganjam have availed this facility. Only with the view to get over the bottle neck as stated above the state Government decided to relax the stipulation for admission into P. G. Course for inservice Demonstrators working in the Government Ayurvedic Colleges. It is also contended by the learned counsel for the state that those non-P. G. Demonstrators who have qualified in the entrance examination having secured minimum qualifying mark have been selected against supernumerary seats as per their merit in the merit list and there is no necessity to sponsor the petitioners who are working as Ayurvedic Medical Officers to acquire P.G. qualification against the supernumerary categories, of P.G. seats. It is also submitted that it is necessary for the Demonstrators who did not have the P.G. qualification to acquire such qualification for promotion as lecturers in view of the norms prescribed by the Central Council of Indian Medicine, New Delhi. The learned counsel appearing for the opposite parties 5, 6 and 7 more or less adopted the argument advanced by the learned counsel for the State and further submitted that the course having commenced for more than six months, it may not be desirable for this Court to up set the admissions that have taken place.

5. The advertisement issued by the State Government for admission to post-graduate courses in Ayurveda for the session 2001 -02 indicates that applications were invited form eligible candidates for admission to Post Graduate Courses in different subjects in Gopabandhu Ayurveda Mahavidyalaya and it is further stipulated that the candidates seeking admission must posses a degree in Ayurveda not less than five and half years duration or any equivalent qualification recognised by the CCIM, New Delhi. The prospectus for admission into the P. G. Course for the session 2001-02 .makes the following provisions :

7. Reservation of Seats :

(i) to (iv)

*** ** (v) Apart from regular seats, one seat in each P. G. course will be

available for supernumerary category in the P. G. training of employees of the Government of Orissa provided they secure the minimum qualifying marks in the entrance examination

*** ** 13. Selection of candidate for admission :

(i) *** ** (ii) The selection shall be made on the basis of merit in the entrance examination. Candidates securing less than 50 per cent of marks in the entrance examination shall not be selected even if the seats lay vacant. In case of S.C./S.T. candidates the qualifying percentage of marks is 40 per cent."

6. There is no dispute that the petitioners in both the writ applications were qualified to appear in the entrance examination for the purpose of admission into P. G. Course/There is also no dispute that when the petitioners applied for admission, Clause 7(v) was in operation. It appears that on the basis of a request made by the Director, Indian Medicines & Homeopathy, Orissa, Bhubaneswar in his letter dated 23.11.2001 the State Government in the Department of Health and Family Welfare decided that only the Demonstrators of the Government Ayurvedic Colleges appointed on regular basis shall be considered eligible for taking admission into P. G. Course against the supernumerary seats if they secure minimum qualifying marks in the entrance examination. This decision of the State Government communicated in letter dated 17.1.2002 has taken away the effect of Clause 7(v) which provides that admission into the supernumerary seats shall be for all inservice Government candidates and got it restricted to only the Demonstrators who had been regularly appointed in Government Ayurvedic Colleges. Therefore, it is clear that while issuing the prospectus the Government had taken a decision to reserve one seat in each subject for the purpose of admission of candidates from amongst the employees serving under the State Government provided they secure minimum qualifying marks in the entrance examination. By the impugned letter dated 17.1.2002 a further stipulation has been made to reserve those seats only for the Demonstrators who are working in Government Ayurvedic Colleges. According to the learned counsel appearing for the petitioners, this amounts to reservation within reserved category and therefore, not permissible under law. The further contention of the learned counsel appearing for the petitioners is that the Demonstrators who have been appointed in the Government Ayurvedic Colleges even did not have the requisite qualification to be appointed as the Demonstrators and to allow them the benefit otherwise means that the Government wants to regularise their appointments by permitting them to get over the deficiency.

7. Now the questions that arise for consideration are that whether the order of the Government dated 17.1.2002 in Annexure-3 amounts to reservation within reserved category and whether it also violates Article 14 of the Constitution of India, In this connection, reference may be made to the decision of the Apex Court in the case of Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others, In the said case an advertisement was issued for selection and admission

to Post Graduate Course in General Medicines, Government Medical College and the minimum qualification was set out in the advertisement. Subsequently, on the basis of an order passed by the Government earlier, the qualification prescribed in the advertisement was not acted upon. The petitioner therein was qualified for selection and admission as per qualification prescribed in the advertisement but did not qualify as per the Government order issued earlier. The Apex Court held as follows :

"... The selection for admission was to be made on the basis of minimum qualifications set out in the advertisement. In respect of two aspects there is a contradiction between the Government order dated March 23, 1979 and the advertisement setting out minimum qualification for admission. Applications were invited from intending candidates who satisfy the minimum eligibility qualification. There was no reference in the advertisement about Government order dated March 23, 1979. Petitioners and others submitted applications keeping in view the advertisement which was issued and therefore the requirements set out in the advertisement should provide the basis for selection and eligibility for admission of the petitioner has to be judged on the same basis otherwise he can complain of discrimination, as others have been admitted on the basis of advertisement and not order dated March 23, 1979."

Reference may also be made to another decision of the Apex Court in the case of Deepak Sibal Vs. Punjab University and Another, In the said case, with the object of accommodating employees in general, admission was to be made to Evening Classes of college in L.L. B. three years degree course. Subsequently the rule was changed restricting admission to only employees of Government/Semi Government and similar institutions. The Apex Court held such restriction to be discriminatory and observed as follows :

"It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question."

8. In the present case though the prospectus issued for admission to the course specifically provided that one seat in P.G. course will be available for supernumerary category of the P.G. Training of employees of the Government of Orissa, by subsequent order of the Government it was restricted to Demonstrators of the Government Ayurveda Colleges appointed on regular basis. In our view, such restriction subsequently made by the order of the Government is discriminatory. Applying the principles laid down by the Apex Court in the case of Deepak Sibal v. Punjab University (supra), we are of the view that the subsequent order passed by the Government keeping the reserve seats in the P.G. Course only for the Demonstrators who were regularly appointed in the

Government amounts to class legislation and under no stretch of imagination can be called a reasonable classification.

9. In view of our findings, the Government order dated 17.1.2002 should have been quashed, but it was brought to our notice that admissions have already taken place and the course has already started since last six months. The learned counsel for the State also informed the Court that some seats are still available to be filled up in the P.G. Course. In view of the above, we do not want to disturb the admissions that have already taken place since October, 2002. Not only the opposite parties 5, 6 and 7 have taken admissions but also have undertaken the P.G. Course for about six months. In view of the submissions of the learned counsel for the State that some seats are available, we direct that the case of the petitioners shall be considered for admission in accordance with their merit against the available seats and they shall be given admission within fifteen days from the date of communication of this order.

Both the writ applications are disposed of with the aforesaid observations and directions.

P. K. Mohanty, J.

I agree.