

(2005) 09 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 8520 of 2004

Dr. Dhanjee Chaubey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Citation : (2005) 4 PLJR 362

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : S.P. Mukherji and Shanti Pratap, for the Appellant; Anup Kr. Chongdar, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the State. The petitioners assail the order dated 11.11.2003 at Annexure-1, by which the Screening Committee in pursuance of the orders of this Court in C.W.J.C. No. 3496 of 1996 dated 11.7.1997 has not found the petitioners eligible for absorption in the Dhanwantari Ayurvedic College and Hospital, Ahirauli, Buxar and thus rejected their claims.

2. The petitioners would claim to have been appointed on the posts of Demonstrator, Ward Attendent and Medical Officers respectively in the year 1986 by the Managing Committee of the College and so worked till 1992.

3. The College, in question, was taken over by the State Govt, with effect from 1.3.1983 under the Bihar Private Medical (Indian System of Medicine) Colleges (Taking Over) Act, 1985 vide order dated 9.12.86 which envisages a cut-off date of 1.3.1983 for the purposes of absorption/regulation to be considered by a Screening Committee. In the circumstances the petitioners moved this Court in C.W.J.C. 590 of 1988 to consider their cases for absorption. Dissatisfied that non-consideration of their candidature, the petitioners approached this Court again in C.W.J.C. No. 3496 of 1996 which was disposed-off on 11.7.97 with a direction

that the cases of the petitioners be considered by the Screening Committee. It would be case of the petitioners that they then submitted relevant documents alongwith their claims giving full details of their service career for consideration by the Screening Committee.

4. The Screening Committee after duly considering the cases of the petitioners by the impugned order at annexure-1 has not found them eligible/fit for absorption.

5. Learned counsel for the petitioners submits that the order at annexure-1 was bad because the Screening Committee did not grant an opportunity of hearing to the petitioners before taking a final decision to reject their claim for absorption/regularisation. It is submitted that this was inviolation of the principles of natural justice. He further submitted that the Screening Committee arrived at wrong conclusions with regard to the actions of the erstwhile Managing Committee which made the appointment of the petitioners.

6. Learned counsel for the State sought to rely upon certain orders of this Court in C.W.J.C. No. 10301 of 2003 and analogous cases, more particularly paragraph 27 of the same where this Court would have recorded certain adverse inference with regard to the appointment made in the College in question after 25.3.1984 and that the same would have been based on the assumption of fraud.

7. This Court in the facts and circumstances of the present case does not consider it necessary to take into consideration the submission of the learned counsel for the State at this stage. Suffice it to say that it would be the case of the petitioners themselves that they submitted their representations alongwith documents in support of their claim of the legality of their appointments before the Screening Committee as aforesaid. What would be the connotation of the words "natural justice" would depend upon the facts of each case. It is settled law that natural justice is no unruly horse which it can be run across any terrain. This Court is satisfied that the only claim of the petitioners would be one for consideration, of their candidature for absorption on the post upon which they had been appointed by the erstwhile Private Management. The only issue would therefore be whether their appointments be in consonance with law so as to make them eligible for consideration for absorption. This would obviously depend upon documentary materials relating to their appointment. It is not the case of the petitioners that their documents itself have not been considered by the Screening Committee at all. The documents relating to their appointment so submitted by the petitioners would find adequate consideration and discussion in the impugned order at Annexure-1 which would reflect adequate consideration of mind by the Screening Committee. In the aforesaid facts and circumstances of the case, this Court finds it difficult to uphold the objection of the petitioners that the impugned order be vitiated for reasons of denial of opportunity of hearing by the Screening Committee while considering their cases for absorption. It would be highly impracticable to hold that the Screening Committee be required to interview personally each candidate when the documents of the candidates be

already available. It has to be remembered that the present would not a case of individual consideration for absorption, but that of several like appointments made by the Managing Committee. It is settled law that such cases would stand in a separate category. In any event there was no direction to grant personal hearing to the petitioners either in C.W.J.C. No. 590 of 1988 or C.W.J.C. No. 3496 of 1996 preferred by the petitioners earlier.

8. The contention of the petitioners that the Screening Committee arrived at wrong conclusions with regard to the action of the erstwhile Managing Committee with regard to the appointments of the petitioners be concerned, this Court is afraid that in exercise of powers in writ jurisdiction it cannot enter into reappraisal or reassessment of the proceeding of the Screening Committee. The proceeding of the Screening Committee at annexure-1 cannot be termed as perverse or arbitrary. The conclusions are supported with reasons and would reflect application of mind. It would not be in the jurisdiction of this Court to sit in judgment over the same as the appellate authority. This Court is satisfied that the Screening Committee has acted with procedural fairness. There would be reasons in support of the decision of the Screening Committee. It would not be the case of the petitioners that the decisions recorded were perverse and that no reasonable would on basis of the materials before the Screening Committee have arrived at such conclusion. The actions of the Screening Committee would be essentially of administrative nature and character.

9. This Court would consider it appropriate to reflect upon the judgment of the Supreme Court in the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, in support of the conclusion arrived at herein:

Para 23.-The shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: Keshav Mills Co. Ltd. vs. Union of India; Mohinder Singh Gill vs. Chief Election Commissioner; Swadeshi Cotton Mills vs. Union of India and M.S. Nally Bharat Engineering Co. Ltd. vs. State of Bihar). For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lis inter partes. There need not be any struggle between two opposing parties giving rise to a "lis". There need not be resolution of lis inter partes. The duty to act judicially or to act fairly many arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights-or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

10. In the facts and circumstances of the case, this Court is unable to grant any relief to the petitioners. This writ application is, therefore, dismissed.