

(1994) 11 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3459 of 1994

Dr. Indra Shekhar Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0008

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application the Petitioner has prayed for the following reliefs: "To issue an appropriate writ/order/direction commanding the Respondents to consider the application of the Petitioner for appointment to the post of Assistant Professor/Registrar, General Surgery against 1992 panel in accordance with the criteria laid down and notified in the advertisement No. 1927 (Swasth)-105 published in the Patna daily edition of "Hindustan Times" on 25.7.1992 and to command the Respondents to allow the Petitioner the benefit of adding 12 points for publication of Journal, 2 points for Ph. D., 2 additional points for teaching experience as envisaged in the criteria duly notified by the Respondents."

2. In order to appreciate the points raised by the respective parties, it is necessary to state some relevant facts. The Petitioner passed the M.B.B.S. examination in the year 1981 and secured 65.70% marks and distinction in Surgery, Pharmacology and preventive Social Medicine. After obtaining the M.B.B.S. degree he was appointed as Assistant Civil Surgeon by the order dated 4.8.1983. The Petitioner thereafter applied for admission in M.S. General Surgery in any college outside the State of Bihar and after obtaining permission having been granted by the State, the Petitioner took admission in M.S. General Surgery in King George Medical College, Lucknow. He worked in Residency scheme in the said college with effect from 17.8.1985 to 29.10.1987 and as a Residency fellow he rendered teaching works for more than two years. In token of having rendered the teaching work for the aforesaid period, a certificate was granted by

the Head of the Department, General Surgery, King George Medical College, Lucknow, copy of which has been made Annexure-5 to this writ application. After completing the post graduate courses and the Residency in the aforesaid college at Lucknow, the Petitioner joined the State Health Services which was accepted by the State-Respondent vide Memo No. 237 (3) dated 18.3.1988 with effect from 30.10.1987, copy of which has been made Annexure-6 to this writ application. The Petitioner worked from 17.6.1988 to 27.9.1988 as Civil Assistant Surgeon, Primary Health Centre in the district of Madhubani. The Petitioner worked as Tutor in the department of Pharmacology and also trainee Medical Officer in the department of Anaesthesia, D.M.C.H., Darbhanga. Pursuant to the advertisement published in the year 1987, the Petitioner was selected and posted as Resident Surgical Officer, Department of Surgery, P.M.C.H. on 19.5.90 and since then he is working in the said hospital. Before joining the post of Resident Surgical Officer, the Petitioner got himself registered for Ph.D. in Surgery in L.N. Mithila University. He completed this course and submitted his thesis on 1.11.1991. His thesis was duly approved both by the External examiners as well as the Internal Examiners on 25.1.1992 and 31.1.1992 respectively and finally the Petitioner was awarded a degree of P.H. D., on 10.4.1992. The receipt showing submission of thesis on 1.11.1991 is made Annexure-7 to this writ application. Seven research papers of the Petitioner were published in Journals of the State and Indian Medical Journal, the details whereof are as follows:

SI. No. Name of Research Articles published. Name of the Journal Date of acceptance and volume no. of Journal in which published

I. Observation on Appendicectomy The Patna Journal of Medicine. 12.5.92 No. 66 (6) 126-127

II. Observation on the Surgical Management of Sigmoid with special Reference to the single layer serosubmucosal Anastomosis. -do- 12.5.92 66(7) 146-147

III. Typhoid perforation (A clinical study of prognostic Factors) Indian Medical Journal 7.2.92 Vol. 86 30.3.92.

IV. Hydrated Cyst. -do- 7.2.92 Vol. 86 4.4.92.

V. Malignant Lymphoma of the chest wall. -do- 7.2.92 Vol. 86 4.4.92.

VI. Chycolymphatic Mssentric Cyst Children -do- 7.2.92 Vol. 86 5.5.92.

VII. Observation on Serum copper levels in Malignant condition of the body. -do- 7.2.92 Vol. 86 6.6.92.

The aforesaid facts have not been denied either by the State-Respondent or by the intervenor.

3. The State-Respondent through advertisement invited applications for preparing a panel for appointment to the various teaching posts in the different Medical Colleges of the State including Assistant professor/Registrar, General Surgery, a copy of the aforesaid Advertisement is made Annexure-1 to this writ

application. Pursuant to the said advertisement/notice (Annexure-1) the Petitioner applied for the post aforesaid claiming the following points in terms of Annexure-1:

M.B.B.S.-65.7Q% and above 4 points

Subject paper (General Surgery) 75.01% and above 5 points

Honours (General Surgery, Pharmacology & P.S.M.) 4 points

Rural Service 3 points

Teaching experience 3 points

Post Graduation (M.S. General Surgery & Ph.D. Surgery) 6 points

Publication of Journal 12 points

37 points

4. It may be mentioned here that the advertisement notice contained in Annexure-1 was subsequently amended by publication in the newspaper dated 30.8.92, copy of which has been made Annexure-12 to the writ application, whereby it has been provided that the candidates should possess three years teaching experience in the subject concerned for the post of Assistant Professor. The applications received pursuant to the advertisement (Annexure-1) were processed in the department of health and the provisional panel of the applicants for the post of Assistant Professor and Registrar was circulated for the purpose of inviting objections. The Petitioner's name was not included as eligible candidates in the panel for the post of Assistant Professor. However, in the provisional panel of Registrar the Petitioner's name was at serial No. 10 allowing total 21 points to him. Copy of the provisional panel of Assistant Professor and Registrar, General Surgery have been made Annexures-8 and 9 to this writ application. The Petitioner, accordingly, filed two separate objections, one against exclusion of the name in the panel of Assistant Professor and other objection regarding not allowing him the points for his teaching experience, Ph.D. degree for the post of Registrar, General Surgery. The representations filed by the Petitioner (Annexures 10 and 11) were rejected whereby the Petitioner was not allowed points for his teaching experience in King George Medical College, Lucknow, Ph.D. degree and publication of journals. The said representations filed by the Petitioner (Annexures 10 and 11), as stated above, were finally rejected by the Minister Incharge of the department by his order dated 23.3.94 (Annexure 13).

5. Counter affidavit has been filed on behalf of the Respondent-State wherein, inter alia, it is stated that the Petitioner did never submitted his claim in the manner in which he made prayer in the present writ application. It is further stated that the teaching experience acquired by the Petitioner at King. George Medical College, Lucknow, is not permissible to be counted in terms of the criteria laid down by the State Government for the post of Assistant Professor. It is further stated that the Petitioner was allowed the benefit of teaching

experience acquired by him during the course of P.G. studies at Lucknow in the panel of 1987 and 1991. It is stated that some of the candidates were allowed the benefit of points on the basis of qualification and other achievements acquired by them after cut off date. It has also been stated that Anr. doctor one Dr. Vinay Prasad was allowed teaching experience acquired by him outside the State during the P.G. studies. As regards points for publication of research papers in the journals, it is stated that the Petitioner is not eligible for publication as principal author, as these were published after cut off date. Similarly it is stated that the Petitioner is not entitled for any additional points for having Ph.D. degree which he has acquired after cut off date.

6. On a prayer made by the intervenor by filing a petition, this Court by its order dated 6.5.94 has directed the intervenor to be impleaded as party Respondent in this case and, accordingly, he has filed counter affidavit almost on the same line as of State-Respondent. The apprehension of the intervenor is that since his name finds place at serial No. 1 in the provisional panel for the post of Assistant Professor having been allowed 36 points in total, his position may be reduced if the Petitioner's prayer is allowed and on that apprehension he has filed the intervenor application.

7. The Petitioner filed reply to the counter affidavit both by the State as well as the intervenor disputing the averment made in those counter affidavits which are contrary to the stand taken by the Petitioner in the main writ application and further it is stated that in terms of the recommendation of the Medical Council of India and teaching experience acquired by the Petitioner in the King George Medical College, Lucknow, is to be counted in terms of the criteria laid down by the Medical Council of India. The extract of recommendation of the Medical Council of India is made Annexure-15 to the reply to the counter affidavit, which reads as follows:

The teaching experience of postgraduate students who are (i) holding teaching appointments, or (2) holding beds under their charge; or (3) doing tutorial work, may be considered as teaching experience for purposes of appointment of Lecturers in Medical College. Lecturers are equivalent to Assistant Professors.

In short it is stated that according to the terms of the advertisement (Annexure-1) although for the post of Registrar, no point is admissible for publication of journal whereas such point is available only for being considered for the post of Assistant Professor. The Petitioner having applied for both the posts, is therefore, entitled for total 25 points for the post of Registrar and 37 points for the post of Assistant Professor.

8. On the basis of the aforesaid pleadings learned Counsel for the Petitioner has submitted that admittedly the Petitioner acquired such required teaching experience in course of P.G. studies as well as residency scheme, has to be counted for the purpose of preparing panel for the appointment of Assistant Professor, in terms of the advertisement (Annexure-1) as also in terms of the

regulation framed by the Medical Council of India. Learned Counsel submits, in course of argument, that it is not the requirement in terms of Annexure-1 that the teaching experience must be required while posted against teaching based cadre. Such teaching experience acquired in any recognised Medical Colleges will have to be taken into consideration for the purpose of such appointment. The King George Medical College, Lucknow, is one of the recognised medical colleges where the Petitioner has rendered teaching work as residency, cannot be deprived of such teaching experience. In support of his contention, learned Counsel has relied upon a Division Bench decision of this Court in the case of S.K. Verma Vs. State of Bihar and Others , wherein their Lordships after taking into consideration that law laid down in the case of Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others, , has held that there is no difference as to whether the teaching experience acquired on regular appointment or in any manner in a teaching hospital actual teaching experience acquired, in such teaching hospital has to be taken into consideration for computing actual teaching experience acquired by the candidate.

9. Learned Counsel appearing on behalf of the State has submitted on the basis of the pleadings aforesaid that the teaching experience acquired by the Petitioner from the King George Medical College, Lucknow cannot be counted for the purpose of preparing the panel for appointment on the post of Assistant Professor, as the same is not in accordance with the Rules framed by the State Government. He has relied upon the various clauses of the advertisement (Annexure-1) and similarly he submits that the Petitioner is also not entitled to any point for publication of his research papers in the journals as well as the Ph.D. degree which were published and obtained after cut off dates.

10. The learned Counsel for the intervener, on the other hand, submitted that the Petitioner is not entitled for the additional points as he was not appointed against a regular teaching post, inasmuch as in Bihar such points are allowed only if he/she holds regular teaching post.

11. The question that falls for consideration is whether the Petitioner is entitled for points for the teaching experience which he has gained at Lucknow Medical College. In this connection it may also be mentioned here that the Petitioner was an applicant for the post of Residency Surgical Officer against 1987 panel wherein he was allowed two points against the teaching experience and similarly in the year 1991 also he was the applicant for the post of Registrar, General Surgery wherein he was allowed two points against teaching experience. From the pleadings it appears that in a similar situation the other doctors were allowed such benefits who obtained the teaching experience in a similar situation outside the State of Bihar.

12. After taking into consideration all the submissions advanced on behalf of the Petitioner as well as the State Counsel and intervenor and also upon relying the aforesaid decisions, I am of the definite view that the teaching experience gained by the Petitioner in King George Medical Cottage, Lucknow is to be counted for

the purpose of consideration of appointment on the post of Assistant Professor. Having heard the parties and the material available on the record, it is difficult to support the action taken by the Respondents in holding that the teaching experience gained by the Petitioner in King George Medical College, Lucknow cannot be taken into consideration. This view of mine is also supported by decision of this Court in the case of Dr. S.K. Verma v. State of Bihar(supra).

13. Publication of research papers in journals-12 points.

Now coming to the publication of seven research papers in journals of the State and Indian Medical Journal, it is submitted on behalf of the Counsel for the Petitioner that the Petitioner made valuable contribution and his seven research papers were published in journals of the State as well as in the Indian Medical Journal, details whereof have been already mentioned in the aforementioned paragraphs. Learned Counsel, accordingly, submits that the Petitioner is entitled for 12 points in terms of the criteria laid down in Annexure-1 to the application. As against this, the learned Counsel for the intervenor submits that claim for 12 points for publication of research papers in the journal is misconceived inasmuch as the papers published after cut off date are not to be taken into consideration for preparing the panel for appointment on the post of Assistant Professor. In order to appreciate the points raised by the parties it is relevant to mention the relevant dates for the purpose of deciding the points in issue. There are two cut off dates mentioned in the advertisement, one is for filing application and other for the qualification, namely, 31.8.92 is the date for making application for appointment on the post of Assistant Professor and the other cut off date 31.1.92 was date for fixing the qualification of the candidates. It is submitted that before the date of filing of the application in terms of Annexure-1 the research papers authored by the Petitioner were accepted for publication. The different dates by which the papers were accepted for publication have been mentioned in paragraph-15 of the petition, which go to show that all those papers accepted before the date of filing of the application, as submitted by the learned Counsel for the Petitioner. The learned Counsel on behalf of the State as well as the intervenor submits that since the research papers were not published before the date fixed for accepting the qualification of the candidates, the benefits for publication of research papers cannot be allowed to the Petitioner. In support of his contention learned Counsel refers to Clause 15 of Annexure-1 and submits that the cut off date fixed for accepting the qualification of the candidates is 31.1.92, beyond that any qualification acquired by the candidates could not be taken into consideration. Learned Counsel for the Petitioner, on the other hand, relied upon Clause 3 (ga) of Annexure-1. It is manifest . from perusal of Clause 3 (ga) that if such research paper is accepted for publication the candidate is eligible to submit the acceptance report till the last date of submission of application, i.e. 31.8.92. It is admitted position that all the research papers authored by the Petitioner were accepted for publication before the date of filing application and also finally published before the said date. The Petitioner admittedly annexed the certificate showing the acceptance of the said research

papers for publication along with the application, and accordingly the Petitioner is eligible for the points as claimed. On the basis of the submissions raised by the Counsel for the parties, I have considered both the clause, namely, 3 (ga) and 15 of Annexure-1. It appears to me that Clause 3 (ga) has an overriding effect as it specifically deals with, the publication of journal whereas Clause 15 lays down general terms and conditions and accordingly the provision contained in Clause 3 (ga) will prevail over Clause 15. The reasons assigned for not allowing the points against publication of research papers in the journals are fallacious and bereft of any substance contrary to the provision of Annexure-1. Learned Counsel appearing on behalf of the Petitioner relied upon a decision in the case of Ashok Kumar Sharma and Ors. v. Chandra Shekher and Ors., reported in (1990) SCC (Supp) 2 611. Somewhat similar question came up for decision before the Apex Court. The question that falls for consideration before their lordship was whether or not candidates who fully qualified to be appointed as Junior engineers on the date of interview but whose results had not been declared on the date of submission of their application, were entitled to be considered for appointment to the post of Engineers. Their Lordships after, taking into consideration all aspects of the matter have held as follows:

The fact is that the Appellants did pass the examinations and were fully qualified for being selected prior to the date of interview. By allowing the Appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examinations in which they had appeared had been delayed for no fault of theirs. The Appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu and Kashmir, we are of the opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was, on the facts of this case, the correct view. Accordingly, we set aside the impugned judgment of the Division Bench and restore that of the learned Single Judge. In the result, we uphold the results announced by the recruiting authority. The appeal is allowed in the above terms. However, we make no order as to costs.

Learned Counsel for the intervenor, on the other hand, had relied upon a decision in the case of Dr. Rita Sinha and Another Vs. State of Bihar and Others, and also in the case of Dr. Anil Kumar Sinha Vs. The State of Bihar and Others, . In support of his submission that since the date of eligibility fixed i.e. 31.1.91, the Petitioner has rightly been denied the points as claimed by him on this issue. These decisions, in any view, do not deal with the points involved.

I have heard learned Counsel for the Petitioner, State as well as the intervenor and after going through the relevant clauses of Annexure-1, I am of the view that the Petitioner is entitled for the points as claimed by him on this head. This view of mine is also supported by the law laid down in the Ashok Kumar Sharma's case (supra).

14. Ph.D.-2 Points.

The Petitioner claiming two points for having Ph.D. degree which have not been allowed on the same ground as has been mentioned while dealing with the points relating to publication of research papers, inasmuch as the Petitioner acquired Ph.D. degree after 31.1.92 i.e. after cut off date fixed for accepting the qualification. In this connection statement made in paragraph 14 of the writ application is relevant wherefrom it appears that the Petitioner submitted his thesis on 1.11.91, which was approved on 25.1.92 and also approved by the External Examiners on 31.1.92 i.e. on the cut off date fixed for acceptance of qualification, although the Ph.D. degree was awarded on 10-4.92. This statement has not been denied either by the State or by the intervenor. Accordingly, learned Counsel for the Petitioner relying on the aforesaid Ashok Kumar Sharma's case (supra), submits that the Petitioner is entitled for 2 points as claimed by him on this head. Learned Counsel for the intervenor, with reference to the statement made in paragraph 14 of the counter affidavit, submits that actually Ph.D. degree, was confirmed after cut off date for accepting the qualification and as such the Petitioner is not entitled for any point for having acquired Ph.D. degree after cut off date. After having heard learned Counsel for the parties and after having relied upon the law laid down by the Apex Court in the Ashok Kumar Sharma's case (supra) and also the reasons assigned while dealing with publication of research papers, I am of the view that the Petitioner is entitled for 2 points for having acquired the Ph.D. degree in terms of Annexure-1 aforesaid.

15. Accordingly, it is held that the Petitioner is entitled for the points for teaching experience, publication of journals and having Ph.D. degree, which have been illegally and arbitrarily refused to him while preparing the provisional list for appointment on the post of Assistant Professor. Let, therefore a writ of mandamus be issued directing the Respondents to reconsider the case of the Petitioner in the light of the observations/directions as above.

16. In the result, this writ application is allowed but in the facts and circumstances of this case, there shall be no order as to costs.