
(2016) 04 OHC CK 0002
In the Orissa High Court
Case No : W.P.(C) No. 21257 of 2015

Dr. Kishore Kumar Panda

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Constitution of India, 1950 — Article 21, Article 226

Citation : (2016) 122 CutLT 453

Hon'ble Judges : Indrajit Mahanty and Dr. D.P. Choudhury, JJ.

Bench : Division Bench

Advocate : Mr. M. Sahu, AGA, for the Opposite Parties; M/s. Manoj Mishra, Tanmay Mishra and Sangram Senapati, Advocates, for the Petitioner

Final Decision : Disposed off

Judgement

Dr. D.P. Choudhury, J. - In the captioned writ application challenge is made to the illegal and arbitrary action of the authorities-O.Ps. in not allowing the petitioner for counselling for higher study/training in teaching and treatment as Senior Resident in the Department of Orthopaedics in S.C.B. Medical College & Hospital, Cuttack.

2. The factual matrix leading to the case of the petitioner is that the petitioner has possessed MS Degree having completed three years higher study of P.G. course in Orthopaedics in the month of August, 2015. It is stated that in the month of August 2015 opposite party No.2 invited applications from eligible candidates for appointment in the post of Senior Resident/Tutor for higher study in different disciplines including Orthopaedics discipline in S.C.B. Medical College & Hospital, Cuttack for existing and future vacancies fixing the date 30.8.2015 as last date for receipt of application and it has also been advertised that the posts will be filled up according to the resolution of the Government in Health & Family Welfare Department of Orissa vide No.1314/H dated 11.1.2013. Such advertisement is annexed as Annexure-1 to the petition.

3. It is further stated that since the petitioner has qualified himself to be eligible for a Senior Resident in Orthopaedics, he submitted application within time. It is alleged, inter alia, that vide order No.17908 dated 6.8.2015 issued by the opposite party No.4 there are four vacancies in the posts/seats in Senior Residents occurred in Orthopaedics discipline. This fact is also available from the letter of the opposite party No.5 who is Professor and H.O.D. of Orthopedics Department, S.C.B. Medical College & Hospital as the latter has informed the opposite party No.3 about the four consequential vacancies of Senior Residents in the Department of Orthopaedics in S.C.B. Medical College & Hospital, Cuttack. Being inspired about all these advertisements and letters showing vacancies the petitioner applied for prosecuting higher study and after evaluation of certificates etc. a merit list was prepared. Although seven candidates have applied but the name of the petitioner finds place at Sl. No.4 of the merit list and he was expecting his berth being fourth in the merit list to occupy the fourth vacancy of Senior Resident in the Department of Orthopaedics.

4. It be stated, the counselling for filling up the vacancies was held on 16.9.1995 at S.C.B. Medical College & Hospital and all the seven candidates were asked to remain present to attend counselling at 9.30 A.M. as the counselling is scheduled to start at 11.00 A.M. When the counselling started as per schedule, to the utter surprise of the petitioner, three candidates were allowed to fill up the requisite form and submission of documents but the petitioner was not allowed to fill up the requisite form and to submit documents. On the other hand, the authorities closed the counselling after completion of counselling for the candidate at Sl. No.3. Although the petitioner approached the authorities but all the attempts were in vain. On 14.10.2015 the opposite party No.2 issued order giving appointment/engagement in Senior Resident posts at different Departments of S.C.B. Medical College & Hospital and in the said order name of only three candidates were found in the discipline of Orthopaedics and the name of the petitioner did not find place.

5. It is stated that the petitioner made representation to the Principal Secretary to the State Government in the Department of Health & Family Welfare on 9.11.2015 to cause enquiry and allowing him to join as Senior Resident as there are four vacancies in the post of Senior Resident in Orthopaedics Department and he is ignored or neglected by the authorities by denying his selection to the fourth vacancy although he has secured rank at Sl. No.4 in the merit list. It is alleged, inter alia, that the opposite party No.1 did not pay any heed to the request of the petitioner. It is stated that denial of the petitioner to his fundamental right to pursue his higher study even though he is entitled for the same is absolute violation of Articles 14 and 16 of the Constitution of India. It is alleged, inter alia, that the actions of the opposite parties are arbitrary, illegal, mala fide and denial of fundamental right of the petitioner to prosecute his higher study and as such, the actions of the opposite parties in rejecting his claim should be quashed and he should be allowed to prosecute higher study in terms of Service-cum-Training programme because residency programme is a

Service-cum-Training programme and it is a phase of transition from a mature student to a fully competent and confident faculty. Hence the writ petition.

6. The opposite party Nos.1 and 2 filed the counter through the Dean and Principal, S.C.B. Medical College & Hospital, Cuttack who is well versed about the case. In the counter the opposite party Nos.1 and 2 have refuted the allegation made by the petitioner. It is the case of the opposite party Nos.1 and 2 that in the relevant advertisement for Senior Residents/Tutors published in August, 2015 did not mention about number of vacancies and there is clear indication in the advertisement vide Annexure-B/3 that the number of vacancies will be filled up on the basis of recruitment subject to changes by the Government without notice depending upon the administrative exigencies at the discretion of the Government. It is stated in the counter that there are eight number of posts of Senior Resident in the Department of Orthopaedics, S.C.B. Medical College & Hospital and the posts of Senior Resident are under the official jurisdiction of the Dean and Principal, S.C.B. Medical College, Cuttack and not under the Superintendent, S.C.B. Medical College, Cuttack. Out of eight vacancies, five posts were filled up before the date of counselling and only three posts of Senior Resident were vacant on the date of counselling. It is also stated in the counter that H.O.D., Orthopaedics had wrongly informed about the vacancy position of Senior Resident in Orthopaedics without verifying the records and actual vacancy position was available in the office of the Dean and Principal, S.C.B. Medical College, Cuttack before the date of counselling. Since the advertisement does not contain about the number of vacancies and in fact there are three vacancies for the posts of Senior Resident, the top three in the merit list were found suitable and they were selected. The petitioner being not in the top three was not selected to the post of Senior Resident and the entire allegation made by the petitioner are false and fabricated. It is also stated in the counter that the petitioner has alleged in the Misc. Case arising out of the present writ petition that one Susanta Kumar Sena has been adjusted against the fourth vacancy is a clear misrepresentation by the petitioner inasmuch as Dr. Susanta Kumar Sena was selected by the counselling held on 22.9.2014 but not on 16.9.2015. The opposite party No.3 also has filed separate counter but in the same line as the counter filed by the opposite party Nos.1 and 2.

7. The petitioner has filed the rejoinder to the counter of the opposite parties reiterating his allegation made in the original petition. It is only added that the State Government vide letter dated 3.8.2015 informed the Principals and Deans of the three Medical Colleges about deployment of Assistant Surgeons who were going to complete their Senior Residency during the month of August, 2015. In pursuance of such letter dated 3.8.2015, the Superintendent/opposite party No.4 issued order No.17908 dated 6.8.2015 under Annexure-4 about joining of Senior Residents in the hospital who have completed their three years higher study and as such four Senior Residents in the Orthopaedics discipline had completed three years higher study in the month of August, 2015 as per the direction of the Principal/opposite party No.2 and their names find place at

Sl.Nos.3, 5, 6 and 17. According to petitioner since there are four Senior Residents in Orthopaedics discipline who had completed their Senior Residency in 2015, the fourth vacancy thus occurs to be filled up as Senior Resident in the Department of Orthopaedics and as such the opposite parties have misled the Court by concealing fourth vacancy. Thus, he challenges the actions of the opposite parties and also further alleged that the H.O.D. being the competent person is well aware of the vacancies after relieving the Senior Resident doctors. It is further stated that there is another Department (Orthopaedics Trauma) beside the Department of Orthopaedics discipline. It is stated that on 28.8.2014 the opposite party No.1 had invited applications from eligible candidates for admission for the posts of Senior Resident including three posts in Orthopaedics discipline and one post in Orthopaedics Trauma and three doctors, namely, Dr. Sujit Kumar Lenka, Dr. Vikash Agarwal and Dr. Laba Kumar Naik were selected for the Orthopaedics discipline and in order to adjust Dr. Susanta Kumar Sena, he was selected for Orthopaedics (Trauma), in the Department of Orthopaedics (Trauma) by showing utmost favour to Dr. Sena. So, it is alleged that the actions of the opposite parties are not only denying the fundamental rights of the petitioner but also it speaks favouritism, nepotism and ulterior motive to help other candidates by depriving the petitioner from his legitimate right.

8. The opposite party Nos.1 and 2 filed the reply to the rejoinder stating that the allegation made by the petitioner in his rejoinder is not correct. According to them there are five posts of Senior Resident in Orthopaedics Department of S.C.B. Medical College, Cuttack prior to filling up of posts by the advertisement in question published in the year 2015 and they are manned by following persons :

1. Dr. Sujit Kumar Lakra
2. Dr. Vikash Agarwal
3. Dr. Laba Kumar Naik
4. Dr. Susant Kumar Sena
5. Dr. Gayadhar Pradhan

It is stated that the discipline of Orthopaedics (Trauma) is not an independent Department and it is included in the Eight Senior Residents posts of Orthopaedics in SCB Medical College & Hospital, Cuttack. The Trauma care service is the additional responsibility of the Department of Orthopaedics and the Senior Residents in the discipline of Orthopaedics are also deployed there to take the care of Trauma care like the Trauma Care service in the other Departments namely Neurosurgery, Anaesthesiology and Surgery etc. In further reply affidavit dated 16.3.2016 the opposite party Nos.1 and 2 stated that as there were five number of posts of Senior Residents filled up prior to May 2015 and three posts were vacant on the date of counseling, i.e., 16.9.2015, petitioner being placed in the fourth position from top order could not be selected. In support of the submissions, documents were filed.

SUBMISSIONS :

9. It is submitted by Mr. Manoj Mishra, learned Senior Advocate appearing for the petitioner strenuously urged that the Trauma Care is a separate discipline other than the discipline of Orthopaedics and there are ten posts of Senior Resident in Orthopaedics and Orthopaedics (Trauma Care) of S.C.B. Medical College and Hospital. It is also submitted that the H.O.D. is well aware about the vacancies going to occur in the Orthopaedics Department and accordingly he has rightly informed the opposite party No.2 that there are four vacancies of Senior Resident during 2015. Since the petitioner had qualified being in the merit list at Sl. No.4, non-consideration of his case after filling up the three posts in the Orthopaedics Department is illegal. It is further submitted that vide Annexure-2 the Government of Odisha in Health & Family Welfare Department had issued the Guidelines whereunder the selection for the engagement of Senior Resident/Tutor would be made in Government Medical and Dental Colleges and as per Annexure-5, the Professor & H.O.D. informed that the four consequential vacancies of Senior Residents in the Department of Orthopaedics would occur and such letter was issued on 16.9.2015. He stressed on the fact that in view of Annexure-5 and in view of Annexure-4 where under four doctors in the Department of Orthopaedics have been deployed with effect from 5.8.2015, there are still four posts left to be filled up in the Department. According to him thus there are four vacancies on the date of counselling instead of three vacancies. On further argument he submitted that in the advertisement dated 17.8.2015 vide Annexure-1, the vacancies in the Department of Orthopaedics have been noted and again vide Annexure-14 there are vacancies for the Orthopaedics (Trauma) other than the Orthopaedics has been shown in the advertisement dated 16.3.2015, thereby he submits that Orthopaedics Trauma is different from Orthopaedics. He submitted that according to inspection of MCI in the Department of Orthopaedics vide Annexure-12 made on 28.8.2014 there are five faculty available but still three vacancies are there and out of five, one vacancy occurred in 2014 and same was yet to be filled up and the opposite parties have knowingly did not fill up such vacancy although petitioner was entitled to be engaged against such vacancy. He also submitted strenuously relying upon Annexure-11 that on 28.8.2014 Orthopaedics Department has got three vacancies in Orthopaedics as per the advertisement dated 28.8.2014 in the post of Resident Surgeon in the Department of Orthopaedics. In the same advertisement there is also one post vacant in Orthopaedics (Trauma) besides the three posts in the discipline of Orthopaedics as per advertisement dated 28.8.2014. So, according to him there were altogether 10 posts out of which four posts (Orthopaedics 3 and Orthopaedics (Trauma) one) were lying vacant on 28.8.2014. He stressed the need of filling up the post of Orthopaedics (Trauma) as it is over and above the three vacancies occurring in the Orthopaedics Department although M.C.I. has not taken care of such seat into consideration while inspecting the Department. Since the petitioner who is one successful candidate in the subject Orthopaedics, he should be considered for the post of

Senior Resident in the Orthopaedics (Trauma). According to him since the petitioner has not been considered, the opposite parties have violated the fundamental right of the petitioner under Article 14 and 16 of the Constitution and illegally filled up such post by allotting to one Dr. Susanta Kumar Sena. Hence, the writ petition should be allowed by quashing the necessary notification and direct the opposite parties to engage the petitioner as a Senior Resident in the Department of Orthopaedics or Orthopaedics (Trauma) as the case may be.

10. Mr. J. Patnaik, learned Additional Government Advocate appearing for the opposite party Nos.1, 2, 4 and 5 and Mr. R.C. Mohanty, learned counsel for the opposite party No.3 submitted that the claim of the petitioner is outright misconceived, illegal and not according to law. They submitted that the letter of the H.O.D. cannot be taken into consideration as it is only a letter stating that four consequential vacancies in the Senior Resident would occur in the Department of Orthopaedics at S.C.B. Medical College and Hospital as per letter dated 16.9.2015 and this letter is addressed to opposite party No.2 who is actually competent to find out vacancy as per the Guidelines issued in 2013 vide Annexure-2. They further submitted that according to M.C.I. inspection made on 28.8.2014 to the Department of Orthopaedics vide Annexure-12 there are altogether eight posts of Senior Resident out of which five were already filled in and three vacancies were noted by the M.C.I. They stressed on the M.C.I. inspection because the M.C.I. is the apex body and they have to find out the manpower required for each Hospital and Departments thereof. The M.C.I. has not found any other Department like Orthopaedics (Trauma) because Orthopaedics (Trauma) is not independent Department but an unit under the Orthopaedics and out of the Senior Residents one doctor is deputed there. They submitted that vide Annexure-11 three posts in Orthopaedics are available and out of those three posts one post in Orthopaedics Trauma Centre was required to be filled up for which such notification was published and the State Government cannot show the vacancies outside the vacancies notified by the Medical Council of India. They also submitted that in order to maintain the service to the people four doctors were deployed in Orthopaedics Department on 5.8.2015 vide Annexure-4 temporarily till regular posting of said Senior Residents by Government and the names of these persons in fact find place in the inspection note of the M.C.I. along with name of another Dr. A.K. Jena. They submitted that since these four doctors were temporarily deployed in the Department, it cannot be said that there are vacancies of four Senior Residents left after their departure. As the petitioner's position is at Sl. No.4 and there were three vacancies left to be filled up after having filled up five vacancies, the petitioner has no claim and the opposite parties in no way have rejected his claim illegally. They submitted that the right to claim the engagement in any discipline is not a matter of right and no fundamental right is attached to such claim. They further submitted that since the case of petitioner is not violative of any fundamental right and the action of the opposite parties is under due process of law, legal, proper and without prejudice to right of the petitioner, the writ petition is devoid of merit and the

same should be rejected.

11. The points for consideration :

(i) Whether there were four posts of Senior Resident vacant in the Orthopaedics Department on the date of counselling ?

(ii) Whether the petitioner is entitled to the reliefs asked for ?

DISCUSSIONS :

POINT NO. (I) :

12. It is undisputed fact that the petitioner had applied for the post of Senior Resident in obedience to the advertisement issued for engagement of Senior Resident/Tutor in August, 2015. It is also admitted fact that the engagement of Senior Resident was to be made as per the Guidelines laid down by the Government of Odisha in Health and Family Welfare Department, Bhubaneswar vide Resolution No.1314/H dated 11.1.2013 and corrigendum thereon issued on 19.2.2013. It is also not disputed that petitioner had secured fourth position in the merit list prepared and called to counselling.

13. The dispute arose with regard to the vacancy positions in the post of Senior Resident/Tutor in the Department of Orthopaedics as on the date of counselling, i.e., 16.9.2015. The documents filed by both the parties will clarify the dispute in question. It is well settled that Medical Council of India (herein after called M.C.I.) is the authority to determine the positions of faculty of different cadres in the Medical College and Hospital.

14. It is reported in 2012 (7) SCC 433 Priya Gupta v. State of Chhattisgarh & others, where Their Lordships observed the following :

"25. A consistent and clear view held by this Court is that the regulations framed by the MCI are binding and these standards cannot be deviated from. Reference can be made to State of M.P. & Ors. v. Gopal D. Tirthani & Ors. [(2003) 7 SCC 83 - paras 24 and 26] Bharati Vidyapeeth (Deemed University) & Ors. v. State of Maharashtra & Anr. [(2004) 11 SCC 755 - para 20]; Chowdhury Navin Hemabhai & Ors. v. State of Gujarat & Ors. [(2011) 3 SCC 617 - paras 7, 11, 12, 14 and 18] and Harish Verma & Ors. v. Ajay Srivastava & Ors. [(2003) 8 SCC 69 - paras 14 to 21]".

With due respect to the decision, we are of the view that M.C.I. is the apex body. The medical education with higher study, the appointment of the faculty and admission of the students in the medical Colleges are all covered under the M.C.I. Act and Regulations, they are binding on respective Medical Colleges. Keeping in view of this settled law, the case in hand has to be considered.

15. So, the first and foremost document to be considered is the inspection made by M.C.I. on 28.8.2014 by the Assessor Dr. Dhaval Modi vide Annexure-12 wherein at para-25 it has been mentioned that on the date of inspection eight

numbers of faculties were required, out of same, five faculties were in possession and three faculties as Senior Residents were in deficiency. Since the M.C.I. has determined the vacancies of Senior Residents required in the Orthopaedics Department as eight in number, the State Government cannot go beyond eight numbers of vacancies to be filled up in view of the decision reported in the case of Priya Gupta (supra). In the same report it is made available that following five Senior Residents were in position :

1. Dr. A.K. Jena
2. Dr. R.R. Mohanty
3. Dr. A.K. Gupta
4. Dr. P.S. Das
5. Dr. B.S. Lenka

16. On further scrutiny of the documents it appears that on 16.3.2015 there was an advertisement to fill up vacancies (existing in future) for the post of Senior Resident-cum-Tutor during 2015 but it was not mentioned how many vacancies are there but it obviously refers to vacancies to occur in 2015 as four doctors out of above five doctors were going to complete their Senior Residentship in the month of August, 2015. Out of those five doctors, Dr. A.K. Jena is found to have been relieved on 1.3.2015 after completion of his Senior Residentship as revealed vide Annexure-13. It is revealed from the counter that when the Doctor is Senior Resident, he works under the Dean and Principal of S.C.B. Medical College and Hospital but while he completes the Senior Residentship he is posted under the disposal of Superintendent, S.C.B. Medical College and Hospital as Doctor in the Department of Orthopaedics till regular posting by Government. So, vide Annexure-13, it appears, Dr. A.K. Jena has joined the establishment of Superintendent, S.C.B. Medical College and Hospital being posted in the Department of Orthopaedics. After his posting on 29.4.2015 there remained four Senior Residents in the position.

17. It is revealed from Annexure-4 that vide order No.17908 dated 6.8.2015 the Superintendent, S.C.B. Medical College Hospital passed order in pursuance of Government of Odisha, Health & Family Welfare Department letter No.16991/H dated 3.8.2015 (Annexure-9) and Dean & Principal Memo No.5366 dated 4.8.2015 that four Senior Residents of Orthopaedics were temporarily deployed in the hospital after completion of three years of higher study as Senior Resident with effect from 5.8.2015. In that list the names of Dr. A.K. Gupta, Dr. R.R. Mohanty, Dr. B.S. Lenka and Dr. P.S. Das find place. So, after Dr. A.K. Jena other four doctors who are in the position also relieved from the post of Senior Resident and joined the hospital in the Department of Orthopaedics till their regular posting by the State Government. So, those five doctors who were in the position on the date of inspection by M.C.I. did not continue as Senior Residents on the date of advertisement vide Annexure-1. At the same time, it appears from

the counter read with Annexure-D/3 that four doctors including Dr. Susant Kumar Sena were all engaged as Senior Residents in 2014 vide advertisement dated 28.8.2014. Annexure-D/3 is not disputed by petitioner in the rejoinder except alleging that Dr. Susanta Kumar Sena made entry by backdoor method which is not established by petitioner by any document. It also appears from that list that Dr. Gayadhar Pradhan was also engaged as Senior Resident in pursuance of the advertisement dated 16.3.2015, i.e., before August 2015. From the list it appears all the five doctors being Senior Resident were to continue for three years and they will complete their three years S.R. tenure in 2017 and 2018, respectively. So, the petitioner's claim that Dr. Susanta Kumar Sena was adjusted against fourth vacancy in 2015 is not correct.

18. It appears from Annexure-1 read with Annexure-B/3 that there was advertisement for filling up of the vacancies in the Orthopaedics without mentioning number of vacancies. But it appears from the aforesaid discussion that out of eight vacancies, three vacancies remained to be filled up. Learned counsel for the petitioner drew our attention to Annexure-15 where in 2010 Trauma Care Unit in Department of General Surgery, Orthopaedics, Neurosurgery and General Anaesthesia under the instruction of Government of India have been established with sanction of Rs.4.3 crores and two posts in each of Department were found to be earmarked without creation of the same as separate Department. This is the notification of 2010 but in the document produced as inspection note of the M.C.I. in 2014 shows there are altogether eight posts in the Department of Orthopaedics. So the two posts as revealed from Annexure-15 are obviously within the eight posts as pointed out by M.C.I. in their inspection vide Annexure-12. At the same time, learned counsel for the petitioner again drew our attention to the advertisement dated 28.8.2014 vide Annexure-11 whereunder advertisement was made for filling up the vacancies available in different Departments including Orthopaedics. While going through the same it appears that three numbers of newly created posts in Orthopaedics Department and consequential vacancy in Orthopaedics (Trauma) one post is required. When in 2014 there are eight posts and no separate Department of Orthopaedics (Trauma) is being established, obviously three vacancies in the Department of Orthopaedics includes one post of Orthopaedic (Trauma) Unit but not over and above the vacancy of three. Had there are two posts created, how the advertisement was made for Orthopaedics (Trauma) against one vacancy vide Annexure-11. Thus, we are of the considered view that in the Orthopaedics Department three vacancies were there on the date of advertisement vide Annexure-1 and on the date of counselling but not four vacant posts of Senior Resident. Point No.(i) is answered accordingly.

POINT NO. (II) :

19. It is stated by the petitioner that by virtue of depriving the petitioner from getting engaged Senior Resident the opposite parties have violated Articles 14 and 16 of the Constitution of India. We have observed in the aforesaid paras that

there are three vacancies of Senior Residents on the date of counselling, i.e., on 16.9.2015. It is also admitted fact that Dean and Principal of S.C.B. Medical College is the competent authority to advertise vacancies for the posts of Senior Resident as the documents are maintained in the latter's office. We have also already observed that there are only three vacancies of Senior Resident in the Department of Orthopaedics which also contains the vacancies in its Trauma Care unit and we have further observed that Trauma Care unit of the Orthopaedics Department is not separate Department. On the other hand, we find there is no illegality in not selecting the petitioner to the post of Senior Resident as there is no vacancy to the post on the date of counselling. When the post is not there, the question of engagement of petitioner as fourth Senior Resident does not arise. On the other hand, the purported actions of the opposite parties is under due process of law, legal, proper and in no way affects the rights of the petitioner. So, the fundamental right of the petitioner under Articles 14 and 16 is not violated in any manner.

20. It is reported in AIR 1971 SC 2560, *State of Andhra Pradesh and another v. Lavu Narendra Nath and others*, where Their Lordship observed the following :

"18. Lastly it was urged that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution. We fail to see how refusal of an application to enter a medical college can be said to affect one's personal liberty guaranteed under that Article. Everybody, subject to the eligibility prescribed by the University, was at liberty to apply for admission to the Medical College. The number of seats being limited compared to the number of applicants every candidate could not expect to be admitted. Once it is held that the test is not invalid the deprivation of personal liberty, if any, in the matter of admission to a medical College was according to procedure established by law. Our attention was drawn to the case of *Spottswood v. Sharpe*, (1953) 98 L. Ed. 884 in which it was held that due process clause of the Fifth Amendment of the American Constitution prohibited racial segregation in the District of Columbia. Incidentally the Court made a remark (at p. 887) :

"Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause."

The problem before us is altogether different. In this case everybody subject to the minimum qualification prescribed was at liberty to apply for admission. The Government objective in selecting a number of them was certainly not improper in the circumstances of the case.

19. Learned counsel also referred us to an observation of this Court in *Satwant Singh v. Passport Officer* (1967) 3 SCR 525 at p. 540 (AIR 1967 SC 1836 at p. 1844) that :

" "liberty" in our Constitution bears the same comprehensive meaning as is given to the expression "liberty" by the 5th and 14th Amendments to the U.S. Constitution and the expression "personal liberty" in Article 21 only excludes the ingredients of "liberty" enshrined in Article 19 of the Constitution." We do not find it necessary to dilate on this point in view of our conclusion that even if personal liberty extends to such conduct there has not been any deprivation thereof in violation of any procedure established in law."

21. With due respect to the decision, we found that Article 21 speaks about liberty. Law of liberty can be said to be curtailed if there is no established due process of law followed. In the instant case, as per the above discussion, we are of the view that there are only three posts and not four posts of Senior Resident, on the date of counselling and first three doctors are available to man the three posts and such posts have also been filled up by following the procedure as per the Guidelines of the M.C.I. and the advertisement made by the opposite parties. When there is due process clause correct, legal and proper and the selection to the post of Senior Resident has been followed thereunder, it cannot be said that in any way liberty under Article 21 of the Constitution of petitioner has been violated, consequently no fundamental right of the petitioner has been violated. As such, the petitioner is not entitled to any relief asked for. Point No.(ii) is decided accordingly.

CONCLUSION :

22. We have observed that for the three vacancies in the Orthopaedics Department, petitioner being at Sl. No.4 of the merit list, cannot claim any berth in the Department of Orthopaedics as Senior Resident. We have already observed in the aforestated para that no fundamental right of the petitioner has been violated and petitioner is not entitled any relief as asked for. In such circumstances, we are of the considered view that petition of the petitioner being devoid of merit stands dismissed.

It is further observed that there is need for increase of posts of Senior Residents in the Department of Orthopaedics of S.C.B. Medical College & Hospital as their service to the patients is indispensable. Accordingly, we suggest to the State Government to make requisition to the M.C.I. to increase the number of "Senior Residents". In case of increase of the number of posts, petitioner if so advised, may apply for consideration as Senior Resident and the opposite parties will do well to consider the same following the due process of law without being influenced by any of the observations made above.

The writ petition is disposed of accordingly.

I. Mahanty, J. : I agree.