
(1992) 07 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4102 of 1991

Dr. Madan Lal Agrawal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226
Indian Medical Council Act, 1956 — Section 19A, 33

Citation : (1993) 1 PLJR 530

Hon'ble Judges : S.B. Sinha, J;B.K. Roy, J

Bench : Division Bench

Advocate : Sudhansu Jyoti Mukhopadhyaya, Shivendra Kishore and Ambor Nath Banerjee in CWJC No. 4102 of 1991 and Lala Sachindra Kr. in CWJC No. 6388 of 1991, for the Appellant; R.N. Yadav, Tej Bahadur Singh, Ram Kishore Singh and Lala Sachindra Kumar in CWJC No. 4102 of 1991 and M/s. P.K. Shahi, Tej Bahadur Singh, Ram Kishore Singh and Sharda Nand Jha in CWJC No. 6388 of 1991, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Both these writ applications involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment. In both these writ application the petitioners have questioned the legality and validity of the panel prepared by the respondents for appointment to the teaching post of Assistant Professor which is contained in Annexure 1 to CWJC No. 4102 of 1991.

In CWJC No. 6388 of 1991, the tentative panel prepared in January, 1991 for appointment on the said post which is contained in Annexure 2 thereto and the revised panel which is contained in Annexure 1.

2. CWJC No. 4102 of 1991 has been filed by Dr. Madan Lal Agrawal wherein he has questioned the placement of Dr. Vinod Kumar Singh (respondent no. 3) and Dr. Bijai Achari (respondent no. 4) in the said panel above him wherein in CWJC

No. 6388 of 1991 the petitioner thereof has questioned the appointment of Dr. Vinod Kumar Singh and Dr. Binod Mishra who had been placed above him both in the tentative as well as final panel.

3. Before proceeding to consider the respective contentions of the parties, it may be mentioned that the petitioner of CWJC No. 4102 of 1991 had filed an application for amendment of the writ petition after hearing of the case commenced wherein a prayer was made to amend the prayer portion by inserting a relief for issuance of a writ for quashing the final panel which is contained in Annexure 1 to CWJC No. 1388 of 1991 and also impleading Dr. Binod Mishra as a party thereto, but the said application was not moved by the Learned Counsel for the petitioner.

4. The basic facts of the matter are not in dispute.

5. An advertisement was issued on 29.5.1990 by the State of Bihar (Annexure 2) whereby applications were invited from the eligible candidates for filling up the post of Assistant Professor (Nephrology).

6. Admittedly, Both the writ petitioners as also the private respondents have the requisite academic qualification for appointment on the post of Assistant Professor (Nephrology).

7. The Selection Committee prepared a provisional panel in January, 1991, the relevant portions whereof are as follows :?

Name & Computer registered No.

M.B. B.S. 1

M.B. B.S. pnt

Sub-j.

Sub-j.

Hons. pnt

Flrded

Pgdeg pnt

Rural pnt

Vinod Kr. Singh

53.26

1

55.75

2

0

1

4

7.00

Vijay Achari

79.13

5

71.50

5

9

0

4

0.00

Jaikant Lal Das

60.61

3

62.50

3

1

0

5

4.50

Madan Lal Agrawal

64.58

3

64.00

3

0

0

4

6.00

Dharam Pal Taneja

60.68

3

63.25

3

0

0

5

7.00

Vinod Mishra

54.97

1

53.00

1

0

0

4

7.00

ICH.

IUB

TOTAL

EXP.

LN.

POINT

PNT

PNT

Vinod Kr. Singh

3

12

28.00

Vijay Achari

0

12

3500

Jaikant Lal Das

5

12

33.50

Madan Lal Agrawal

5

12

33.00

Dharam Pal Teneja

3

12

33.00

Vinod Mishra

3

28.00

8. However, the said panel was later on revised after considering the objections filed in relation thereto which is contained in Annexure 1 to CWJC No. 6388 of 1991.

The position of the contesting parties in the said panel are as follows :?

Kram Sankhya

Chikitsak kanam

Wariyta kramank

Chateka kramank

Warg

Praptank

Abhiyukti

1.

Dr. Vinod Kr. Singh

192/19

1

Samanya

28.00

Karya nuvav keadhar par.

2.

Dr. Vinod Mishra

77

15

"

29.00

3.

Dr. Vijay Achari

81

15

"

33.00

4.

Dr. Madan Lal Agrawal

76

4

"

33.00

9. In his writ application, Dr. Agrawal inter alia questioned the placement of Dr. Vinod Kumar Singh in the said panel above him on the ground that the actual teaching experience for working as Resident in the Nephrology Department should not have been granted to him as he was not a regular student of M.D. but appeared in the said examination as a teacher candidate despite deletion of

relevant statute by the Chancellor of the Patna University by a notification dated 29.6.1986 (Annexure 8). He has questioned, the placement of Dr. Achari in the panel on the ground that he did not have any teaching experience at all and, thus, he was not eligible for consideration for appointment in the said post in terms of the said advertisement dated 29.5.1990.

10. Dr. Achari in his writ application has questioned the placement of Dr. Singh also on the ground that in view of the fact that he obtained less points and thus being less meritorious than him, should not have been given the benefit of the provision of the "overriding effect" as contained in clause 3 of the advertisement inasmuch as Nephrology is not a super specialty as per the advertisement. It has further been contended that the grant of any point for posting in a rural area is not a relevant consideration for appointment in the said post as nobody had a choice of posting and further in view of the fact that posting of a doctor in a rural area has nothing to do with the merit of the candidates.

11. Dr. Achari has questioned the placement of Dr. Binod Mishra in the said panel on the ground that he did not have any teaching experience as he was posted in the Indira Gandhi Institute of Medical Sciences which is not a teaching Institution having been recognised by the Medical Council of India.

12. Learned Advocate General appearing on behalf of the Respondent-State as also Mr. Tej Narain Singh appearing on behalf of Dr. Singh, on the other hand, inter alia, contended that as at the point of time when Annexure 8 was issued, D. Singh had acquired the right to appear at the examination as a teacher candidate and in view of the fact that he had been permitted to appear at the said examination by all the concerned authorities, his appearance at the examination as a teacher can not be said to be illegal.

13. It was further submitted that teaching experience means actual teaching experience and as Dr. Singh acquired such experience while he was posted as a Resident Medical Officer in the Nephrology Department which is a teaching post, there is absolutely no reason as to why he should not have been given the credit for acquisition of teaching experience.

In this connection our attention has been drawn to Annexure 3/D, 3/D/1 and 3/F appended to the counter affidavit filed on behalf of the respondent no. 3. It was further submitted that despite the fact that Dr. Singh acquired less marks, he had rightly been given the benefit of Clause 3 read with Clause 9 of the advertisement in view of his having teaching experience in Nephrology Department which is a Super Specialty subject.

Our attention was further drawn to the regulations of the Medical Council of India and on the basis thereof it was submitted that as per appointment of a lecturer. Reader or Professor ; two years" special training in Nephrology having been prescribed as one of the qualifications by the Medical Council of India, the benefit of the overriding benefit in terms of Clause 3 of the Advertisement and the benefit of "preference" in terms of Clause 9 thereof have rightly been granted to

Dr. Singh.

14. With regard to the placement of Dr. Mishra in the panel, it was submitted that Indira Gandhi Institute of Medical Sciences is a statutory organisation and having been established inter alia, for imparting training, it must be held that Dr. Mishra to have acquired the necessary teaching experience and thus, eligible for appointment in the said post.

15. It was further submitted that in the event it is found that Dr. Singh's name has rightly been placed at the top of the panel, the question as to whether Dr. Mishra acquired requisite teaching experience or not would be academic and thus the said question need not be decided in this application.

16. Mr. Sharda Nand Jha, Learned Counsel appearing on behalf of Dr. Achari adopted the submission of the learned Advocate General.

17. The questions, thus, which arise for consideration in these writ applications are : ?

(i) Whether deletion of the statute by notification dated 29.6.1988 (Annexure 8) disentitled Dr. Singh to obtain the benefit of the teaching experience while working in the Nephrology department as a Resident Medical Officer ?

(ii) Whether the placement of Dr. Singh at the top of the list purported to be on the basis of clauses 3 and 19 of the Advertisement was legal, although he obtained less marks than the others ?

(iii) Whether any point should have been awarded to Dr. Singh for his posting in the rural area ?

(iv) Whether Dr. Achari was qualified to apply for the appointment of an Assistant Professor (Nephrology) as he did not have any teaching experience ?

(v) Whether Dr. Mishra's empanelment is valid in view of the fact that he had acquired the purported teaching experience while serving in Indira Gandhi Institute of Medical Sciences which is not a teaching Institution having been recognised by the Medical Council of India as such ?

18. Re:Question-(1) :

The Medical Council of India recognises the right of a candidate to sit at the M.D. Examination either as a student or as a teacher. From a perusal of the letter dated 14.7.1986 addressed by the Secretary of the Medical Council of India to Sri Kuseshwar Sahay (Annexure 3 to CWJC No. 4108 of 1991), it appears that the Medical Council of India in its recommendations made u/s 33 of the Indian Medical Council Act opined that a teacher in service may also appear at the examination. However, so far as the Patna University is concerned, a statute existed whereby and whereunder a teacher working in an academic Institution was permitted to appear at the examination by the University.

The said statute is as follows :?

teacher working in any educational institution under the University or of a College or Department (within the territorial jurisdiction of the University) transferred or re-transferred to the Control of the State Government, at least for a continuous period of eighteen months, may be permitted by the Academic Council to appear at an examination, conducted by the University, provided that where the examination involves practical work also, he shall have fulfilled the prescribed requirements regarding the same.

By the notification dated 29.6.1988 issued by the Chancellor the aforementioned University statute was directed to be deleted so far as the teachers appointed in the Medical College for admission at the Post Graduate (Medical) University Examination is concerned. The said direction was issued in terms of the provisions contained in Section 5(2) of the Bihar Inter University Board Act, 1981 and, thus, the same became binding upon all the Universities.

19. It is, however, admitted that Dr. Singh was appointed as a Resident Medical Officer in Patna Medical College on 17.7.1986 which is a teaching post. It is also accepted that he was posted as Resident Medical Officer (Nephrology) on the post of Housemanship for a period of one year as Honorary Junior Clinical Assistant in P.M.C.H. He also had obtained the training in Super Specialty. He, thus, completed the period of 18 months on 29.6.1988 as it is evident from Annexure 8.

20. By reason of a letter dated 29.11.1988 (Annexure 3/D) to the counter affidavit filed by Dr. Singh in CWJC No. 4102 of 1991, he was granted permission by the Chancellor to sit in the examination which was to be held in 1988 subject to the approval of the Academic Council. The Academic Council had also granted the requisite permission by reason of its resolution dated 31.8.1988 (Annexure 4/F to the counter affidavit filed by Dr. Singh in CWJC No. 6388 of 1991) and a no objection certificate to the aforementioned effect had also been given by the State in terms of its Circular letter dated 27.7.1988 which is contained in Annexure 3/D/1.

21. From a perusal of the letter dated 5.4.1988 (Annexure 3/F) it appears that the Chancellor was of the opinion that the deletion of notification dated 29.6.1988 had no retrospective effect.

22. From a perusal of Annexures 3/G and 3/H, it appears that other persons similarly situated had also been granted permission to sit at the M.D. Examination. Dr. Singh appeared in the 1988 examination but failed. He was thereafter allowed to appear in the examination held in the year 1989 and therein he became successful.

23. From a perusal of the regulations of the Patna University for M.D. and M.S. Examinations in the faculty of medicine, it appears that the following has been laid down therein :?

A candidate shall be allowed to sit at the written, oral, practical and clinical

(where necessary) examinations only after his thesis has been accepted by the majority of the examiners for the thesis. If the thesis is not accepted by the majority of the examiners, then the candidate shall be communicated the comments of the examiner/examiners within a week and the candidate shall be required to resubmit the thesis at the subsequent examination after necessary corrections/alterations in the light of the comments made by the examiner/examiners.

If a candidate, whose thesis has been accepted by the examiners, has failed in the written, only oral, practical or clinical examination, then he shall not be required to resubmit his thesis if he wishes to appear at any subsequent examination. The thesis submitted by him and accepted by the examiners in the previous examination shall be deemed to be the thesis accepted for any subsequent examination in the subject.

It is, therefore, evident that apart from the fact that when a candidate who appears at an examination but does not come out successful therein is entitled to appear at the next examination as an ex student wherefore, in my opinion, need not obtain fresh permission from the concerned authorities once over again.

24. It is, therefore, clear that as Dr. Singh was permitted to appear at the examination held in 1988 in view of the provisions of the relevant statute of Patna University (as it thence existed) he having completed a period of 18 months in a teaching post, was thus, entitled to appear as a teacher candidate in the M.D. examination. By reason of his posting in a teaching post for a period of 18 months, he had acquired a right to sit in the examination subject of course to grant of permission by the Academic Council. He therefore could not have been deprived of the said right in terms of the notification dated 29.6.1988 (Annexure 8).

25. The said notification has no retrospective effect as is evident from the Chancellor's order dated 5.4.1990 (Annexure 3/F). In my view also the said notification dated 29.6.1988 is prospective in nature.

The validity of the aforementioned statute came up for consideration before a Division Bench of this Court in Mr. Vijai Kumar Mishra & others v. State of Bihar and others, in CWJC No. 1134 of 1984 (R) and by a judgment dated 22.1.1985, it was held that there is no conflict between the provision of previous statute and the criteria laid down by Medical Council of India. It was held that the said statute is valid.

26. It, therefore, cannot be said that the acquisition of M.D. degree by Dr. Singh was in any way illegal. Consequently it must also be held that he was entitled to the benefit of teaching experience which he acquired by reason of his posting as a Resident Medical Officer in the Nephrology Department. It is admitted that he worked in a teaching post for a period of about four years in the Nephrological Department.

27. So far as the question of acquisition of teaching experience is concerned, the same must be the actual teaching experience, Dr. Singh was allowed to appear at the M.D. Examination as a teacher candidate. It would, therefore, not be correct to contend that he could not get the benefit of teaching experience while he had been serving in the post of Resident Medical Officer in the Department of Nephrology.

In *Dr. Ashim Kumar Base v. Union of India*, reported in AIR 1983 SC 509, it has been held that teaching experience means actual teaching experience gained in a Medical College or in a teaching institution.

28. It would be paradoxical if a candidate is allowed to appear at the M.D. Examination as a teacher candidate but he would not be given the benefit of teaching experience. In this view of the matter it must be held that Dr. Singh has rightly been conferred M.D. degree and he could not have been deprived of the benefit of the teaching experience in view of the order dated 29.6.1988.

29. However, it may be mentioned that Mr. Mukhopadhyaya, the Learned Counsel appearing on behalf of the petitioner in CWJC No. 4102 of 1991 has categorically stated that the petitioner does not press for the relief that the M.D. degree conferred upon Dr. Singh be declared illegal. In this view of the matter, in my opinion, the degree conferred upon Mr. Singh must be held to be valid.

30. Re : Question- (ii):

The relevant clauses of the advertisement dated 29.5.1990 (Annexure 2) namely Clauses 2 (c), 3, 18 and 19 read as follows :?

31. A similar advertisement came up for consideration before the Supreme Court of India in *Dr. Arun Kumar Agrawal v. State of Bihar*, reported in AIR 1991 SC page 1514, wherein the translated version of the relevant clause have been stated which are as follows :?

Clause 2(C) :?

For the post of Assistant Professor and Registrar it will be essential for the candidates to have obtained in the same Specialty for which the application is being made. M.D. M.S F.R C.S. (U.K.) M.R.C. O.G. (U.K.) or American Board of Specialty or any other Post Graduates qualification considered by the Medical Council of India equivalent to the aforesaid degrees. Post Graduate qualification obtained from the U.K. after November 11, 1976 shall not be granted recognition.

Clause 3 :

For Assistant Professor : (a) Resident Registrar in the same specialty on officers having worked on the two posts in an educational hospital having obtained recognition from the Medical Council of India for conducting M.B.B.S. course, alone can apply.

(b) Service on any other accepted/ acknowledged teaching post (Jr. Surgeon/ Jr.

Physician) in the same subject for which the application is being made shall be considered equivalent to Registrar/Resident, (c). In addition to the other conditions Resident Registrar in the concerned subject or medical officers having a minimum of three years experience on the two posts shall alone be eligible to apply. This, however, shall not be essential for Radiology, Skin & V.D. Anaesthesia, Neurology, Neurosurgery, Plastic Surgery or any Specialty to be constituted in future nor shall it be essential to obtain the prescribed minimum of 15 points for being posted in these subjects. In these subjects, however, in case one or more than one such candidates are available who have obtained three years' teaching experience in the concerned specialty, then in that situation the Medical Officers having such experience shall be entitled to foremost consideration for appointment and they shall be appointed although they might have obtained less points than these candidates who do not possess three years teaching experience.

Clause 18 :

For the post of Registrar and Resident Doctor in the units (Specialities) of Cardiology, Cardiothoracic Surgery, Neuro Surgery, Gastro enterology, Paediatric Surgery and Kidney in addition to the necessity of fulfilling the conditions contained in clauses 4 and 6 respectively, preference shall be given for working experience in the concerned subject.

Clause 19 :

For appointment of Assistant, Assistant Professor in the aforesaid major super specialities, the degree and the teaching experience in the related basic (parent) subject as enumerated in clause 3 will be essential. However, those having degrees, research work or working experience shall be given preference.

32. The State in paragraph 6 of its counter affidavit stated that "Nephrology" is a super speciality subject.

33. The contention of Mr. Chandramauli Prasad, the Learned Counsel appearing on behalf of the petitioner is that on a comparison of the Hindi version and the English version set out in Arun Kumar Agrawal (supra) it would appear that the English version does not reflect the correct translation of the Hindi text.

34. According to the Learned Counsel the overriding consideration can be granted only in respect of the candidates who worked in the departments specifically mentioned therein and as "Nephrology" has not been mentioned in Clause 3 of the advertisement, the said provision has no application to the facts and circumstances of the case.

35. Mr. Prasad submits that clause 3 of the advertisement being an "exception" the same must be construed strictly.

36. The contention of the learned Advocate General, on the other hand, is that the entire clause has to be read as a whole.

37. It is true that a document has to be read as a whole. It is also true that such interpretation which gives effect to the intention of the maker of the instrument should be preferred. However, it is also well known that such an intention has to be gathered from the words used in the document itself.

38. There are three types of speciality in the Medical education in the State of Bihar as has been observed by the Supreme Court in Agrawal's case vis Speciality, Parent Speciality and super speciality. It is not in dispute that Nephrology comes within the purview of super speciality.

Clause 2 (c) of the advertisement provides for the essential educational qualification required for the appointment in the post of the Assistant Professor.

Clause 3 provides for the requirement for appointment to the post of Assistant Professor.

39. It is not in dispute that the department of Medicine falls within the category of "Parent Speciality" in relation to the subject of "Nephrology".

40. Apart from the fact that the candidate must have worked in the same speciality or in the educational Hospital or in the alternative in the department falling within Clause "B" thereof; an additional condition has been imposed in the advertisement namely, that the Resident/Registrar in the concerned subject or Medical Officer having minimum of three years" experience shall alone be eligible to apply. The sentence occurring thereafter in the Hindi version begins with the word "Kintu" i.e. "But" and the same provides that the said qualification shall not be necessary for Radiology, Skin and V.D., Anaesthesia, Neurology Neurosurgery, Plastic Surgery or any speciality to be constituted in future nor shall it be essential to obtain the prescribed minimum of 15 points for being posted in those subjects. Thereafter, in Hindi version again the word "Kintu" appears which provides that in those subjects however, in case one such candidate is available who has obtained three years" teaching experience in the same speciality then in that situation the Medical Officer having such experience shall be entitled to foremost consideration for appointment and he shall be appointed. Therefore, it is evident that the benefit of three years teaching experience can only be given in respect of the candidate for appointment in relation to the post of Assistant Professor in those departments which have specifically been mentioned therein or would be constituted in future. The very fact that the word "But" has been used goes to show that the said provision is in the nature of "proviso". Grant of foremost consideration for appointment to a person who has three years teaching experience despite the fact that he obtained less mark is an exception to the general rule.

41. Empanelment of candidates has to be done on the basis of marks obtained by the candidates. Such exception, therefore, in my opinion, has to be construed strictly. "Nephrology" thus not being a super speciality mentioned in Clause 3, Dr. Singh should not have been given foremost consideration for appointment on the basis of having three years teaching experience. If this meaning is not

assigned, the words "But" and "in these subjects" become redundant and otiose.

42. However, Dr. Singh was entitled to be given preference in terms of Clause 19 of the advertisement.

43. The Medical Council of India in the year 1974 made recommendations with regard to the academic qualifications for appointment on the post of lecturer in Nephrology being M.D. in Medicine with two years special training in Nephrology for appointment on the post of lecturer teaching/research experience. It is provided that the candidate must have requisite experience in the subject and three years" teaching experience as Tutor/Registrar/ Resident in Nephrology/ Medicine of which one year should be after Post Graduate qualification.

Thus, Two years" special training in Nephrology as also three years" teaching experience as a Resident in Nephrology or Medicine appears to be a must.

44. The said recommendations have been reiterated by the Medical Council of India in the year 1983 in exercise of its power u/s 19A of the Medical Council of India Act.

45. Dr. Singh had the special training in Nephrology. It also appears from the counter affidavit filed on his behalf that after obtaining M.D. in 1989 he continued to work as Resident Medical Officer upto 27.7.1990 i.e. for the period from 17.7.1990 to 27.7.1990. The recommendations of Medical Council of India in terms of Section 19A are mandatory in nature. In any event such recommendations have got to be given full effect to the advertisement should be read with the recommendations of the Medical Council of India and in that view of the matter, it has to be held that Dr. Singh was entitled for appointment The action on the part of the State of Bihar in placing Dr. Singh at Serial 1 in the final panel, thus, cannot be said to be arbitrary or discriminatory.

46. In Dr. Arun Kumar Agrawal, it has been held by the Supreme Court:?

The High Court, in our view, committed a further error in not appreciating Clause 19 in its correct perspective. Clause 19 envisaged that preference would be given to a person who had a degree in super speciality alongwith research or working experience. Thus, the appellant having a degree in super speciality and also having research work or working experience has been rightly given preference in the matter of appointment to the post of Assistant professor in Neuro Surgery over respondent no. 5 who did not have a degree in super speciality.

47. This aspect of the matter also came up for consideration before this Court in Prakash Chandra vs. The State of Bihar and others in CWJC No. 4315 of 1984 wherein a learned Single Judge of this Court by a judgment dated 23rd November, 1985 held as follows :?

Then clause 19 of the advertisement says that for appointment to the post of Assistant Professor in the Super Speciality unit the posts and teaching experience in the related parent speciality will be necessary. It also says that those having

experience in the supper specialities shall be given priority. A perusal of what I have quoted above shows that the candidates must have experience in the parent speciality but those who have experience in the super speciality will be given preference. Admittedly the hospitals where respondent nos. 3 to 5 gained experience are hospitals where M.B.B.S. teaching is imparted. Respondent no. 3 while doing M.S. also obtained the experience in Neuro Surgery as its Resident. He, therefore, has to be given preference to those, who do not possess experience in the supper speciality. So far respondent no. 4 and respondent no. 5 are concerned, they do not deserve any preference.

48. A Letters Patent Appeal was preferred from the aforementioned judgment being L.P.A. No. 140 of 1986 and by an order dated 7.2.1986 a Division Bench of this Court dismissed the said appeal.

The writ petitioner thereafter filed a petition for Special Leave to Appeal before the Supreme Court of India in terms of Article 136 of the Constitution of India being SLP (Civil) No. 5961 of 1986 and by an order dated 23.11.1987 the Supreme Court of India refused to grant Special Leave.

49. In view of the aforementioned decision, therefore, I have no other option but to hold that Dr. Singh was entitled to have preference over other candidates in view of Clause 19 of the advertisement.

50. In this case all the candidates have requisite academic qualification but none except Dr. Singh has any working experience in the Super Speciality of Nephrology. No candidate other than Dr. Singh has worked in Nephrology Department at all. Thus, the interpretation of Clause 19 of the advertisement as given by the Supreme Court in Agrawal's case (supra) applies to the facts of the present case also.

51. Re: Questions (iii) :

It is true that posting in a rural area has got nothing to do with the merit of the candidates. However, it is well known that credit is given for working in a rural area in order to make the services of qualified doctors available in rural area. It has not been contended by Dr. Achari that he was not posted in rural area although he had asked therefor. Further the advertisement itself is not in question.

52. The petitioner applied for appointment knowing fully well the terms and conditions of the advertisement. Apart from the fact that the advertisement is not in question, in my opinion, the petitioner having appeared before the Selection Committee and having "taken a chance for being selected on the basis of the terms and conditions laid down in the advertisement itself, he cannot at this stage, be permitted to turn round and indirectly question the rationality of grant of marks on the basis of posting a candidate in a rural area. Further it is not the contention of the petitioner that the said provision is violative of Article 14 of the Constitution of India.

53. While exercising jurisdiction under Article 226 of the Constitution of India, this Court may refuse to grant relief keeping in view the conduct of the petitioner.

Reference in this connection may be made to *Munindra Kumar vs. Rajiv Govil*, reported in AIR 1991 SC 1607.

54. Re: Questions (iv):

From a perusal of Clause 3 of the advertisement itself it is evident that three years' teaching experience is a must. A supplementary affidavit has been filed by Dr. Singh on 7.4.1992 wherein the application filed by Dr. Achari for appointment in the said post has been filed and marked as Annexure 4/6.

From a perusal of the said application, it appears that Dr. Achari has not mentioned his previous experience in the capacity of teacher. He left column no. 11 blank. The said column no. It requires enclosures to be given showing previous experience of the intending candidate, if any. It is, therefore, evident that Dr. Achari had no teaching or working experience. Consequently it has to be held that Respondent no. 4 having no teaching experience, he was not entitled for appointment at all. He has, therefore, no locus standi to maintain the writ application.

55. Re : Question (v) :

Before adverting to this question, it may be mentioned that it is stated at the bar that an identical question as to whether Indira Gandhi Institute of Medical Science is a teaching institution or not is pending consideration before a division Bench of this Court. It is also stated that detailed affidavit with regard to the status of the said institute as also papers showing that in fact teaching job is done therein have been filed. This Court, however, cannot take into consideration the facts stated in any other writ application.

56. In this writ application, therefore this Court has to proceed on the materials based in this application. Except making a bald assertion that Indira Gandhi Institute of Medical Science is a teaching institution; no other particular has been mentioned in the counter affidavit filed by the respondents. It has also not been stated as to whether the said institute has been recognised as a teaching institution by the Medical Council of India or not. However, in my opinion, it is not necessary to give a final opinion on this point.

57. A Division Bench of this Court in *Dr. Rita Sinha v. State of Bihar*, reported in 1990 (2) PLJR 243 prescribed cut off date which should be taken into consideration for appointment on the various points in the Health Department. So far as the post of Assistant Professor, Nephrology Department is concerned, there is only one post, as has been accepted at the bar.

58. In terms of Rita Sinha's decision aforementioned, we have upheld the empanelment of Dr. Singh whose name now appears at serial no. 1, as valid and as before us Mr. Tej Narain Singh, Learned Counsel appearing on behalf of Dr.

Singh, has categorically stated that his client shall accept the offer of appointment once, we, in my opinion, need not go into the question as in terms of the impugned panel, the offer of appointment has to be made by the State of Bihar to Dr. Singh only. This question thus, has become academic.

59. It has however, also to be held that the writ petition filed on behalf of Dr. Agrawal is not maintainable.

Dr. Agrawal, in his writ application, has prayed for quashing of the provisional panel. However, the provisional panel after consideration of the objections filed by the candidates was made final in may, 1990. The said panel has not been questioned by Dr. Agrawal as the application for amendment of the writ petition has not been pressed.

60. Further in the said panel, Dr. Binod Mishra is at serial no. 2. He is not a party in this writ application. As Dr. Binod Mishra is not a party in this writ application, the panel in question cannot be quashed by this Court in its entirety. Thus, as the panel validity of which has been challenged was provisional in nature, no purpose would be served by quashing the same as in the meantime, a final panel has been prepared.

61. this Court, as is well known, does not issue any futile writ.

62. Thus, the writ application filed by Dr. Agrawal is not maintainable at all.

63. So far as the CWJC No. 6388 of 1991 is concerned, the writ petitioner thereof himself was not eligible for being considered for appointment as he did not fulfil the requisite qualification of having three years' teaching experience. He has, thus, also no locus standi to question the impugned panel as contained in Annexure 1 to his writ application. For these reasons also these two writ applications must fail and are accordingly dismissed.

However, in the facts and circumstances of the case there will be no order as to costs.

B.K. Roy, J.

I agree.