
(2001) 04 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 13072 of 2000

Dr. Manisha Mohapatra

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 92 CLT 269

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The petitioner, a lady doctor seeking admission into the Post Graduate Course in Government Medical Colleges of the State, is neither litigation minded nor litigation her hobby. However, being aggrieved by the action of the authorities who have refrained from considering her case the petitioner is constrained to approach the portals of this Court for redressal of the grievances caused to her.

2. Bereft of all unnecessary details, it is stated that in reply to the advertisement issued by the Post Graduate Selection Committee, S. C. B. Medical College, Cuttack inviting applications from the candidates desirous of seeking admission into the P. G. course in any of the three medical colleges of Orissa in the Session, 2001, the petitioner submitted her application form after sacrosanctly fulfilling all the paraphernalias as an in service candidate. The eligibility criteria for taking admission into the said course reads as follows:

"For Post Graduate Course, the candidates have passed M.B.B.S. Examination from a recognised Medical College and must have completed one year of compulsory Rotating Housemanship/Internship by 31-3-2000,"

3. Admittedly, the petitioner completed her M.B.B.S. degree in the year 1989 and thereafter completed her Houseman-ship course in the year, 1990 from the said college. After completion of Housemanship, the petitioner, as stated in the writ

petition, involved herself in different research work in relation to Post Graduate Studies in different colleges. It is further alleged that after facing rigorous recruitment process, in the year 1992, the petitioner was selected as Sr. Research Fellow in the Regional Medical Research Centre of Indian Council of Medical Research, New Delhi and was posted in the department of Clinical Pathology and Micro-biology under the direct control of the Deputy Director of Head Division of Clinical Pathology and Micro-biology.

4. The prospectus issued for selection of candidate for P. G. Medical Course, 2001 under Clauses 5.2, 5.2.1 and 5.2.2, relates to in service candidates which read as follows :

5.2 : An in service candidate is one who at the time of Application.

5.2.1 : Is in the employment in Govt. of Orissa and has completed 5 years of service in Orissa which includes all categories of employment like temporary/ adhoc/regular by 31st March, 2000.

5.2.2. : Or is in the employment of Govt. of India, but posted in Orissa Public Sector Undertaking of Govt. of India located in Orissa and has completed 5 years of service in Orissa by 31st March, 2000."

5. The petitioner, who joined as a Senior Research Fellow in January, 1992, has put in more than 5 years of service in an undertaking of the Indian Council of Medical Research in Orissa and otherwise satisfies the criteria stipulated. It is alleged in the writ application that though the petitioner fulfills all the eligibility criteria, the opp. parties denied her the privilege of in service candidate for admission into the P. G. course and wrongly treated her as a direct candidate. It is specifically averred by the petitioner that if the service rendered by her under the Central Government in I.C.M.R, is taken into consideration, she fulfills all the criteria of in service candidate and her position in the select list will be within the first 30 in accordance with merit. It is also averred, as an in service candidate, she is likely to get a seat in the S.C.B. Medical College, Cuttack in any of the faculties, namely, Pathology, Psychiatric, Micro-Biology and S.P.M.. On 18-12-2000, this Court directed that as an interim measure, pending disposal of the writ application, a seat in one of the four subjects mentioned above, in S.C.B. Medical College, Cuttack be kept reserved.

6. After receiving the Rule, the opp. parties have entered appearance and filed a counter affidavit taking a plea that as the petitioner was working as a Research Fellow, the same being not a service of any kind and the I.C.M.R. being a Research Centre unit of Government of India, she cannot be treated as in service candidate. It is further stated that the petitioner joined as an Assistant Surgeon only in September, 1997 and has not acquired 5 (Five) years of service experience as on 31-3-2000 under the Government of Orissa and thus do not satisfy the eligibility criteria enumerated under the Clause 5.2.1 of P. G. Prospectus-2001. In paragraph-5 of the counter, however, it is stated that in consonance with the direction issued by this Court vide order dated 18-12-2000,

a seat in the P. G. course under the Pathology faculty out of in service quota in S. C. B. Medical College, Cuttack has been kept reserved till final decision of the case.

7. Heard learned counsel for the petitioner and learned Addl. Government Advocate.

In course of hearing, my attention has been drawn to Judgment of this Court passed in O. J. C. Nos. 13707, 11680, 8125, 7538, 8919, 7068, 8464, 7150, 13031, 13130, 12956 of 1997 and 13253 of 1996, disposed of on 30-9-97 by a common Judgment. The facts of the said cases were identical to the facts of the present case so also the point of law. In the said judgment, while deciding O. J. C. No. 7138 of 1997 it was observed as follows :

".....the only dispute is regarding his service as Asst. Research Officer in I. C. M. R., as according to the opposite parties he was only doing research work. In the rejoinder, the appointment letter dated 30th August, 1991 has been annexed as Annexure-4 and we find that the petitioner was appointed as Asst. Research Officer in Human Reproduction Research Centre (I.C.M.R.) in the Department of Obst. and Gynaecology, S. C. B. Medical College, Cuttack on the consolidated pay and allowances of Rs. 3320/- per month. From Annexure-5 we find that the petitioner was granted maternity leave and from Annexure-6 series we find that she was given D.A., H. R. A. and P. F. etc.. Therefore, we are unable to accept the contention of the opposite parties that the petitioner was doing only research assistance and not on regular employment. From clause 7.5 of the Prospectus we find that this benefit is available for doctors not only in Government of Orissa service but also in the employment of the Government of India organisations located in, Orissa or the Public Sector undertakings of Government of India and of the State Government. We can take judicial notice of the fact that the I. C. M. R. is a research organisation of the Government of India and they are doing the research work on medical science. Moreover, the petitioner was working in a project undertaken by the I. C. M. R. in S. C. B. Medical College....."

8. In the present case also the petitioner has filed a reply annexing her appointment letter which reveals that she was appointed as a Senior Research Fellow under the Regional Medical Research Centre. She was attached to the Department of Pathology and has enclosed several documents to reveal research and practical analysis done by her under I. C. M. R.. Perusal of the said documents leads to an irresistible conclusion that the petitioner fulfills all the criteria in accordance with the ratio of the judgment of this Court referred to supra and I have no hesitation to hold that the petitioner is entitled to get the benefit of working under the I. C. M. R. and should be treated as an in service candidate. It is needless to say that if the petitioner comes within the select list, she will be permitted to take admission. However, she cannot claim any equity and shall be bound by the other stipulations fixed by the Indian Medical Council.

With the aforesaid observations and directions, the writ application is allowed. No

cost.

9. Writ application allowed.