
(2020) 09 JH CK 0107
In the Jharkhand High Court
Case No : L.P.A. No. 615 Of 2017

Dr. Rekha Sharma & Ors

APPELLANT

Vs

State Of Jharkhand & Ors

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Citation : (2020) 09 JH CK 0107

Hon'ble Judges : Aparesh Kumar Singh, J; Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Anil Kr. Sinha, Abhay Prakash, Dr. Ashok Kumar Singh, Ritu Kumar, Rishi Bharti

Final Decision : Allowed

Judgement

This appeal has been taken up on the prayer of intervenor Dr. Mukesh Kumar through I.A. Nos. 461/2020 and 462/2020 for being permitted to be added as respondent and also for modification of the order dated 16th January 2018 whereby the Coordinate Bench of this Court had been pleased to stay the operation, implementation and execution of the judgment and order dated 6th December 2017 passed by learned Single Judge in W.P.(S) No.2274/2015 during pendency of this letters patent appeal.

Respondent-RIMS has filed a counter affidavit on 27th August 2020 in the present appeal and a supplementary counter affidavit on 9th September 2020 in terms of the order dated 9th July 2020 and the subsequent order dated 2nd September 2020. The supplementary counter affidavit reflects the vacancy position in the 8 non-clinical departments in respect of which the advertisement no.8576 dated 9th July 2016 was issued for the vacant post of Tutor.

Be it pointed here that the appellants are Tutors serving under RIMS since 2007-08 who are aggrieved by the dismissal of their writ petition W.P.(S) No.2274/2015 vide judgement dated 6th December 2017 passed by the learned Single Judge. The writ petitioners had approached this Court for a direction upon

the respondents to declare the post of 'Tutor' in RIMS, Ranchi as a permanent post prior to coming into force of RIMS Rule w.e.f. 8th September 2014; to allow the petitioners to continue on the post of 'Tutor' of different non-clinical branches in RIMS, Ranchi and allow subsequent benefits of promotion as their services were permanent and not tenure based. The writ petitioners wanted their services to be regularized and be not controlled by the RIMS Rules which has been brought into effect from 8th September 2014 which declared the post of Tutor as tenure post. They also wanted the Director, RIMS, Ranchi to advertise only those sanctioned and vacant post of 'Tutor' for new recruitment other than on which the petitioners are working. The writ petitioners' during pendency of the writ petition had filed an Interlocutory Application No.4488/2016 seeking an amendment for quashing of the Advertisement No. 8576 dated 09-07-2016 whereby certain vacant posts for 'Tutor' were to be filled up by RIMS. However, this I.A. was not allowed. It was disposed of when the writ petition was disposed of by the impugned judgement dated 6th December 2017. During pendency of the writ petition, two candidates who were selected under the Advertisement no.8576 dated 9th July 2016 in the Department of Physiology and Microbiology Dr. Anita Kumari and Dr. Manju Boipai were impleaded as respondents No. 4 & 5 on their prayer made through I.A. No. 4198/2017 vide order dated 31st July 2017.

In the present appeal the Coordinate Bench of this Court vide order dated 16th January 2018 admitted the writ petition and directed it to be listed in the 2nd week of December 2018 for hearing. Respondents had appeared and waived notice of admission. By the same order, the operation, implementation and execution of the judgment and order dated 6th December 2017 passed by the learned Single Judge was stayed till final hearing of this L.P.A. Later on, respondent nos. 4 and 5 made a prayer for modification in the interim order of stay on the plea that they are the selected candidates under the advertisement and should be allowed to join on the post of Tutor in the Department of Physiology and Microbiology as it will not affect the interest of the writ petitioners/appellants. The interim order dated 16 th January 2018 was modified vide order dated 18th June 2018 in the following terms :-

"6. Thus, the stay granted by this Court in I.A. No.9886 of 2017 in L.P.A. No.615 of 2017, is, hereby, modified to the effect that the stay granted by this Court vide order dated 16.01.2018 shall not be made applicable to the respondent nos. 4 & 5. Their appointment will be made in accordance with law and in accordance with the judgment delivered by the learned Single Judge in W.P.(S) No.2274 of 2015 dated 06.12.2017."

The appeal has not been taken up for hearing thereafter.

Meanwhile, the intervenor Mukesh Kumar through I.A. Nos. 462/2020 prayed for his impleadment as respondent. Through I.A. No. 461/2020 he had also sought for similar modification in the interim order dated 16 th January 2018 on the plea that he is also a successful candidate under the same advertisement as per the

select list dated 7th March 2017 (Annexure-S/C to the supplementary counter affidavit of respondent RIMS dated 9 th September 2020). In response, RIMS has filed the counter affidavit on 27th August 2020 and supplementary counter affidavit on 9th September 2020. Counter affidavit dated 27th August 2020 is on the merits of the appeal. The supplementary counter affidavit refers to the advertisement dated 9th July 2016 under which 43 posts were advertised (Annexure-S/B) for 8 non-clinical departments for appointment of Tutor against vacant post available therein and also contains the select list of 32 persons(Annexure-S/C) found successful under this advertisement. At page-38 of this supplementary counter affidavit (Annexure-S/F) is the present vacancy position as on 30th August 2020 in the respective departments on the post of Tutor and Senior Residents in RIMS.

Learned counsel for RIMS has submitted that the post of Tutor is tenure based and cannot be filled up by promotion. He also points out that, except the two posts of Tutors in Physiology and Microbiology Departments filled up by the respondent nos. 4 and 5 after the order of modification dated 18th June 2018, none of the vacant post advertised on 9th July 2016 have been filled-up from the select list dated 7th March 2017 because of the interim order of stay granted by this Court on 16 th January 2018. After this advertisement no. 8576 dated 9th July 2016, other advertisements have been issued to fill-up the post of Tutor or Senior Resident in Clinical Departments and also in other departments considering the vacancy in those Departments. By virtue of the stay, appellants have been continuing on the post of Tutors in different departments. The consolidated position of sanctioned post, working strength and vacancy position in 37 Departments of RIMS as per Annexure-S/F as on 30th August 2020 would indicate that only 122 Tutors/Senior Residents are working against the sanctioned strength of 271. This working strength includes the appellants of the instant appeal also Learned counsel Mr. Singh submits that the appointments could not be made in these 8 non-clinical departments against the select list dated 7th March 2017 due to the stay granted vide order dated 16th January 2018. He submits that the functioning of RIMS has been affected due to vacancy in the post of Tutor/Senior Resident in not only the non-clinical departments but other clinical departments also. RIMS has been making endeavours to fill up the vacancies of 'Tutor' and 'Senior Residents' in various departments of RIMS. Learned counsel submits that in these circumstances, if these vacancies in the 8 non-clinical departments are allowed to be filled up from the select list dated 7th March 2017, as per the merit list against each department, the appellants are not going to suffer so long the appeal is not finally decided. He has fervently prayed for hearing of the appeal at an early date.

Mr. Ganesh Khanna assisted by Ms. Rishi Bharti has submitted that the applicant had to approach this Court for modification of the interim order dated 16th January 2018 as the applicant who is first in the merit list in the Pharmacology Department, could not get parity of treatment vis-a-vis respondent no. 4 and 5 who were of the same select list in the departments of Physiology and

Microbiology and were permitted to join pursuant to the modification order dated 18th June 2018. He submits that the posts in Pharmacology Department are still vacant and the position of this applicant is first in the select list of five candidates in such department. Clearly the interest of the appellants are not going to be affected by his appointment even as per the stand of RIMS reflected from the vacancy position at page-38 of the supplementary counter affidavit. Therefore, this applicant has pleaded for being impleaded as respondent in the instant appeal as the cause of action still continues and no one is going to be adversely affected on his joining.

Learned Senior Counsel for the appellants, at the outset, submits that the appellants who were serving RIMS as Tutor in different departments had approached the Writ Court for being regularized in services and for a declaration that their posts were not tenure based post. Since they were appointed in 2007-08, their service conditions should not be guided by the Rules notified w.e.f. 8th September 2014. These appellants continue to serve RIMS on the post of Tutor except four appellants who are no longer serving. Appellant no. 2 Dr. Pranita Shrivastava has unfortunately died, appellant no.3 Dr. Camellia Chanda had gone for undertaking post-graduation course and thereafter she has not been allowed to join, the tenure of appellant no.6 Dr. Archana has been terminated while appellant no.12 Dr. Kumar Ashutosh has also not been allowed to join after he had gone to undertake post-graduation course. Therefore, the post of Tutor held by these four appellants have also fallen vacant. Learned senior counsel categorically submits that appellants would not have any objection if the vacant posts of Tutor are filled up by the candidates out of the select list dated 7th March 2017 including the applicant- intervenor Dr. Mukesh Kumar, provided the appellants remain unaffected.

Learned counsel for the respondent nos. 4 and 5 does not have any objection to the prayer of the applicant-intervenor as they also stand on the same side.

We have considered the submissions of the learned counsel for the parties in the light of the facts and circumstances noted herein above in some detail, in view of the prayer made by the applicant in I.A. No.461/2020 and 462/2020 for being impleaded as respondent in the instant appeal and for being permitted to join on the post of Tutor in Pharmacology Department being first in the merit list dated 7th March 2017 as against that department, prepared under Advertisement no.8576 dated 9th July 2016. The vacancy position as on 30th August 2020 in different Departments of RIMS on the post of Tutor / Senior Resident is being extracted herein below from Annexure-S/F for proper appreciation :-

Working position of officers 30-08-2020

Sl. No.

Name of Post

Sanction post

Working

Vacant

1.

ANATOMY

Tutor

7

6

1

2.

PHYSIOLOGY

Tutor

7

5

2

3.

BIOCHEMISTRY

Tutor

6

1

5

4.

PATHOLOGY

Tutor

10

4

6

5.

MICROBIOLOGY

Tutor

7

5

2

6.

PHARMACOLOGY

Tutor

7

3

4

7.

FMT

Tutor

7

1

6

8.

PSM

Tutor

7

1

6

9.

Medicine

Senior Resident

17

8

9

10.

Psychiatry

Senior Resident

3

1

2

11.

Paediatrics

Senior Resident

10

7

3

12.

SKIN

Senior Resident

4

0

4

13.

SURGERY

Senior Resident

18

12

6

14.

PEADIATRICS SURGERY

Senior Resident

5

0

5

15.

ORTHOPEDICS

Senior Resident

15

10

5

16.

NEUROSURGERY

Senior Resident

4

1

3

17.

OBS & GYNAE

Senior Resident

15

14

1

18.

ENT

Senior Resident

6

4

2

19.

EYE

Senior Resident

7

5

2

20.

RADIOLOGY

Senior Resident

15

4

11

21.

ANESTHESIA

Senior Resident

26

14

12

22.

LABORATORY MEDICINE

Senior Resident

3

2

1

23.

BLOOD BANK

Senior Resident

2

2

0

24.

T.B. & CHEST

Senior Resident

5

3

2

25.

Cardiology

Senior Resident

6

1

5

26.

Radiotherapy

Senior Resident

5

1

4

27.

Urology

Senior Resident

3

0

3

28.

Cardiothoracic Surgery

Senior Resident

9

0

9

29.

PMR

Senior Resident

3

0

3

30.

Nephrology

Senior Resident

4

0

4

31.

Medical Oncology

Senior Resident

4

0

4

32.

Surgical Oncology

Senior Resident

4

0

4

33.

Neonatology

Senior Resident

4

2

4

34.

Neurology

Senior Resident

4

0

4

35.

Plastic Surgery

Senior Resident

4

0

4

36.

Critical Care

Senior Resident

4

0

4

37.

Cardiac Anaesthesia

Senior Resident

4

0

4

Total

271

122

150

The genesis of the instant litigation prosecuted by the appellants relates to a claim for regularization in service of RIMS on the strength of their continuance as Tutor since 2007-08 and on the plea that the Rules framed by RIMS in 2014 making the post of Tutor tenure based should not apply to their case. The writ petitioners' during pendency of the writ petition had filed an Interlocutory Application No.4488/2016 seeking an amendment for quashing of the Advertisement No. 8576 dated 09-07-2016 whereby certain vacant posts for 'Tutor' were to be filled up by RIMS. However, this I.A was not allowed. It was disposed of when the writ petition was disposed of by the impugned judgement dated 6th December 2017. Subsequent advertisements were issued for filling-up of the post of Tutor/Senior Resident in various departments of RIMS. Those advertisements have led to filling up of a number of the advertised post in those departments as per availability of the selected candidate as submitted by Learned Counsel for RIMS.. However, because of the interim order of stay dated 16 th January 2018 passed in this appeal, the posts notified under Advertisement dated 9th July 2016 have remained vacant except the appointment of respondent nos. 4 and 5 pursuant to the modification order dated 18th June 2018.

It is apparent from the submission of learned counsel for RIMS that there is shortage of hands in these non-clinical departments also because of the vacancies remaining unfilled till date. Appellants have no objection if rest of the persons in the select list dated 7 th March 2017 are appointed against the vacancies lying in those departments for the post of Tutor so long they remain unaffected and pending final adjudication of this appeal. The vacancy position as per Annexure-S/F to the supplementary counter affidavit of RIMS shows that there are number of vacancies existing in these 8 non-clinical departments i.e. Anatomy, Physiology, Biochemistry, Pathology, Microbiology, Pharmacology, FMT and PSM. In total, there are 32 vacancies existing in these 8 non-clinical departments. By the appointment of the selected candidates against these vacancies, appellants are definitely not going to suffer even as per the stand of the appellants and that of the RIMS.

In those circumstances, this Court is of the opinion that if permission is granted to fill up the vacant posts notified under advertisement no.8576 dated 9th July 2016 in 8 non-clinical departments from the select list dated 7th March 2017, the larger interest of functioning of RIMS would be served considering the paucity of medical professionals acutely felt during the Pandemic while the interest of the appellants would not suffer in any way till adjudication of the main appeal. Keeping this larger perspective in mind and in the interest of justice, we are persuaded to modify the order of stay dated 16th January 2018 to the extent that RIMS is allowed to fill-up the notified vacant sanctioned posts of Tutor in these 8 non-clinical departments out of the selected candidates in the merit list dated 7th March 2017 as against each of these departments, strictly in order of merit and in accordance with law and also subject to any order passed in any other judicial proceedings in respect of any of these vacancies. There might be a situation where in one or the other department after the vacancies are filled- up as per the merit list of selected candidates from the select list dated 7th March 2017, one or the other selected candidates may still be left out. However, such a situation can't be helped at this stage, till the appeal is finally decided. Learned counsel for the appellants has informed that four posts previously held by four appellants no. 2, 3, 6 and 12 have fallen vacant during pendency of the appeal.

Accordingly, prayer for impleadment made through I.A. No.462/2020 on behalf of the applicant Dr. Mukesh Kumar is allowed. Let him be added as respondent No. 6 in the array of respondents. Registry to carry out the addition. The order dated 16th January 2018 is modified in the manner and to the extent indicated herein above. I.A.No. 462/2020 is disposed of The appeal requires to be heard at an early date, so that the lingering issue is finally decided upon. Let the appeal be listed in the reopening week after Dussehra vacation. Meanwhile, pleadings, if not exchanged by now, be exchanged between the parties. Written notes of arguments and judgments on which the parties seek to rely, be submitted to the Court Master through email and also hard copy thereof be furnished by 16th October 2020.