

(1989) 05 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. 2848 of 1988

Dr. Sheo Shander Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Patna High Court Rules, 1916 — Rule 5

Public Service Commission (Procedure) Rules, 1970 — Rule 7, 7A

Citation : (1990) 1 PLJR 298

Hon'ble Judges : Krishna Ballabh Sinha, J

Bench : Single Bench

Advocate : S.J. Mukhopadhyay, Shivendra Kishore, Susant Kumar Ghosh and K. Mukerjee, in C.W.J.C. No. 2848/88, Shyama Pd. Mukherjee and H.K. Thakur, in C.W.J.C. No. 4216/88, Sunil Kumar Singh, Chandra Mohan Prasad Singh and Shanti Kumar Pandey, in C.W.J.C. No. 4777/88, for the Appellant; Ram Balak Mahto, A.G. and J.N.P. Sinha, G.A, for the Respondent

Final Decision : Allowed

Judgement

Krishna Ballabh Sinha, J.—The State of Bihar in the Department of Health came out with an advertisement in a local newspaper "AAZ" on the 1st of June, 1983, inviting applications from eligible candidates for preparation of panels for appointment/posting on various teaching posts in different Departments of the Medical Colleges of this State. A copy of the advertisement is Annexure 2 to this petition (C.W.J.C. No. 2848/88). It is mentioned in Annexure 2 that a panel will remain operative for twelve months from the date of its approval by the State Government or until a fresh panel is prepared.

2. Two learned Judges, forming a Bench of this Court, were divided in their opinion as to the decision to be given with regard to the life of the panel prepared in pursuance of the said advertisement (hereinafter referred to as "the 1983 Panel"), which necessitated reference of these cases under Clause 28 of the Letters Patent. Although, learned Judges, in their separate judgments have

expressed divergent views, but it appears that it was not considered necessary by their Lordships to specifically formulate the point, on which difference of opinion was expressed. On perusal of the prepared judgment, I find that the primary question for determination is as to what is the life of the 1983 Panels. Learned Counsel appearing on behalf of the parties also stated that the difference of opinion between the two Hon'ble Judges was over the point mentioned above.

3. This petition (C.W.J.C. No. 2848/88) was filed on 28.4.88 in which originally only four officers of the Government of Bihar in the Department of Health and in the Department of Medical Education and Family Welfare were made Respondents. Subsequently, on an application filed by Dr. (Smt.) Alka Pandey, under the proviso to Rule 5 of Chapter XXLC of the Patna High Court Rules she was allowed to appear as Respondent No. 5 by order dated 15.6.1988. Thereafter, two separate applications under the said provision were filed by Dr. Vishnu Ratan and Dr. Basant Singh and they were also allowed to appear as Respondents No. 6 and 7 by the order dated 14.7.1988.

4. During the pendency of the petition (C.W.J.C. No. 2848/89 two writ petitions, C.W.J.C. No. 4216 of 1988 and C.W.J.C. No. 4777 of 1988, were filed on 8.6.88 and 8.7.88, respectively. As the main points involved in these petitions are common, so they were heard together with the main petition (C.W.J.C. No. 2848/88).

5. Before dealing with the point at issue, it is relevant to notice the system of functioning of teachers in different Medical Colleges of this State. Under the State of Bihar in the Department of Health, there are teaching as well as non-teaching posts of Doctors. Teaching posts are available in the Medical Colleges in different grades as indicated herein below:

- (i) Registrar/Resident Medical Officer/Resident Surgical Officer.
- (ii) Assistant Professor.
- (iii) Associate Professor.
- (iv) Professor.
- (v) Principal.

After passing the M.B.B.S. Examination, a Doctor is eligible for appointment in the State Health Services as Medical Officer. Thereafter, two avenues are open to the Medical Officers in this cadre that are commonly known as teaching and non-teaching posts. A candidate having two years experience as Medical Officer becomes eligible for appointment/posting in the basic teaching post of Registrar/Resident Medical Officer (in short R.M.O.)/Resident Surgical Officer (in short R.S.O.). A panel is prepared on the basis of merit according to the criteria laid down by the State Government of suitable candidates for posting on the teaching posts of Registrar/R.M.O./R.S.O. which is known as Junior Teaching post. The

next higher post is that of the Assistant Professor on the teaching side. For appointment on the point of Assistant Professor, a candidate, having teaching experience of three years is eligible. In the channel of promotion in the teaching side, the next higher post is that of the Associate Professor and then the Professor and the highest is the post of the Principal of a Medical College.

6. Now adverting to the petitions under consideration, some facts may be stated to better comprehend the question posed for consideration. The case of the Petitioners (C.W.J.C. No. 2848/83), who are eight in number, has been elaborately narrated in paragraph 4 of the prepared judgment. They have prayed for a writ in the nature of mandamus directing the State to publish the panel prepared in pursuance of the advertisement made on 29.12.1987 and make appointment/posting to different teaching posts, including the post of Assistant Professor in different subjects/Department in the Medical Colleges of this State. They have also prayed for issuing a direction to the Respondents not to make further appointment/posting to the Junior Teaching Posts of Registrar and Assistant Professor from the 1983 Panel.

7. At the time when the advertisement in the year 1983 was made, these Petitioners were working on Junior Teaching Posts and all of them, except Petitioner No. 6 are still working on the teaching posts in different Medical Colleges of the State. From the order dated 12.5.1988, it appears that an interim order was passed restraining the State-Respondents from making appointment from the 1983 Panel. Subsequently, the said order was modified on 21.5.1988 and thereby it was made clear that no appointment from the 1983 panel would be made on the post of Assistant Professor and Junior Teaching post of Registrar, R.M.O. and R.S.O. Thereafter, intervention petitions as well as two separate writ applications (C.W.J.C. Nos. 4216 of 1988 and 4777 of 1988) were filed.

8. C.W.J.C. No. 4777 of 1988 has been filed by Dr. Nawal Kishore Prasad Singh. He has made prayer for a writ in the nature of mandamus for posting him on the vacant post of Registrar in the Department of Medicine in the Patna Medical College Hospital (hereinafter referred to as "the P.M.C.H."), which fell vacant on 14.2.1987 or any Medical College Hospital of this State.

9. The other writ application (C.W.J.C. No. 4216/88) has been filed by Dr. Sunil Kumar Mallik. He has prayed for a writ directing the concerned Respondents to appoint/post him on the Junior Teaching Post of Registrar in the Department of Orthopaedics, lying vacant in the P.M.C.H. or in any other Medical College of this State. Further prayer has been made on his behalf for a direction to the State-Respondent not to make posting/appointment from the panel prepared in pursuance of advertisement dated 29.11.1987 till this Petitioner is appointed/posted on Junior Teaching Post of Registrar on the basis of the 1983 Panel. His name has been included in the 1983 Panel and so also of Dr. Sanjay Kumar Ghosh, who is Petitioner No. 2 in C.W.J.C. No. 2848/88. The name of the latter is placed in the panel just below this Petitioner.

The grievance of the Petitioner is that Dr. Sanjay Kumar Ghosh was offered the post of Registrar by notification dated 17.5.1986, ignoring his claim. Having received information about the said notification, this Petitioner made representation to the authorities concerned on 20.4.1988. On enquiry, he learnt that he was not posted as Registrar (Orthopaedics) as he had filed an application, indicating his unwillingness to join the said post, according to the Petitioner, he did not file any such application,

The application, purported to have been filed on his behalf, is a forged document. A supplementary affidavit was filed on behalf of the Petitioners of C.W.J.C. No. 2848/83 asserting therein that Dr. Sanjay Kumar Ghosh never joined the post of Registrar (Orthopaedics) in pursuance of the notification dated 17.5.1986. In view of the said statement made on behalf of Dr. Sanjay Kumar Ghosh, the contention raised by Dr. Sunil Kumar Mallik docs not merit any consideration.

10. The cases of Dr. Nawal Kishore Prasad Singh and Dr. Sunil Kumar Mallik have been elaborately set forth in paragraphs 14 and 20 of the prepared judgment. As regards interveners, namely, Dr. Arun Kumar Sharma, Dr. (Smt.) Alka Pandey, Dr. Vishwa Ratan and Dr. Basant Singh, their cases have been separately narrated in paragraphs 15, 16, 17 and 18, respectively of the prepared judgment. It may be mentioned here that Dr. Arun Kr. Sharma has filed a separate writ petition, which is still pending disposal before this Court.

11. The common case of all the interveners-Respondents as well as Dr. Nawal Kishore Pd. Singh (C.W.J.C. No. 4777/88), and Dr. Sunil Kumar Mallik (C.W.J.C. No. 4216/88; is that the candidates from the 1983 Panel, placed above their names in Order of merit, have been posted in different Medical Colleges on Junior Teaching Posts. When their turn came for posting, they were deprived of their right because of the order of stay passed by this Court and also on account of inaction on the part of the State-Respondent and its authorities.

12. Yet there is another intervention petition, at the instance of Dr. Ram Sundar Ram Kanojia. By filing the petition, prayer has been made on his behalf to vacate the order of stay, by which all the appointments from the 1983 Panels to the different Junior Teaching posts, including the appointment to the post of Assistant Professor in the Department of Orthopaedics, have been stayed. He claims to be the only Scheduled Caste candidate in the 1983 Panel, who has not been appointed on the post of Assistant Professor although one such post is available in the Department of Orthopaedics reserved for the Scheduled Caste. He has given the details of his academic achievements. His case is that he became entitled to be appointed/posted soon after the preparation of the 1983. Panel, but it could not be done-because he was away from this country. He went to Japan for higher study. After coming back from Japan, he approached the authorities concerned and learnt about the order of stay passed by this Court due to which it was not possible to appoint him on the said post.

13. A counter-affidavit has been filed on behalf of Respondent-State stating

therein that the 1983 Panel for the Junior Teaching post is still valid. It is further stated therein that a fresh advertisement was made in December, 1987, inviting applications from eligible candidates for preparing new panels for posting in different specialities of Junior Teaching Posts in the Medical College Hospitals of this State. A large number of applications have been received and it is likely to take sometime in preparation of the Panels. According to this counter-affidavit, preparation of fresh Panels in pursuance of the 1987 advertisement is not possible, immediately and so posting made from the 1983 Panel is valid and in accordance with the terms of the advertisement.

14. In course of hearing, a supplementary counter-affidavit was filed on 27.3.1989 on behalf of the State-Respondent. It is stated therein that Panels of different subjects have been prepared in pursuance of the advertisement made on 29.12.1987 and most of them have been approved and some are awaiting the final approval of the State Government.

15. As mentioned above, the cases of the Petitioners of different writ applications, as also of the interveners, have been mentioned in detail in the judgment prepared by learned U P. Singh, J. I have given only brief narration of their cases for the purpose of appreciation of the contentions raised on their behalf. In the opinion of learned U.P. Singh, J., the 1983 panel is still valid and shall remain effective until the new panel is prepared. His Lordship has held that the period of twelve months, mentioned in the 1983 advertisement, prescribes the minimum life of the panel and not the maximum. In the opinion of learned H. Prasad, J., after expiry of twelve months from the date of approval of the panel by the State Government, life of such a panel comes to an end and further appointment from the said panel is permissible only in case of urgency and to meet unwarranted situations.

16. The answer to the question, posted for determination, will depend on correct interpretation of the relevant part of the advertisement, made in the year 1983, which is quoted herein-below:

rS;kj dh xbZ rkfydk ljdkj dh Lohd`fr dh frfFk ls vxys 12 eghuksa rd vFkok tcrd iqu % u;h rkfydk rS;kj u gks tk;] dk;Zdkjh jgsxh A

17. Appearing on behalf of the Petitioners (C.W.J.C. No. 2848/88), it was contended by Mr. S.J. Mukhopadhyay that according to the terms of the advertisement made in 1983, the life of the panels was fixed for only twelve months and, thereafter, it was not open to the State Government to make appointment/posting from the said panels. It was further contended that inclusion of name of a candidate in a panel did not confer a right to be appointed. In support of this contention, reliance was placed on the The State of Haryana Vs. Subash Chander Marwaha and Others, in which it has been held that existence of vacancy does not give a legal right to a candidate empanelled in a list for appointment.

18. Appearing on behalf of Dr. Arun Kumar Sharma, it was contended by Mr.

Sunil Kumar Singh that in the merit list, the name of this intervener appeared at serial No. 14 in the 1983 panel. Two candidates, placed at serial No. 16 and 32 were posted by the State Government from the 1983 panels completely ignoring the case of this intervener in flagrant violation of Articles 14 and 16 of the Constitution of India.

19. Mr. Shyama Prasad Mukherjee, learned Senior Counsel, appearing on behalf of the Petitioner of C.W.J.C. No. 4216 of 1988, contended that Dr. Sanjay Kumar Ghosh (Petitioner No. 2 of C.W.J.C. No. 2848/88) was offered the post of Registrar (Orthopaedics 1 by notification dated 17.5.1986, ignoring the claim of this Petitioner, whose name was placed above in the merit list of the 1983 panel. It was also contended that according to the terms of the advertisement of 1983, a panel prepared for a particular subject, would remain valid till a fresh panel was prepared and approved by the State Government. Therefore, Petitioner Dr. Sunil Kumar Mallik was entitled to be posted as Registrar in the Speciality of Paediatrics. It was urged that preparation of a new panel by itself was not enough to put an end to the old panel unless it was approved by the State Government.

20. Mr. Mukherjee also appeared on behalf of intervener-Respondent Ram Sunder Ram Kanojia. In course of argument, the academic achievements of this Petitioner were highlighted and it was contended that in view of his specialised training and one of the highest degree obtained by him, he was entitled to be posted as Assistant Professor (Orthopaedics) in any Medical College. It was also urged that a post, reserved for Scheduled Caste, was lying vacant and the intervener being the only suitable candidate of the said category ought not have been made to suffer because he remained out of this country for higher studies. Submission was made that the State-Respondent should have given him even paper promotion in his absence.

21. Appearing on behalf of interveners-Respondents No. 6 and 7, Mr. Chandramouli Kumar Prasad Sinha contended that all the Petitioners of the main writ petition (C.W.J.C. No. 2848/88) were disqualified for being appointed as R.M.O./R.S.O. as they had already put in six years of service, which disentitled them for such posts in terms of the advertisement. It was strenuously argued that in clear terms it was mentioned in the advertisement made in 1983 that a panel would remain valid for twelve months or till the new panel was prepared. Submission was made that so long the new panel was not prepared, the interveners were entitled to be posted in different Specialities according to their qualifications.

22. An application for intervention was also filed on behalf of Dr. Vijay Acharya supporting the case of the Petitioners of C.W.J.C. No. 2848/88. Appearing on his behalf, Mr. A.B. Ojha adopted the argument put forward by Mr. S.J. Mukhopadhyay.

23. It was argued by learned Advocate General that in this age of planning,

besides enacting law for proper development of the country, the authority concerned had been issuing administrative order/instructions in accordance with the policy of the State Government TO cater to the need of people. As in other walks of the Society so also in the field of Medical Education, there had been considerable expansion within last few decades. In order to maintain the standard of education, the Medical Council of India has fixed certain norms and guidelines. The number of teachers in different Specialities/subjects is fixed in proportion to the number of students and the klinical facilities in a Medical College. It was submitted that the primary object of the Government, while making advertisement in 1983 or even earlier, was to fix the life of a panel for twelve months The second clause as mentioned above was added only to meet exceptional circumstance. It was never the idea to allow a panel prepared in a particular year to continue for years to accommodate the candidate at the bottom in the list. It was argued that the word "minimum" was not to be found in the advertisement of 1983 and, thus, it would be absolutely wrong to say that twelve months mentioned in the advertisement was the minimum life of the panels.

24. Mr. J.N.P. Sinha, learned Government Advocate, also appeared on behalf of some of the Respondents. According to him, the two expressions occurring in the above quoted advertisement were not contradictory to each other, rather they were complementary. It was submitted that the first part of the advertisement was absolutely clear fixing the life of a panel for twelve months only. As regards the second part, it was argued that no period was fixed and so it was uncertain. Submission was made that as the first part was unequivocal and certain in its terms, so, the second part would derive its colour from the first part. In support of this proposition, reliance was placed on Nagpur Corporation Ltd. v. Its Employees AIR 1960 Supreme Court 675.

25. A glance at the above quoted advertisement of 1983 reveals that a panel prepared will remain operative for twelve months or till a new panel is prepared. If these two clauses are considered in isolation, obviously, they will lead to two contradictory conclusions. If a panel is valid only for a period of twelve month from the date of its approval by the State Government, then the other part, that the same would remain valid till the next panel is prepared, becomes redundant. Likewise, if the second part is given its literal meaning that a panel, approved by the State Government, will remain valid till the next panel is prepared, the first part becomes superfluous. Under the circumstances mentioned above, the well-known canons of interpretation of Statute can be prepared into service to find out the correct meaning of the words used in the said advertisement. The language used in a Statute or an order is the determining factor of intention of the framer of law or authority empowered to pass an order. Generally, interpretation which reflects the intention of the authority concerned should be preferred to resolve such a controversy. A bare mechanical and literal construction of a word has to be disregarded if it conflicts with some essential requirement of fair-play, which the Legislature or maker of an order never

intended. The words used by an authority while passing an order have to be construed in the light of the general purpose of the order itself.

26. Quite often occasions do arise when the Courts have to unfold the meaning of ambiguous words and expressions used in a Statute, notification or order for resolving the inconsistencies occurring in it. There are large number of decisions of this Court as well as of the Supreme Court throwing light on this subject. However, I would like to refer to the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , in which it has been observed thus:

...But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case; in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

27. Applying the principle mentioned above to the instant case, it may be useful to look to the relevant provisions relating to the preparation of some such earlier panels, prepared by the State-Respondent for appointment/posting on different posts in this State. A copy of the memorandum issued by the Government of Bihar in the Appointment Department dated the 5th of April 1955, is Annexure 3 to this petition. It appears that under memo No. 1101-A dated the 28th of March, 1944, it was laid down that the list of approved candidates prepared after consultation with the Public Service Commission would be considered valid up to a date not exceeding one year from the date fixed for receipt of the applications from which that list was prepared. The earlier decision was sought to be modified by Annexure 3, in which it is stated that the recommendation of the Public Service Commission for direct recruitment to most of the State Services are, now, made on the results of a competitive examination and, therefore, it is necessary to make slight modification in the earlier, memorandum. The Government, therefore, decided that where posts fall vacant, or are likely to fall vacant at intervals throughout the year and have to be filled up as soon as they fall vacant, appointments may be made from a list of approved candidates prepared after consultation with the Public Service Commission, which may be considered valid up to a date not exceeding one year from the date on which the recommendation was made by the Commission. It further states that where recruitment is made to a service at one time during the year, the Public Service Commission will be consulted once a year. If during the year, an unforeseen vacancy occurs in such a service and it has to be filled up immediately the latest list of candidates approved by the Commission may be used for filling the vacancy.

By memo dated the 22nd of April, 1972, decision of the State Government was circulated to all the departments concerned in regard to promotion/appointment on the recommendation of the Departmental Promotion Committee. A copy of the said memo is Annexure 4 to this petition. Clause 5(ii) of Annexure 4, provides that the date of commencement of validity of the panel will be the date, on which the Departmental Promotion Committee (in short "D.P.C.") finalises it. In case the panel is referred partially or wholly to the Commission for approval, the date of validity would be the date on which the Commission communicates its approval of the panel. In any case, the panel shall cease to be in force on the expiration of a period of one year unless for special reason to be recorded in writing the Department concerned secures revalidation of the panel by the Commission.

28. On behalf of the Petitioners" (C.W.J.C. No. 2848/88), a copy of the resolution dated 23.7.1988 of the Government of Bihar in the Department of Health and Family Welfare has been filed as Annexure-13. While reiterating, the earlier policy decision as contained in Annexure 3, it is mentioned therein that it is cumbent to prepare panel for Junior Teaching Post every year.

29. An argument was advanced on behalf of the interveners Respondents as well as Petitioners of C.W.J.C. Nos. 4216/88 and 4777/88, that the decisions of the Government of the year 1955 (Annexure 3) and 1972 (Annexure-4), both of remote past, as also the resolution of the State Government, as contained in Annexure 13, coming in existence during the pendency of these writ petitions, were wholly irrelevant for the purpose of decisions on the point in issue and as such, the same should be ignored.

30. I am unable to appreciate this contention in some cases as in the instant one, the historical backdrop of the subject matter for consideration is of immense aid and provides" proper guideline to ascertain the correct meaning of the expression used therein. The cardinal rule of interpretation also permits looking back to the history for finding out the intent of the maker. From Annexure 3, it appears that right from the beginning, the Government had decided that a panel prepared for appointment/posting would remain valid for a period of one year and that has been finally affirmed in the year 1988 by Annexure 13, according to which, now, it is imperative to prepare panel for Junior Teaching Post every year. It appears that for quite sometime in the past, the authorities concerned did not adhere to the decisions taken by the Government, which necessitated the issuance of Annexure 13.

31. As mentioned earlier, the contention on behalf of interveners add the Petitioners of C.W.J.C No. 4216/88 and C.W.J.C. No. 4777/88 was that all the candidates placed in the 1983 Panel, above (heir names had already been posted on Junior Teaching Post and now they are entitled for posting on these posts. This argument proceeds on the assumption that the panels once prepared remain valid till the preparation of the new Panels. At this stage, the interveners and the said two Petitioners are claiming seniority amongst the left over candidates of

the 1983 Panel. If their prayer is allowed and a direction for their posting is issued, the same argument will be available to those candidates of the 198 ? Panel, whose names are placed, just below these interveners and said two Petitioners. Likewise, each candidate, one after other, will claim light of posting from the 1983 Panel and thereby life of the said Panel will continue till it is completely exhausted. In order to accept this argument, a third clause in the 1983 advertisement has to be introduced and read that no candidate from any subsequently prepared panel will be posted on any Junior Teaching Post unless all those, empanelled in the 1983 Panel, are accommodated. So, a panel which is, normally, valid for twelve months, will remain operative for years to come. It is well-settled that in the garb of interpretation, a Court is not expected to legislate and add a fresh clause in any Statute or order. There does not seem to be any reasonable nexus for giving this extended meaning to the terms of the 1983 advertisement.

32. A similar point fell for consideration before the Supreme Court in the case of the State of Uttar Pradesh and Anr. v. Rain Gopal Shukla AIR 1981 Supreme Court 1041. In that case regular selection for the post of Tehsildar was made in the year 1966 in accordance with the Uttar Pradesh Adheenasth Rajaswa Karyakari (Tehsildar) Sewa Niyamavali, 1966. As provided in the said rule, the Uttar Pradesh Public Service Commission prepared a list (List-A) of 148, persons for substantive appointment as Tehsildars. Another list (List-B) was prepared by the Commission of 300, Candidates for temporary and officiating appointment as Tehsildars during the coming years. The name of the Respondent was not included in either list because of adverse entry in his Service Book Subsequently in the year 1969, the adverse entry was expunged and his seniority amongst the Naib Tehsildar was restored in the year 1970. As no selection list was prepared after 1966, the name of the Respondent could not be included in the Select List. The State of Uttar Pradesh framed Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970 (hereinafter referred to as "the 1970 Rule") with a view to standardise the procedure for promotion and make it uniform. This Rule was made applicable to various U.P. Services including the service of Tehsildars. Subsequently, by amendment in 1972, Rules 7A and 7a were introduced in the 1970 Rules, which provided that the candidates in the Select List of 1966 were to be appointed against substantive vacancies in preference to any candidate selected in accordance with the provisions of the 1970 Rules and unless the candidates in the list were exhausted,. other eligible candidates were not to be considered for promotion. The validity of Rules 7A and IB was challenged on the ground that they were discriminatory and violative of Articles 14 and 16 of the Constitution of India, as other eligible candidates were not to be considered for promotion and their chance of promotion was deferred to an undated future until the 1966 list was exhausted. In this case, a large number of decisions of The Supreme Court as well as of some High Courts were surveyed and it has been held as follows:

There appears to be no rational basis for; such a departure from the ordinary

operation of the 1970 Rules which envisaged the preparation of a new list every year and for singling out one particular list for according preferential treatment to ,the persons whose names were contained therein. The classification in this case, therefore, cannot be said to be a reasonable classification based on intelligible differentia having a nexus to the object sought to be achieved.

A rule which contemplates that unless the list of 300 persons is exhausted no other person can be selected obviously is unjust and it deprives other persons in the same situation of the opportunity of being considered for promotion.

33. The case of Ram Gopal Shukla (supra) was sought to be distinguished by learned U.P. Singh, J. On the other hand, learned B. Prasad, J. has placed reliance on it. In my view, the said case is aptly applicable to the facts of this case.

34. Approaching the matter from a slightly different angle, both the clauses of the above quoted advertisement can be read harmoniously, as they operate in two different situations. There is significance of incorporating the term in the said advertisement that the life of the panel will remain operative for twelve months from the date of its approval. It aims at attracting the best and talented candidates to the teaching side, who qualify each year, for main taining the standard and excellence of Medical education. Generally, a Panel contains names of a large number of eligible candidates. It may take several years to exhaust and give chance to each of them including those towards the bottom to hold a Junior Teaching Post. Every year, some candidates, with good results, may be available for empanmellment. If the old panel is allowed to operate to year, it will close the door of entry for many meritorious candidates intending to join the, teaching side. It will be clear denial of equal opportunity, in matter relating to employment, to many deserving candidates, which will be discriminatory, and violative of Articles 14 and 16 of the Constitution of India.

35. There is yet another aspect of the said advertisement, which needs consideration. The first part of the advertisement is clear and definite, which fixes the normal life of a panel for twelve months. The second part is uncertain and obscure and gives unbridled power to the authority concerned to allow it to continue for years. It is well-settled that in order to stand the test of reasonableness, the action of the Government must not only be free from arbitrariness, but should also be predictable; So harmonious construction of the two parts of the above quoted advertisement manifestly "Meads to" the inference that the first part of the said advertisement fixes the life of the panel for twelve months and the second part makes provision for use of such panel only in exceptional circumstances. It is difficult to enumerate all circumstances, in which the State Government may use a panel even after expiry of twelve months for making appointment and posting. Generally, sudden transfer, serious ailment and premature death of one working on the post may necessitate use of the panel even after expiry of twelve months from the date, of its approval Sometimes, it may not be possible for the State Government to prepare a fresh panel because

of prolonged strike of the employees or natural catastrophe. So, it is only in pressing necessity and exceptional circumstance that after expiry of twelve months from the date of its approval by the State Government, a panel may be used for making appointment or posting. Any interpretation other than this will render the first part meaningless.

36. Lastly it was argued by learned Counsel appearing on behalf of the intervenors-Respondents that the new panel prepared in pursuance of the advertisement of 1987 was held to be bad by a Bench of this Court in C.W.J.C. No. 4276 of 1988. To me, it appears that this does not make any difference so far as the old panel is concerned. Once a new panel is prepared, the old panel automatically comes to an end in terms of the 1983 advertisement. Even if the new panel is held to be invalid due to some legal flaw, it will not infuse life in the old panel.

37. Having taken into consideration different aspects of the questions posed for determination, I am of the opinion that the correct interpretation of the above quoted advertisement is that the panels prepared for posting/appointment on different teaching post, were operative for only twelve months from the date of their approval by the State Government and the second part permitted use of the panels only in exceptional circumstance. Thus, I am unable to attribute to the view taken by learned U.P. Singh, J. and I find myself in complete agreement with learned B. Prasad, J.

38. In the result, C.W.J.C. No. 2848 of 1988 is allowed and consequently, the State-Respondent is directed to publish the fresh panels in accordance with law at an early date. I do not find any merit in C.W.J.C. No. 4216 of 1988 and C.W.J.C. No. 4777 of 1988 as well as in any of the intervention applications and, accordingly, they are dismissed.

39. Before parting with the judgment, I would like to observe that in the first counter-affidavit filed on behalf of the State, it is averred that it is not possible to prepare panel immediately in pursuance of the advertisement made on 29.12.1987 and so the 1983 panels are Valid. The stand of the State disclosed in the said counter-affidavit cannot be appreciated in this age of computer. It gives an inkling of apathetic attitude of the authorities responsible for preparing panels each year. The malady appears to have permeated so deep in the present system of functioning of the Health Department that the whole atmosphere seems to be surcharged with uncertainty and confusion there. This is amply established by the decision taken by the Government as contained in Annexure 13. The State Government will be well advised to notify a time schedule to be followed each year for furnishing information regarding expected vacancies on the Reaching posts in different Medical Colleges the, date for receipt of application of eligible candidates for preparation of panels and also the time for final approval. The task may be onerous, but not difficult if the policy spelt out in Annexure 13 is executed with firm determination, prompt action and constant pursuance.