

(2005) 07 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (Civil) No. 4010 of 2003

Dr. Sudipta Pattanaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Constitution of India, 1950 — Article 142, 227

Orissa Medical Education Service (Recruitment) Rules, 1979 — Rule 4

Citation : (2005) 100 CLT 577 : (2005) 100 CLT 426

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : M.K. Das, S. Mohanty and R. Choudhury, for the Appellant; M. Mishra, B.K. Dash, B. Routray and A.K. Rath, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—This Writ Petition has been filed by the petitioner challenging to the judgment of the Orissa State Administrative Tribunal, Cuttack Bench, Cuttack dated 7.4.2003 (Annexure-11). Five Original Applications (in short "O.As."), which includes O.A. No. 1953 (C) of 2002, were disposed of by the common impugned judgement. Petitioner was the applicant in the above noted O.A.

2. The undisputed fact involved in the case is that on the requisition of the State Government, the Orissa Public Service Commission issued an advertisement, which was published in the daily newspaper on 6.5.2002. Annexure-5 is a copy of such advertisement. In that advertisement applications in the prescribed form were invited from in service Assistant Surgeons of the categories mentioned in that advertisement for the Junior Teaching Posts (Lecturers) in 32 disciplines (subjects). While prescribing the age, qualifications and experience, etc. as indicated in Annexure-5, the last date of receipt of application was fixed to June 6th, 2002. It was provided there in that, "In service doctors with P.G. Degree but without the prescribed experience of one year and those with P. G. Degree who are not in-service Doctors, may also apply but they will be considered only if

those working as Assistant Surgeons/Lecturers under the State Government/ State Government Undertakings with the prescribed qualification are not available in adequate number". According to the vacancy position indicated in Annexure-5, 14 posts were notified in Physiology discipline to which category petitioner belongs. The other undisputed fact is that the advertisement was made keeping in view the vacancy position after the last date of advertisement in 1999 and the vacancy, which had occurred till 2001.

3. Admittedly, petitioner took admission in the year 1999. In ordinary course the session for the P. G. course was to commence from May, 1999, but admission of the petitioner and students of her batch was done in the month of September, 1999. According to the Resolution, Annexure-2, passed on 9.4.1997 in the office of the Chancellor, it was resolved to prescribe the method and the manner in which the P.G. course was to be conducted, training was to be imparted and certificate was to be granted. The relevant portions from Annexure-2 reads that :

"(4) The candidate shall, however, be eligible for award of the degrees only on fulfilling the following conditions :

(i) On passing of examinations; and

(ii) On completion of three calendar years of training from the actual date of admission.

The fulfillment of the latter condition shall be intimated by the Principals of the Medical Colleges to the concerned Vice Chancellors.

(5) The Post-Graduates students shall continue to undergo training even after the examinations, so as to complete three calendar years of training from the actual date of admission, in accordance with the Medical Council of India Regulations.

(6) In-service Post-Graduate candidates will be eligible for regular posting only after completion of the three calendar years of training. They will continue to draw their salary against their respective places of posting, until they complete three calendar years of training.

(7) * * * * *

(8) The system will continue for future examination also."

4. Grievance of the petitioner is that if the P.G. Course would have commenced in May, 1999, then she would have been eligible to apply for a post as per the advertisement, Annexure-5. There was no personal contribution from the petitioner for the delayed admission in the month of September, 1999 and therefore she cannot be prejudiced for a wrong not done by her and, in any event the State Government should have extended the last date of receipt of applications to a period beyond September, 2002, so that petitioner would have been able to apply for the post and to compete with the other applicants and since such a practice was adopted by the State Government in relation to the

recruitment made in the year 1999, therefore, that parity should have been granted to the eligible candidates including the petitioner for the impugned recruitment of the year 2002. It may be noted that in the other original applications, similar dispute was also raised and, therefore all the five original applications were disposed of by the tribunal as per the impugned common judgment, Annexure-11.

5. The State Government did not file a counter before the Tribunal but participated in the hearing. The Orissa Public Service Commission (in short "OPSC") however filed a counter stating that the advertisement was made in conformity with the requisition made by the State Government, it had no discretion to extend the last date of submission of applications and by the cut off date (last date of application) petitioner was not qualified to apply because of non-completion of three years training in the P. G. Course and, therefore, her case deserves no consideration.

6. In the original applications, interim relief was granted to the petitioner by permitting her to sit in the examination subject to non-publication of the result and in that context petitioner is not entitled to claim equity.

7. On consideration of the aforesaid dispute, the Administrative Tribunal accepted the contention of the OPSC and dismissed the original application on the ground that by the last date of receipt of the application petitioner had no requisite qualification. That decision of the Tribunal is under challenge before us.

8. After receipt of notice in this case, a counter was filed by the State Government stating therein that the vacancies, which accrued up to 2001 because of no recruitment of 2000 and 2001, were required to be filled up as per the advertisement Annexure-2 and, therefore, petitioner cannot have a grievance for late start of the P. G. Course in 1999, and non-extension of the last date of application is not illegal because she had no requisite qualification to apply by 6th June, 2002.

9. The above position was also admitted by the petitioner in paragraph-12 of the Writ Petition where she has stated that in 2000 and 2001 there was no advertisement and the vacancy was allowed to continue/accumulate. Hence this advertisement might have been issued to fill up those vacancies.

10. The O.P.S.C. in their counter have reiterated the earlier stand taken before the Tribunal. It has been stated by them that the appointment to the junior teaching post in Medical Colleges of the State is being regulated under the provisions of Orissa Medical Education Service (Recruitment) Rules, 1979. Rule 4 of the said Rules empowers the O.P.S.C. to issue advertisement to make the selection. The Government in Health and Family Welfare department being the appointing authority requested the O.P.S.C. to release advertisement for recruitment to the junior teaching post in different disciplines. On the basis, of the requisition and draft advertisement received from the State Government, the advertisement no. 6/01-02 inviting applications from prospective candidates in

Class-II Orissa Medical Education Services, was issued by the O.P.S.C. on 27.3.2002. The last date of receipt of application was 6.6.2002. In response to the advertisement, the petitioner had submitted her application for recruitment to the post of junior teacher in Physiology by the closing date. The following salient points were mentioned in the advertisement to determine the eligibility of the candidates.

(i) Warning at the top of the advertisement

Applications received incomplete, in any respect, are liable to be summarily rejected. No correspondence on that score will be entertained.

(ii) Para-3 of the Advertisement i.e. qualification :

A candidate must have obtained a P.G. degree in the concerned specialty/higher specialty or any other equivalent degree or qualification prescribed and recognised by the I.M.C.

(iii) Para-4(v) : other eligible conditions :

Only those candidates who fulfill the requisite qualification and experience by the closing date of receipt of the application will be considered eligible.

As such in view of the above conditions, the applicant was not eligible for consideration to the post in question since she had not completed her P. G. degree in the discipline of Physiology by the closing date of receipt of the application. In the meantime, she filed O.A. No. 1953(C) of 2002 before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, praying to direct the opposite parties to accept the application of the applicant and to consider her case to the post of Junior Teacher in Physiology. The Tribunal by interim order dated 1.11.2002 directed to permit the applicant to take part in the interview on the condition that her result should not be published without leave of the Tribunal. It was further directed that the applicant could not claim any equity on the ground of interim relief she had obtained. She was directed to produce the M. D. pass certificate at the time of interview. Pursuant to this order of the learned Tribunal, applicant was allowed to take part in the interview along with other eligible candidates on 27.2.2003. The present case was taken up along with other identical cases for hearing. The tribunal by its decision-dated 7.4.2004 dismissed the case finding no merit in the application and vacated the interim relief granted earlier. Thereafter the result of the selection test/interview was published and the recommendation of the Commission was sent to the concerned Department of the Government. The petitioner was not recommended by the Commission. In view of the above, the Writ Petition lacks merit so far as O.P.S.C. is concerned and the same being devoid of any merit, is liable to be dismissed.

11. The learned Counsel for the petitioner submitted that fixing last date to 6.6.2002 for receipt of applications was illegal and arbitrary as final P. G. Students of 2002 did not possess P. G. degree as on the last date of application and thereby they were deprived from applying for the post of Lecturers. The P. G.

course was to be completed within a period of three years, which is to be calculated from the actual date of admission. Usually admission to the P. G. course was to be completed by the month of May every year, but the students of 1999 batch took admission in September, 1999. So technically, the degree was to be conferred on those students in September 2002, which wasn't the fault of the petitioner. Actually the P. G. examination was held in May 2002, but the result was published in September 2002. As such the Government has violated its own earlier decision regarding completion of admission by the month of May. In the year 1999 at the request of the Government O.P.S.C. extended the cut off date from 1.7.1999 to 15.10.1999 to give equal opportunity to all. Representation of the petitioner to the Government to extend the cut off date was pending for consideration. The Tribunal did not take all the above grounds for its consideration while dismissing the Original Application on the sole ground that the petitioner was not eligible to apply to the post by the last date of submission of the application, relying on a decision of the Hon'ble Apex Court. Even though the petitioner was not eligible by the cut off date, she was eligible on the date of interview and she has submitted P. G. degree before O.P.S.C. at the time of interview. Individual merit of the petitioner was overlooked. Due to fault of the Government the admission was delayed for which the petitioner should not suffer. In respect of her contention, the petitioner relied upon the decision of the Hon'ble Apex Court in the case of Ashok Kumar Sharma and Anr. v. Chandrasekhar and Anr. 1993 (1) SLR 379 and Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, .

12. Learned Additional Government Advocate as well as Mr. B.K. Das, learned Counsel for O.P.S.C. have relied upon and cited the decision of the Hon'ble Apex Court in the cases of State of Rajasthan v. Hitendra Kumar Bhatt reported in 1998 SC 91, Bhupendrapal Singh v. State of Punjab reported in AIR 2000 SC 2011, Shankar K. Mandal and Others Vs. State of Bihar and Others, and U.P. Service Public Commission v. Alpana reported in (1994) SCW 2861.

13. We have patiently heard learned Counsel for both the parties and gone through the decision relied upon and cited by them. The facts and circumstances in the case of Ashok alias Soman Gouda v. State of Karnataka (supra) has no bearing with the present case at hand. In the above cited case, the records of the selection Committee was produced before the Hon'ble Apex Court at the time of hearing and on a perusal of the marks awarded to the selected candidates it came to the notice that a large number of selected candidates had secured much lesser marks than the appellants in the qualifying examination, but had secured very high marks in the Viva voce test out of 50 marks kept for the purpose. It was an admitted position that if the marks in the interview were kept even at 15% of the total marks and merit list was prepared accordingly, then both the applicants were bound to be selected and a large number of selected candidates should have gone much lower in the merit list than the appellants. In view of the fact that the result of the impugned selection was declared in 1987 and selected candidates had already joined in the post, the Hon'ble Apex Court

did not consider it just and proper to quash the selection on the above ground. Further the selection was made according to Rule of 1973. This practice was being constantly followed for the last 17 years. There was no allegation of any mala fide in the matter of impugned selection. The Rule is in clear violation of the dictum laid down to keep the marks in Viva voce at 15% of the total marks and if the marks in Viva Voce would have been 15%, the appellants were bound to be selected. Therefore, the Hon"ble Apex Court directed the Opp. Parties to give appointment to the appellants. It thus appears that the facts and circumstances of the above-cited case are completely different than that of the present case and as such ratio decided in the case can have no application to the present case.

14. The next decision, which was cited by the learned Counsel for the petitioner, is in the case of Ashok Kumar Sharma and Anr. v. Chander Sekhar and Anr. reported in 1993(1) SLR 379. The said decision was on the basis of Rule 37 of the Public Service Commission Business Rules (Jammu & Kashmir). In the said case the appellants had not obtained the results and were awaiting the same but in the affidavit filed by the appointing authority their intention as clearly stated i.e. to allow the applicant who had obtained necessary qualifications on the dates of interview to appear in the interview. The appellant therein had fulfilled all the necessary qualifications for being interviewed and their selection on the basis of the results announced on the basis of marks obtained by them was held to be rightly made. In the advertisement also it was specifically mentioned that attested copies of the certificates (original to be produced at the time of interview before the, said recruitment Board) should be attached to the application.

Rule 37 of the Public Service Commission Business Rules (Jammu & Kashmir) reads as follows :

"Applications of candidates who have appeared in the examination, the passing of which may make them eligible to appear in an interview for recruitment to a post to be made otherwise than by a competitive examination, but results where of have not been declared upto the date of making of the application, may be entertained provisionally, but no such candidate shall be permitted to take the interview if he is declared as having failed in the examination or if the results are not available on the date the viva voce test is held."

15. The appellants in the cited case were fully qualified on the date of interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, the Hon"ble Apex Court upheld the result announced by the Recruiting authority. In the cited case it has also been held that non-filing of any of the certificates could have resulted in not entertaining the application as the requirements as specified would have been presumed to be non-existent. Fulfillment of conditions was mandatory and its proof could be directory. However, since basing on Rule 37 of the Public Service Commission Business Rules, the candidates were allowed to appear in the interview and their results were declared, it was further held that once the appellants were held to be

eligible may not be strictly under law, but on equitable consideration then it was wholly unjust to place them junior and under those who in the same examination secured lesser marks.

16. As such, the ratio decided in the above cited case cannot be made applicable to the present case in hand, since in the rules of Orissa Public Service Commission, there is no such rules like that of Rule 37 of Public Service Commissioner Business Rule (Jammu & Kashmir). Here in Orissa the applications received incomplete in any respect are liable to be summarily rejected. Only those candidates who fulfill all the conditions, possess the requisites qualification and experience on the closing date of receipt of the application are only considered to be eligible.

17. In the case of *State of Rajasthan v. Hitendra Kumar Bhatt* reported in AIR 1998 SC 91 which was relied upon and cited by the learned Counsel for the opposite parties, the Hon''ble Apex Court at paragraph 6 have observed and found as follows :

"6. Looking to the clear terms of the advertisement which we have referred to above, the respondent was not eligible for consideration. It is submitted by the respondent before us that since he has been continued and has now been confirmed we should not disturb his appointment. He has requested that his case should be considered sympathetically. The fact, however, remains that the appellants have taken the correct stand right from the beginning. The respondent's application was not considered and he was not called for an interview. It was on account of interim orders, which were obtained by the respondent that he was given appointment and continued. He was aware that his appointment was subject to the outcome of his petition. One cannot, therefore, take to sympathetic view of the situation in which the respondent finds himself. A cut-off date, by which all the requirements relating to qualification have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualification was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others."

18. In the case of *Bhupinderpal Singh and Ors. v. State of Punjab and Ors.* reported in AIR 2000 SC 2011, the Apex Court upheld the view taken by the High Court on the basis of a series of supporting decisions of the Hon''ble Apex Court, to the effect that (i) The cut off date by reference to which the eligibility recruitment must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) If there is no such date appointed then the eligibility criteria should be applied by reference to the last date appointed by which the applications have to be received by the competent authority. It has also been held that "the authorities of the State should be tied

down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence. However, finally keeping in view of the irregularities followed in Punjab and Haryana in entertaining the applications belabouring under the identical wrong impression, the action on the part of the Selection Board and the authorities of the Education Department though mistaken and unsustainable in law was held to be bona fide as there are no mala fide alleged and it was the result of loose practice prevailed till then and subsequently discontinued. Finally the Hon''ble Court held that appointment letters having already been issued, the selection/appointment of such candidate should not be disturbed and that order was made keeping in view Article 142 of the Constitution to do complete justice to the facts and circumstances of the case before them as already stated. As it appears from the above, final order was passed by the Hon''ble Apex Court to do complete justice in the matter under the special facts and circumstances of the case. But in principle, it has been accepted that the cut off date by which eligibility requirement must be satisfied by the candidate seeking public employment.

19. In the case of Shankar K. Mandal and Others Vs. State of Bihar and Others, , the Hon''ble Apex Court also accepted the above settled principle that (i) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules, (ii) if there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications. (iii) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

20. Lastly, in the case of U.P.S.C. Utter Pradesh and Anr. v. Alpana reported in(1994) 2 ATT 423 (SC) in paragraph-6 of this decision, it has been specifically observed and held as follows :

"In the facts of the present case we failed to appropriate how the ratio of the said decision of this Court can be attracted. The facts of this case reveal that the respondent was not qualified to apply since the last dated fixed for receipt of applications was August 20, 1988. No rule or practice is shown to have existed which permitted entertainment of her application. The Public Service Commission was, therefore, right in refusing to call her for interview. The High Court in Writ Petition No. 1898/91 mandated the Public Service Commission to interview her but directed to withhold the result until further orders. In obedience to the direction of the High Court the Public Service Commission interviewed her but her result was kept in abeyance. Thereafter, the High Court while disposing of the matter finally directed the Public Service Commission to declare her result and, if successful, to forward her name for appointment. The High Court even went to the length of ordering the creation of a supernumerary post to accommodate her.

This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied, as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We therefore, find it difficult to uphold the view of the High-Court impugned in this appeal."

21. Considering the submissions of the learned Counsel for both the parties, the admitted position is that on the last date of submission of application the petitioner did not have the requisite qualification (P. G. degree) in the discipline, but she was permitted to appear in the interview by virtue of the interim relief granted by Orissa Administrative Tribunal without her application being rejected by the O.P.S.C. on the ground of non-fulfillment of the requisite conditions/qualifications to be eligible for applying to the post. In the years 2000 and 2001 there was no advertisement for recruitment to the post of Junior Teacher/Lecturer and the vacancies were allowed to continue and accumulate. Hence, the State Government issued the requisition by letter dated 1.9.2001 along with a draft advertisement to fill up those posts and accordingly O.P.S.C. published the advertisement bearing No. 6 of 2001 -02 to fill up those vacancies, by which time the petitioner was only a Post Graduate student and not completed her study/obtained the P. G. Degree. As it appears from the above, the advertisement was issued to fill up the vacancies, which were allowed to continue/accumulate in the years 2000 and 2001 on the requisition of the State Government dated 1.9.2001 and by the date of requisition the petitioner had another year for completion of her P. G. course.

22. In view of the position as indicated above and the ratio decided in different cases by the Hon"ble Apex Court, we are of the considered view that the petitioner was not having the requisite qualification i.e. P.G. degree in the respective discipline on the last date of submission of the application and as such she was not in a position to file the required P.G. degree nor its attested copy along with her application and thereby she has failed to fulfill the requisites qualification and experience by the closing date receipt of the application as she had not obtained P. G. degree in the concerned specialty/higher specialty or any other equivalent degree or qualification prescribed or recognised by the IMC on the last date i.e. 6.6.2002. As such, her application which was received by the Orissa Public Service Commission was not complete in all respects and hence is

liable to be summarily rejected. It goes without saying that incomplete application with an undertaking to furnish the required certificate at the time of interview cannot be accepted as per the prevalent rules and procedure followed by the Orissa Public Service Commission. In our considered view a court or Tribunal cannot change the eligibility criteria as has been fixed by the Public Service Commission / State Government by its order. The petitioner also cannot claim any equity as a matter of right for shifting the date of examination by the Orissa Public Service Commission even though on earlier occasions not directly by the Orissa Public Service Commission, but on requisition of the State Government the last date of application was shifted by the Orissa Public Service Commission and filing of a representation before the State Government by the petitioner shall not ipso facto confer any right on her to be eligible and apply for a post even though she did not have requisite qualification on the last date of the application. Furthermore, while exercising its jurisdiction in a Writ Petition under Article 227 of the Constitution of India in a certiorari proceeding this Court has a limited role to play. It is only to be seen as to whether there is any infirmity, illegality or manifest error of law in the decision of the learned Court below/ Tribunal.

23. Considering all the facts and circumstances of the case as stated above, we are of the view that there is no infirmity, illegality or manifest error of law in the decision of the learned Tribunal. The petitioner cannot claim any equity for being permitted by the learned Tribunal by an interim order to appear in the selection test even though admittedly she had no requisite qualification of P.G. Degree in the respective discipline on the last/prescribed date of receipt of the application for which her application was liable to be summarily rejected. Hence, we are not in a position to grant any relief to the petitioner, as has been prayed for by her in this Writ Petition because of the settled principle of law so far as service jurisprudence is concerned that a cut off date, by which all requirements relating to qualification and experience have to be met, cannot be ignored. There may be other persons who would have submitted their application if it would have been to their knowledge that the cut off date for acquiring qualification and experience is flexible. Relaxation of the prescribed norms for an individual is neither equity nor justice when any other similarly situated person cannot be granted such benefit. On the other hand, grant of such relaxation in individual cases will give rise to confusion and discrimination which is also unjust, illegal and impermissible in the eye of law.

The Writ Petition is accordingly devoid of any merit and is dismissed in limine without any order as to cost.

P.K. Tripathy, J.

I agree.