

(1981) 12 OHC CK 0029

In the Orissa High Court

Case No : O.J.C. No's. 1990, 2094 and 2947 of 1981

Dr. Trailokyanath Kanungo and

APPELLANT

Vs

Dr. A.K. Acharya and Others

RESPONDENT

Date of Decision : 16-12-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : AIR 1982 Ori 139

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Advocate : R.K. Mohapatra, A.N. Misra, K.C. Panda and B. Rautray, L. Rath, A.K. Misra and B.S. Misra, for the Appellant; Govt. Advocate, for the Respondent

Judgement

R.N. Misra, C.J.—Each of these 3 applications under Article 226 of the Constitution is by a doctor with M. B. B. S. qualification who is in the employment of the State Government and had applied for admission into the Resident House Staff course (hereinafter referred to as "R. H. S.") for the 1981-82 session. It has been asserted that each of the petitioners had the requisite qualification indicated in the relevant prospectus, yet admission has been refused on the ground that 113 seats in the different specialities of Post-Graduate study for which applications had been invited were reserved for direct candidates, and in-service candidates were not entitled to join the course. Each of these applications is for a direction to the opposite party-authorities to consider the claim of the petitioner for admission into the R. H. S. course. There is no dispute that each of the petitioners possesses the qualification prescribed in paragraph 3 of the prospectus. Paragraph 5 of the counter affidavit in O. J. C. No. 1990 of 1981 categorically admits this position. It has been explained that Government decided to have 226 seats for Post-Graduate study in different subjects and out of these, 113 seats being 50 per cent were reserved for in-service candidates and the remaining seats were intended to be available to the direct candidates. Since each of the petitioners wanted admission in respect of the seats intended for direct candidates, the application has been rejected. It is

admitted at the hearing by the learned Government Advocate that in the prospectus there was no indication that in-service candidates should not be entitled to consideration in respect of the 113 seats. The decision not to permit in-service candidates for the 113 seats appears to have been taken administratively subsequent to the publication of the prospectus. The petitioners made the applications and had received Index Cards but were not permitted to take the entrance examination. Since there was no bar to in service candidates appearing at the entrance examination in terms of the prospectus and since each of the petitioners possessed the minimum qualification prescribed, once their applications had been entertained and Index Cards had been issued, there could be no justification to disqualify them by a subsequent administrative decision that in-service candidates would not be allowed to compete at the entrance examination. It is not disputed by either side that the petitioners have not put in 5 years of service which is a necessary qualification to seek admission as in-service candidates. Inasmuch as each of the petitioners possessed the requisite qualification and though he/she was not entitled to selection as an in-service candidate and there was no bar for considering in-service candidates for the 113 seats for which the prospectus had been published, we are inclined to agree with the counsel for the petitioners that the rejection of their applications was wholly unjustified. The terms of the prospectus should not have been retrospectively altered so as to affect candidates who had already made applications. In fact, if there was such a restriction, it was open to any of the petitioners to resign from Government service and seek admission for the Post-Graduate study. Since the restriction had not been indicated and the petitioners had made applications which had been entertained at the initial stage, we are of the view that for the year the applications should be entertained even from in-service candidates like the petitioners. It is open to Government to notify in advance for future years that the seats which would be for the non-service quota would not be available for the in-service candidates.

2. The learned Government Advocate had confessed before us that to entertain the applications at this stage and give directions for consideration of the claim of the petitioners would work out discrimination inasmuch as there may be several others similarly situated whose claim for admission would not be considered. We do not find any force in this contention. We are concerned with those who have pressed their claim. It is not a case where anybody who has taken admission is being prejudiced. It is already quite late in the session and the entire thing cannot be redone at this point of time. By an interim order in two of these cases, a seat has been reserved for the petitioner in the event of success. If the petitioners' claims are not considered, these seats would go unfilled and the possibility of some Doctors getting more qualified to be useful to society would be ruled out. In such circumstances, to go by the technical rule, even if there be any force in the contention of the learned Government Advocate, would not be in the larger interest of the State. We are, therefore, not impressed by the contention placed by the learned Government Advocate before us.

3. In O. J. C. No. 2094 of 1981 no seat was reserved but a direction had been given that in case the petitioner succeeded appropriate orders would be made. We think, the proper order to be made in O. J. C. No. 1990 of 1981 and O. J. C. No. 2947 of 1981 where a seat has been reserved would be to require the two petitioners to appear before such Board for being examined as the Director, opposite party No. 2, may fix up, and in case they are found qualified, they should be admitted as against the reserved seats. If they are found disqualified, no admission should be given. So far as the petitioner in O. J. C. No. 2094 of 1981 is concerned, in case he passes the entrance examination and a seat is available in either of the two specialities for which he had opted, he may be given admission. In case there is no accommodation in either of the specialities for which option had been exercised, he would not be entitled to accommodation. At this belated stage we do not propose to direct Government to enhance any seat. In case the petitioner in O. J. C. No. 2094 of 1981 cannot be accommodated for want of seat, it would be open to Government to consider whether on the basis of the arrangement made in respect of candidates of the last year, the petitioners' claim may not be taken as that of carried over candidates of the previous year when admission for the next session takes place.

4. Our direction shall be subject to the restrictions indicated in the University Regulations regarding taking of admission.

5. There would be no order for costs.

Behera, J.

6. I agree with my Lord the Chief Justice.