

(2002) 04 JH CK 0066

In the Jharkhand High Court

Case No : Writ Petition (S) No. 717 of 2002

Dr. Vinay Pratap and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Bihar (Now Jharkhand) Medical Education Service Cadre and its Cadre Post Appointment Rules, 1997 — Rule 8

Citation : (2002) 04 JH CK 0066

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Anwar and Satyendra Singh, for the Appellant; S.K. Mishra, J.C. to AAG, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioners who are Resident Surgical Officer (R.S.O.)/or Resident Medical Officer (R.M.O.)—now known as "Tutor"—have challenged the advertisement published by Government of Jharkhand from Health, Medical Education and Family Welfare Department on 14th January, 2002 in the newspaper "Hindustan Times", Ranchi, whereby and where under, applications have been called for posting against the posts of Assistant Professors (Clinical subject) in different Medical Colleges of the State of Jharkhand.

2. The only ground taken by the petitioners is that the posts of Assistant Professors cannot be filled up from amongst non-eligible candidates like Medical Officers/ Civil Assistant Surgeons i.e. those who are not in the teaching cadre, the same being against the rule framed under proviso to Article 309 of the Constitution of India, commonly known as "Bihar (now Jharkhand) Medical Education Service Cadre and its Cadre Post Appointment Rules, 1997"—1997 Rules for short.

3. In the counter affidavit, the stand taken by the respondents is that the advertisement was issued to fill up the posts of Assistant Professors (Clinical

Subject) from those doctors who are working as Medical Officers in "Jharkhand Health Service" and are willing to join "Jharkhand Medical Education Service" on working arrangement basis. In the advertisement, it has been mentioned that those doctors who have requisite Post Graduate Degree with three years teaching experience as Registrar/Resident Medical Officer of Anesthesia can only apply as per MCI, Regulations 1998.

4. It has not been disputed that the "Health Services of the State" was bifurcated and "Medical Education Service" was created by rule framed under proviso to Article 309, which was published in the Gazette vide Notification dated 21st May, 1997. Under the said rule of 1997, the post of Resident Doctors (R.M.O./R.S.O./Registrar) who are clubbed together were provided with fresh nomenclature of "Tutor".

5. Rule 8 of 1997 Rules provides the manner in which appointments and promotions to be made against the higher teaching posts of Assistant Professors/Associate Professors etc. Therein, under Sub-rule (ii) of Rule 8, specific provisions have been made that the post, of Assistant Professors will be filled up by promotion from amongst "Tutors", having requisite qualifications and experience, as mentioned therein.

6. From the aforesaid fact, it will be evident that it is the only from amongst "Tutors", the higher post of Assistant Professors can be filled up and those who are not in the teaching cadre, but in the general cadre of "State Health Service" are not eligible for promotions to the post of Assistant Professors.

7. In view of the aforesaid rule, though it is open to the respondents to fill up the post of Assistant Professor by ad hoc arrangement, they cannot fill up the post of Assistant Professors from amongst those who are not eligible, ignoring the claim of those who are eligible "Tutors" and working in the State of Jharkhand.

8. For the reasons aforesaid, the part of advertisement dated 14th January, 2002 (Annexure-5) being illegal so far as it relates to those who are in the non-teaching cadre, such part is set aside.

9. The respondents are given liberty to fill up the posts of Assistant Professors (Clinical Subject) from amongst the eligible teachers (R.M.O./R.S.O. or Registrar). After their appointments/postings, if there remains any vacancy to the post of Assistant Professor, as a measure of interim arrangement, they may fill up the post from amongst the Medical Officers/ Civil Assistant Surgeons of "State Health Service", who having requisite qualifications and experience, as per 1997. Rules and Medical Council of India Regulations, till the such appointment/promotion is made.

10. The writ petition stands disposed of with aforesaid observations and directions.