

(2001) 11 JH CK 0025

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 3970, 4028 and 4054 of 2001

Nandji Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Bihar Medical Education Service Cadre and Appointments to its Cadre Post Rules, 1997
— Rule 5(GA), 5(KA)
Constitution of India, 1950 — Article 309

Citation : (2002) 93 FLR 576

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

Bench : Single Bench

Advocate : Anil Kumar Sinha, N.N. Tiwari, M.S. Anwar, Rajesh Kumar and S. Arun, for the Appellant; B. Poddar, A.A.G. and N. Thakur, J.C. to A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these writ petitions, as common Notification of Transfer No, 318(2) dated 18th August, 2001 is under challenge, they were heard together and are being disposed of by this common order.

2. Petitioners, Dr. Nandjee Singh of W.P. (S) No. 3970 of 2001 and Dr. Satyarin Singh of W.P. (S) No. 4054 of 2001, while challenged the Notification of transfer on the ground that they have been transferred outside the Medical Teaching Cadre, petitioner Dr. Ram Sewak Sahu of W.P. (S) No. 4028 of 2001 has challenged the same on other ground.

3. For determination of the question raised by some of the petitioners, it is necessary to take into consideration the relevant facts, as emerged from Notification dated 21st May, 1997 issued by the State.

The State Medical Service was commonly known as Bihar Health Service. The teaching posts were available with Medical Colleges which were ex-cadre posts

and had no separate cadre. The eligible members of the Bihar Health Service used to be appointed by transfer to the basic tenure and nontenure posts, out of which the higher posts like Assistant Professor; Associate Professor; Professor etc. used to be filled up. The posts like Resident Doctors i.e. Resident Medical Officer (R.M.O.); Resident Surgical Officer (R.S.O.) and the Registrars were junior most three years tenure teaching posts. The next higher posts were of Assistant Professor; Associate Professor and Professor etc., which were now tenure posts.

4. The Governor of Bihar taking into consideration the relevant facts and in public interest, framed rules under proviso to Article 309 of Constitution, published vide Notification No. 162(17) dated 21st May, 1997 and created a teaching cadre, commonly known as "Bihar Medical Education Service Cadre and Appointments to its Cadre Post Rule, 1997".

5. The tenure teaching posts like RMO/ RSO and Registrar were designated as Tutor and were made non-tenure posts of the cadre. The other non-tenure teaching posts of Assistant Professor, Associate Professors. Principals of Medical Colleges, as also the post of Deputy Director, Joint Director-cum-Controller of Examination and Director/Additional Director of Directorate were also brought in such teaching cadre.

For the purpose of calculation of strength of teaching cadre, under Rule 5(KA), it was stipulated that the posts as were available on 1st April, 1997 shall be the strength of the cadre.

Rule 5(GA) therein, it was also stipulated that the officers who were holding the teaching posts on the date, may give option to continue in the Medical Education Cadre or to switch over to the parent cadre of Bihar State Health Service. Those who will not give option, shall be reverted to the parent cadre of Bihar State Health Service.

6. The petitioner Nandjee Singh of W.P. (S) No. 3970 of 2001 entered the Bihar State Health Service a Civil Assistant Surgeon, in 1976, obtained M.D. in Pathology in the year 1982 and was posted as Bio-chemist in Artificial Kidney Unit in February, 1982. Thereafter, he was sent to Chandigarh for specialist training in Netrology in PGI Chandigarh which was subsequently held in AIIMS. New Delhi and was later on posted as Bio-chemist in the Artificial Kidney Unit of RMCH. Ranchi.

By Impugned Notification dated 18th August, 2001, he has been transferred as Medical Officer, Primary Health Centre, Mohanar Tand. Palamau.

7. The petitioner, Dr. Satyaram Singh of WP (S) No. 4058 of 2001 was also appointed in the Bihar State Health Service and since 1994 working as Medical Officer in the Department of Preventive and Social Medicines - (PSM for short) - RMCH. Ranchi. By impugned Notification dated 18th August, 2001, he has been transferred as Medical Officer. Sadar Hospital, Dumka.

8. According to both the petitioner. Dr. Nandjee Singh and Dr. Satyaram Singh, they are working against teaching posts since prior to 21st May, 1997 i.e. the date Bihar Medical Education Teaching Cadre was created and they having given option under Rule 5(GA), cannot be transferred against non-teaching posts of Medical Officers in a Primary Health Centre or Sadar Hospital.

9. The petitioner, Dr. Nandjee Singh in his support has claimed that he is getting teaching allowance and has also relied on Supreme Court's decision dated 14th May, 1993 in Civil Appeal No. 2909 of 1993 Dr. Nandjee Singh v. P.G. Medical Students Association and others, to suggest that he was performing the teaching job.

10. The petitioner, Dr. Satyaram Singh has enclosed a Memo No. 144 dated 14th June. 2001, whereby distribution of classes for PSM was circulated to suggest that he was a teacher in the Medical College. A letter No. 2507 dated 28th July, 1994 written by the Principal, RMCH. Ranchi and another Letter dated 8th June, 1994 have been enclosed by him in his support.

11. At this stage, it may be mentioned that the Medical Council of India framed regulations whereunder, it mentioned the medical teaching posts, as also laid down qualifications for teachers in Medical Institutions. The teaching posts with common nomenclature as that of Tutor/Demonstrator/ Resident/Registrar/ Resident Medical Officer, apart from the other higher posts of Lecturer/Assistant Professor/Reader/Associate Professor and Professor.

12. So far as the post of Bio-chemist is concerned, no specific document brought on record to suggest that the post is a teaching post, though it appears that the petitioner Dr. Nandjee Singh is performing the teaching job as Bio-chemist in Artificial Kidney Unit of General Medicines Deptt. RMCH, Ranchi. The letter dated 8th June. 1994 issued by the Principal, RMCH. Ranchi (Annexure-5) to WP(S) No. 4054 of 2001 while deals with teaching post, petitioner Dr. Satyaram Singh has been shown to be a Medical Officer of a Mobile Unit.

13. None of the aforesaid posts of Biochemist or Medical Officer as distinct from Resident Medical Officer have been shown as teaching posts of Medical Institutions in the regulation framed by the Medical Council of India.

14. In absence of relevant evidence, it is not possible for this Court to declare whether Dr. Nandjee Singh and Dr. Satyaram Singh are teachers in Medical Institutions or not, though they may be teaching the students.

In this context, it may be mentioned that some times teaching work is also taken from the members of the Health Service, while persons working on supernumary posts.

15. The basic question as to whether the petitioners Dr. Nandjee Singh and Dr. Satyaram Singh were working against "Cadre Post" of The Bihar Medical Education Service" or not.

16. It has already been mentioned that the post of Resident Doctors (RMO/RSO), Registrar, Assistant Professor, Associate Professor, Professor etc. were brought in the cadre of Bihar Medical Education Service since 1.4.1997.

17. Admittedly, the petitioners were neither the Resident Doctors like RMO or RSO, nor they are Registrar, Assistant Professor or Associate Professor etc. on 1st April, 1997/21st May, 1997.

18. The posts against which the petitioners were functioning as on 1st April, 1997/21st May, 1997 having not brought in the cadre of Bihar Medical Education Service", there is no occasion for petitioners to give any option under Rule 5(GA) for their retention in the Bihar Medical Education Service Cadre. Option, if any, given by one or other petitioner is of no value.

19. Further, the posts against which the petitioners were functioning as on 1st April, 1997/21st May, 1997 having not brought in the cadre of Bihar Medical Education Service, they have no right to claim posting against a teaching cadre post of Bihar Medical Education Service, nor can oppose to their transfer, if made against parent cadre post of State Health Service (now Jharkhand State Health Service), as made vide Notification dated 18th August, 2001.

20. So far as Dr. Ram Sewak Sahu of WP (S) No. 4028 of 2001 is concerned, he has not made any specific claim in the writ petition that he is working against a teaching post. According to him, he is doing the post mortem work in the Deptt. of Forensic Medicines. RMCH. Ranchi since 1990. He has appeared in several criminal cases as a witness even in the month of July and August, 2001 and thus, according to him, he should not have been transferred as it would affect the session cases pending before one or other Court in which he is a witness. However, such ground cannot be accepted to nullify the Notification of transfer dated 18th August, 2001.

21. In the supplementary affidavit, the petitioner, Dr. Ram Sewak Sahu enclosed a certificate dated 1st September 2001 and the regulations framed by the Medical Council of India to suggest that the post of Medical Officer, Forensic Medicine against which he is functioning as a teaching post. However, such submission cannot be accepted as the teaching post mentioned therein is of "Casualty Medical Officer" and not that of "Medical Officer".

22. Thereby, the petitioner. Dr. Ram Sewak Sahu cannot claim to be a teacher, apart from the fact that the post against which he was working as on 1st April, 1997/21st May, 1997 has not been brought in the cadre of Medical Education Service.

23. There being no merit, all the writ petitions are dismissed.

24. Writ petitions dismissed.