
(2012) 03 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No. 909, 2204 and 850 of 2012

Satyabrata Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 114 CLT 198

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : B. Routray, P.K. Sahoo, R.P. Dalai, K. Mohanty, S. Das, S. Jena, S.K. Samal and S.P. Nath and Ors, for the Appellant; R.C. Mohanty, K.C. Swain, Miss. S. Mohanty, M/s. R.K. Rath, Pami Rath and J. Mohanty, M/s. S.K. Das and S.K. Mishra, N. Mishra, M/s. R.K. Mohanty, D. Varadwaj, P. Jena, S.N. Biswal, S. Mohanty and A. Mohanty, M/s. S.K. Padhi, M. Padhi, A. Das, B. Pamgrahi and S.S. Mohanty and Ors., for the Respondent

Judgement

Sanju Panda, J.—Since common questions & identical facts are involved in these Writ Petitions, they were heard together & are being disposed of by this common Judgment. WP(C) No. 909 of 2012

The Petitioners have filed this Writ Petition challenging Clause 11.2 of the Prospectus for selection of candidates for P.G. (Medical) Courses in the Government Medical Colleges of Orissa, 2012 (in short, "Prospectus, 2012") & praying for issuance of a mandamus directing the Opp. Parties not to act pursuant to the said Clause 11.2 of the Prospectus, 2012 in respect of the seats meant for Direct Candidates.

WP(C) No. 2204 of 2012

The Petitioners have filed this Writ Petition challenging the selection of candidates for Post Graduate (Medical) Courses in the Government Medical Colleges of Odisha. 2012 as illegal & contrary to the settled position/principle of law propounded by this Court in WP(C) No. 5778 of 2011 dated 22.3.2011.

The Petitioners have filed this Writ Petition challenging the action of Opp. Parties 2 to 6 as the Chairman, the Convenor & the Members of the P.G. (Medical) Selection, 2012 as illegal & invalid in the eye of law & accordingly they have prayed for quashing of Clause 1.2 of the prospectus for selection of candidates for Post Graduate (Medical) Selection - 2012, Odisha along with Clause 11.2 in respect of direct candidates & issuance of a direction to the Opp; Parties to publish the model questions & answers in the website, allow the candidates to file objection, if any, as per Clause 10.17 of the Prospectus of last year, i.e., P.G. (Medical) Selection, 2011 & modify the setting of questions as per Clause 9.2 of the Prospectus of last year by incorporating Appendix-II.

2. In WP(C) Nos. 850 of 2012, Misc. Case No. 2185 of 2012 was filed by Dr. Bikas Chandra Nanda & Dr. Nishant Nilotpala Dash for being impleaded as Opp. Parties. Said application having been allowed, they have been arrayed as Opp. Parties 7 & 8 respectively in that Writ Petition. Both the intervenors are direct candidates & are in Government service. They have not completed five years of service. They support the action of the Opp. Parties.

3. In WP(C) No. 909 of 2012, twenty six number of doctors had filed Misc. Case Nos. 1990, 2541, 2542 & 2543 of 2012 to be impleaded as intervenors & those misc cases having been allowed, they have supported the plea of the Writ Petitioners challenging Clause 11.2 of the Prospectus, 2012.

4. Learned Counsel for the Petitioners submitted that Clause 4.1 of the Prospectus, 2012 reveals the availability of seats, i.e., 121 seats for Unreserved Category, 21, 14, 5, 3 & 9 seats are for Reservation Category, i.e., ST, SC, PH, Defence & Green Card respectively. Clause 6 defines the Category of Candidates. Clause 11.2 reflects the Additional Weightage of marks to be awarded to the candidates who are in the employment in the Government of Odisha/Government of Odisha Undertaking. The additional weightage of marks will be awarded to both Direct & In-service candidates. As per Clause-4 of the Prospectus, 2012, the total number on the basis of category wise availability of seats for P.G. (Medical) Courses in the three Government Medical Colleges of Orissa for the academic session, 2012 is 173. In the Prospectus, 2012, it is stipulated that 50% of the seats out of the State quota shall be allotted to the candidates who are in Government service & 50% seats to direct candidates. In case additional weightage is given to the candidates, both direct & in-service as per Clause 11.2. the quota of seats reserved for the in-service candidates v. (sic) upon the direct candidates quota seats which will be more than 50% of the seats available & the Opp. Parties will not reserve more than 50% of the seats for one category of candidates, i.e., In-service candidates. As such, Clause 11.2 of the Prospectus, 2012 is liable to be quashed. Learned Counsel for the Petitioners further submitted that in case the additional weightage is given to the candidates as per Clause 11.2 of the Prospectus, 2012, the ineligible candidates will become eligible & get higher rank. The said clause is also not in accordance with the

Regulation issued by the Medical Council of India (in short, "MCI") in its amended Regulation, 2009.

5. On the above submission, the points to be determined in these Writ Petitions are whether Clause 11.2 of the Prospectus, 2012 is illegal & arbitrary & whether by giving the additional weightage in-service candidates quota will encroach upon the seats reserved for the direct candidates in term of the policy formulated by the State Government which is reflected in the Prospectus, 2012.

6. For better appreciation, the relevant clauses of the Prospectus, 2012 are quoted below:

4. AVAILABILITY OF SEATS:

4.1 Category wise availability of seats for P.G. (Medical) Courses in the three Government Medical Colleges of Odisha for the academic session, 2012:

Categorywise distribution of seats

Category

Unreserved

Reservation

category

Total

M.D/M.S

Category

Course

ST (12%) SC (8%)PH (3%) Defence (3%) Green

Card

5%

In-service

62

10

7

3

0

5

87

Direct

59

11

7

2

3

4

86

Total

121

21

14

5

3

9

173

6. CATEGORY OF CANDIDATES:

6.1 A Direct Candidate is one who at the time of application:

6.1.1 is son/daughter/spouse of a person who has reserved in Defence Service for minimum of 5 years by 31.12.2011.

6.1.2 Is either unemployed or in the employment of Government of Odisha, but not completed five years of service which includes all categories of employment like contractual/ temporary/ ad-hoc/ regular by 31.12.2011.

6.1.3 Is in the employment of Govt. of Orissa Public Sector Undertakings/Govt. of India Public Sector Undertakings located in Odisha. The employer has to sponsor the candidates for entire period of course & must submit the sponsorship certificate as in Appendix III.

6-2 As In-service candidate is one who at the time of application.

6.2.1 is in the employment in Government of Odisha & has complete a length of 5 years of service which includes all categories of employment like contractual/ temporary/ad-hoc/ regular by 31.12.2011. excluding at-a-stretch leave of any kind, of 30 days or more. However the maternity leave is exempted from this exclusion & shall be counted towards the length of five years of service.

Note: In-service & Direct candidates in employment under Government of Odisha at the time of application are advised to submit their applications along with the required documents directly to the Convenor, P.G. (Medical) Selection Committee 2012, under intimation to their Employer. Copy of such intimation is to be attached.

11.2 ADDITIONAL WEIGHTAGE:

Those candidates who are in employment in Govt. of Odisha/ Govt. of Odisha undertaking (Both direct & in-service), & have qualified in the Entrance Examination & have worked in Rural/ Tribal Backward areas (as per the list vide G.O. No. 325/H Dt. 03.01.1997) shall be awarded an additional weightage of 10% of the marks secured in the P.G. Entrance Examination per year of completion of service (in Rural/Tribal/Backward areas), subject to maximum of 30% of marks secured in entrance examination, vide MCI Notification No. 51210/ dt. 17.11.2009.

12. RESULTS:

12.1 Candidates securing 40% or more in case of SC/ST candidates, 45% or more for candidates with locomotory disabilities of lower limbs & 50% of total marks or more in case of all other candidates in the Entrance Examination shall be eligible for selection & provisional merit lists (one for in-service & one for direct) shall be prepared of all the eligible candidates only, category wise after adding the credit marks as per Clause 11.2.

7. Learned Counsel for the Petitioners submitted that last year in WP(C) No. 5778 of 2011 some of the candidates had challenged the Prospectus, 2011 in respect of Clause 11.2 which is similar to Clause 11.2 of Prospectus, 2012. The only difference in the last year Prospectus is in respect of in-service candidates. However, this year in the Prospectus, 2012 both direct & in-service candidates have been included.

8. Last year on 7.3.2011, i.e., after issuance of the Prospectus, a notice was published in the newspaper indicating that additional weightage of marks shall be given to the direct candidates who have completed per year of service in rural/ tribal/backward areas of the State. The said subsequent notification was challenged before this Court in WP(C) No. 5778 of 2011 on the ground that after the Prospectus was issued & selection process started the conditions shall not be changed. The Petitioners therein raised a point that in case additional weightage is awarded to the direct candidates, it will not only amount to encroach upon the seats of the said direct candidates but also change the condition of the Prospectus after selection process took place which is not permissible under law. In the said Writ Petition, a stand was taken by the Opp. Parties that as per the MCI guidelines they issued the subsequent notification. This Court, holding that it was not permissible under law for the Selection Committee to change the conditions mentioned in the Prospectus by issuing impugned notice as at Annexure-3 & if this is to be done, the same can only be done prospectively from

the next year quashed the said notification observing that the candidates who have not completed 5 years of service under the employment of the Government Medical College & Hospital & dispensaries will not be entitled to any incentive marks for each year of service as provided in Clause 11.2 of the Prospectus. The said decision was challenged in Writ Appeal No. 270 of 2011. A Division Bench of this Court dismissed the writ appeal observing as follows:

....We do not find any good reason to interfere with the order of the Learned Single Judge as Respondent No. 2 is not right in providing preference to the Appellants who have served in the backward/tribal areas within the quota earmarked for direct candidates, which amounts to horizontal reservation in the direct candidates which is not permissible under law.

9. Therefore, the Learned Counsel for the Petitioners submitted that since the said issue has already been decided by this Court, Clause 11.2 of the Prospectus, 2012 is liable to be quashed & the benefit of additional weightage of marks may be available only to the in-service candidates who have completed five years of service & not to the direct candidates. He cited the decisions of the Apex Court in the case of *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, & *Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others*, .

10. A counter affidavit has been filed by Opp. Parties 1 to 4. A separate counter affidavit has also been filed by Opp. Party No. 5 taking a stand that admission to Post-Graduate Medical Courses is in accordance with the guidelines/regulations of the MCI & the Prospectus is made thereunder as approved by the Department of Health & Family Welfare, Government of Odisha & the availability of 50% of the seats to the direct candidates & the in-service candidates is as per the decision of this Court in *Dr. Subash Singh & others v. Convenor, P.G. (Medical) Selection, 2003 & others*, 2003 OLR (II) 652. It is further stated that as per the observation made by this Court in WP(C) No. 5778 of 2011 dated 22.3.2011, Opp. Parties have included this year both the categories of students in Clause 11.2, i.e., direct & in service candidates, & they have also followed the MCI Notification dated 17th November, 2009. Clause 3 of the said Notification stipulates as follows:

3. The following proviso shall be added after clause 9(2)(d) of the "Postgraduate Medical Education (Amendment) Regulations, 2000 as amended by Postgraduate Medical Education (Amendment) Regulations, 2009 (Part II).

Further provided that in determining the merit & the entrance test for postgraduate admission weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained.

Accordingly, the Prospectus, 2012 is in pursuance of the aforesaid Notification of the MCI & the Opp. Parties have not violated any of the stipulations/conditions while including Clause 11.2 in the prospectus 2012.

11. Learned Counsel for the intervenors, submitted that since the additional

weightage of marks as stipulated in Clause 11.2 is only an incentive to be awarded to the candidates who are in merit list, the contention raised by the Petitioners that in-service candidates will encroach upon the seats allotted to direct candidates is a misnomer. Therefore, the Writ Petitions are liable to be dismissed. He further submitted that Clause 11.2 of the Prospectus, 2012 provides that additional weightage of marks shall be given to the candidates who are eligible for the selection.

12. From the above submissions of the Learned Counsel for the parties & on a bare reading of the Prospectus, 2012, it appears that the category of candidates, i.e., direct candidates & in-service candidates, is as per Clause 6 of the Prospectus. A Direct Candidate is one who at the time of application is either unemployed or in the employment of Government of Odisha, but not completed five years of service which includes all categories of employment like contractual/temporary/ad-hoc/regular & is in the employment of Government of Odisha/Public Sector undertakings/Government of India Public Sector undertakings located in Odisha. The employer has to sponsor the candidates for entire period of course & must submit the sponsorship certificate as in appendix III. In service candidate is one who at the time of application & is in the employment in Govt. of Odisha & has completed a length of 5 years of service. So candidates of these two categories, i.e., direct & in-service, are available in Clause 11.2 of the Prospectus, 2012. Clause 11.2 read with Clause 12.1, it stipulates that the candidates shall be entitled to get additional weightage of marks in case they have qualified in the Entrance Examination, which means, they are eligible to take admission to the PG Course by obtaining 50% of total marks in the entrance test. So, a candidate who has obtained 50% of the total marks in the Entrance Test is only entitled to get additional weightage of marks as stipulated in Clause 11.2 of the Prospectus, 2012. As such, a less meritorious student will not be eligible to take admission in the PG Course by virtue of this additional weightage of marks.

13. The MCI notification dated 17th November, 2009 stipulates that in determining the merit & the entrance test for Post Graduate Admission, weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year of service in remote or difficult areas & said incentive is available to the candidates whoever has served in rural/tribal/backward areas. Since a candidate has to be first eligible for the admission to the PG Course by obtaining 50% of the marks & then only he will be entitled to additional weightage of marks, the contention of the Learned Counsel for the Petitioners that a less meritorious student will be selected by virtue of Clause 11.2 is not acceptable.

14. Since this incentive of additional weightage of marks for the service rendered in the rural/tribal/backward areas is awarded to the candidates, who are eligible to take admission into PG Course or who have obtained qualifying marks in the Entrance Test, & the said incentive is available for maximum three years of

service, there is no question that the in-service candidates will encroach upon the seats available to the direct candidates.

15. Clause 11.2 of the Prospectus, 2012 has to be read conjointly with Clause 12.1 which stipulates that all candidates, other than SC/ST & candidates with locomotory disabilities of lower limbs, securing 50% of total marks or more in the Entrance Examination shall be eligible for selection & provisional merit lists (one for in service & one for direct) shall be prepared of all the eligible candidates only, category wise after adding the credit marks as per Clause 11.2.

16. In the case of Dr. Bhupesh Ku. Nayak v. Secretary, Health & Family Welfare Deptt. & others, 2004 (Supp.) OLR 587, this Court examining the question, whether in terms of the Prospectus, the additional marks are to be added to whatever mark one obtains in the competitive admission test to make up even the qualifying mark or only a candidate who qualifies in the pre-admission test is only eligible to the additional benefits in terms of Clause 11.2, the Doctors who have completed minimum three years service in Rural/Tribal/backward areas, held that only eligible candidates can be given advantage of addition of weightage while preparing the merit list & not for the purpose of determining eligibility. The same question was also considered by a Division Bench of this Court in the case of Dr. Deepak Kumar Singh v. Convenor, P.G. (Medical) Selection committee, 2007, S.C.B, Medical College, Cuttack & others, 103 (2007) CLT 724, wherein it has been held that there is no illegality in fixing the said norms in the Prospectus.

17. Accordingly the contentions of the Learned Counsel for the Petitioner fail & are hereby rejected & both the questions are answered against the Petitioners.

18. As regards the prayer made by the Petitioners in WP(C) No. 850 of 2012 that publication of the Model Question & Answer in the Website, Clause 10.17 of the Prospectus, 2011 stipulates that the Model Question & Answer will be made available in the Website on the next day of examination & accordingly the candidates will be given scope to file objection, if any, within seven days from the date of completion of the examination before the Chairman, who will take up the matter with a committee of experts & the decision of the committee would be final & binding on the candidates. In case any objection is found to be true, the marks will be awarded accordingly at the time of evaluation of the answer sheets. After the stipulated period is over, no objection in any form will be entertained & the same is liable to be rejected. However, the said Clause is not there in the Prospectus, 2012 to maintain transparency in the selection process.

19. Learned Counsel for the Petitioners submitted that in order to maintain transparency in the matter of selection, the aforesaid Clause should be included in the Prospectus, 2012 & the authorities have intentionally not included the aforesaid Clause in the Prospectus to accommodate their candidates.

20. Learned Counsel for the Opp. Parties submitted that since the selection process has already been started & the same has to be completed as per the MCI

guidelines & the cut off date has been approved by the Apex Court, it is not possible to include the said Clause now in the Prospectus, 2012 due to paucity of time. Considering the above facts & circumstances of the case & the fact that the Petitioners have not been able to prove any material regarding the intention of the Opp. Parties to accommodate, their candidates, this Court is of the view that there is no substance in the plea of the Petitioners & accordingly the same is rejected. Since the selection process & the admission are to be completed within the cut off date, this Court in order to maintain transparency in the selection process directs the Opp. Parties to supply photocopies of the answer sheets to the candidates, if any application for verification is made within a period of seven days from the date of publication of the result. The right to inspection of answer book by the examinee is permissible, however re-evaluation is not permissible as it is not available under the RTI Act or in any bye-law. (See, Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others,). This Court further directs the Opp. Parties to publish the results of the Entrance Examination for Post Graduate (Medical) Course, 2012 by 26th March, 2012 or earlier if possible.

With the above observations, the Writ Petitions are disposed of.

Free copy of this order be supplied to Mr. R.C. Mohanty, Learned Counsel appearing for Opp. Parties 1 to 5 for compliance.