
(2008) 07 OHC CK 0107

In the Orissa High Court

Case No : Writ Petition (C) No. 10935 of 2004

Sri. Pabitra Mohan Pattnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Citation : (2008) 07 OHC CK 0107

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Advocate : Bijaya Kumar Patnaik, for the Appellant; B.N. Mohanty, S.N. Sharma, B. Mohanty, B.K. Biswal and K.K. Samal for Party No. 2, J. Sahu, H. Tripathy, S.P. Nayak, M.K. Rout and J.P. Patra for Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—The Petitioner-Sri. Pabitra Mohan Pattnaik claiming to be a public-spirited young man has filed the present writ application, purportedly in public interest, seeking to challenge the terms of appointment of Lecturers to the Acharya Harihar Regional Cancer Centre (A.H.R.C.C.) (hereinafter referred to as the "Cancer Institute") Cuttack, Orissa.

2. The Petitioner has made the following prayer in the writ application.

Under the circumstances, the Petitioner fervently prays to the Hon''ble Court to be graciously pleased to admit the petition, call for the relevant records and after hearing the counsel for parties, issue a writ of mandamus commanding the opposite party to extend the last date of advertisement by four months more with the incorporation of required qualifications as per the guidelines of M.C.I in respect of the appointment of lecturers in surgical Oncology, Medical Oncology and Gynaecology Oncology with further reasonable restriction to the upper age limit relaxation as is generally and logically done in respect of all other class II & I posts by UPSC and the selection be made after regular appointment of permanent Director.

3. The essential ground of challenge raised by the Petitioner is that, the qualification mentioned in the advertisement dated 7.9.2004 issued by the Cancer Institute, was not in consonance with the qualifications prescribed by the Medical Council of India. In the information brochure issued by the Cancer Institute, the eligibility criteria for the post of Lecturers in various subjects, such as, in the fields of Surgical Oncology, Medical Oncology and Gynaecology Oncology (under Annexure-I), is quoted hereunder:

C. Eligibility criteria:

Lecturer: Should have a post graduate in the concerned speciality. Should have one year post P.G. experience. Selection Committee shall give due regard to the candidates academic attainments, experience, aptitude and ability to teach. Preference shall be given to the candidate having work experience in any reputed Cancer Institute and Medical College in the concerned discipline.

4. The Petitioner alleges that the eligibility qualification for the post of Lecturer, fixed by the Cancer Institute, was not in conformity with the Medical Council of India (MCI) Guidelines (Annexure-2). The qualification prescribed under Annexure-2 is quoted hereinbelow:

(C) Assistant Professor /Lecturer A recognized DM/M.Ch qualification in the concerned speciality subject.

i. Requisite recognized super-qualification in the subject.

ii. Three years teaching speciality experience in the concerned subject in a recognized Med. College as Resident/Registrar/Demonstrator /Tutor.

5. Learned Counsel for the Petitioner, inter alia, asserts that the eligibility criteria fixed by the "Cancer Institute", in its Information Brochure under Annexure-I is not in consonance with the eligibility criteria fixed by the Medical Council of India and consequently, he further alleges that the persons who should not have been considered for appointment to the said post, have become eligible to be considered on account of lowering of eligibility standards by the "Cancer Institute".

6. Learned Counsel for the opposite parties (interveners) raised serious objection regarding the locus standi of the Petitioner and the maintainability of the writ application (PIL). Learned Counsel for the opposite parties strongly refuted the allegation of lowering the eligibility standards by the Cancer Institute and contended that the eligibility criteria fixed by the Cancer Institute was absolutely in consonance with the guidelines fixed by the Medical Council of India and that the allegation to the contrary, is completely incorrect and baseless.

7. Learned Counsel for the opposite parties further submitted that the document annexed as Annexure-2 to the writ application, claiming the same to be the eligibility qualification fixed by the Medical Council of India, is incorrect and inapplicable to the facts of the present case. It is submitted that Annexure-2 to

the writ application while being a "summary" and not being the extract-guidelines pertains to the eligibility criteria fixed by the Medical Council of India for PostGraduate (P.G.) Education, the same is not relevant since the A.H.R.C.C. is not a P.G. Institute of Education.

8. It was further submitted by the opposite parties that Annexure-2 was an extract or summary from Post Graduate Medical Education Regulation 2000, which is of no relevance to the writ application, since the same applies to institutions where P.G. Education is imparted.

9. It was further contended that the Medical Council of India has prescribed the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 which alone apply to the facts of the present case and in terms of the said Regulation, and Clause-8 of Schedule-1 thereof, stipulates that the names of the teaching posts, academic qualifications and teaching or research experience required for each teaching post are given in Table-1 in respect of graduate and post-graduate/higher speciality courses and in Table II in respect of super-speciality courses. Accordingly, the qualifications of Lecturer in Medical Oncology or Surgical Oncology in terms of the said Regulation are quoted hereunder:

(C) Assistant Professor /Lecturer A recognized postgraduate medical qualification in the subject.

i. Requisite recognized postgraduate qualification in the subject.

ii. Three years teaching experience in the subject in a recognized medical college as Resident/Registrar/Demonstrator /Tutor.

10. In course of hearing of this matter, since there was some disputes between the parties relating to the relevant Regulations for the post of Lecturer, learned Counsel for the Cancer Institute had been directed to produce a copy of the Medical Institutions Regulations, 1998 and the said order was complied with by the Institute by filing a memo enclosing thereto a copy of the said Regulation, prepared by the Medical Council of India.

11. From the headlines of Annexure-2 to the writ application, there is a noting of general requirements of teaching appointments to "super-speciality courses". It is the admitted case between the parties that the Cancer Institute does not impart any super speciality course and is not a Post-Graduate institute.

12. Apart from Annexure-2, reliance was placed by the learned Counsel for the Petitioner on Annexure-6, claiming the same to be a complete document from which Annexure-2 was extracted. This Annexure-6 is titled "Salient Features of Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998". In fact, at the last page of Annexure-6, there is a declaration made in the said document itself to the following effect:

Above are general requirements for teaching appointments in a medical college in India. However, there may be some verifications - subject-wise, which may

either be referred to the detailed Regulations obtainable from the office of MCI or by a letter through proper channel.

13. The language of the title of Annexure-6 and the disclaimer at the end of the said document, clearly indicates that those are not the statutory Regulation of 1998. Learned Counsel for the Petitioner asserted that this Annexure-6 had been downloaded from the web-site of the Medical Council of India, but in the face of the above quotation, and having been provided with a copy of the printed Regulation of the Medical Council of India, no reliance can be placed on the document under Annexure-6. Apart from this reason, under Annexure-6 and the Table-I and in particular, the Table including the general requirements for "teaching appointments for super speciality courses" is of no relevance since the "Cancer Institute" is not a P.G. Institute, where super speciality courses are being imparted. It would be pertinent to note herein that even Annexure-6, in Table-I has also prescribed the "requirements of academic qualifications, teaching and research experience for graduate courses", the post of Lecturer and the eligibility criteria are quoted hereinbelow:

TABLE-1 REQUIREMENTS of ACADEMIC QUALIFICATIONS, TEACHING and RESEARCH EXPERIENCE.

Post: (C) Assistant Professor/Lecturer Academic qualifications: A recognized postgraduate medical qualification in the subject.

Teaching/ Research Experience:

- i. Requisite recognized postgraduate qualification in the subject.
- ii. Three years teaching experience in the subject in a recognized medical college as Resident/Registrar/Demonstrator/Tutor.

14. We have already extracted hereinabove the necessary Regulations and the criteria fixed by the Medical Council of India for the post of the Lecturer in Medical Oncology and Lecturer in Surgical Oncology. The advertisement for appointment of the opposite parties was in consonance with the said eligibility criteria fixed by the Medical Council of India.

15. Learned Counsel for the Petitioner contended that limiting the period for making application pursuant to the impugned advertisement under Annexure-I to one month, was totally inadequate and that, such time limit deprived the eligible candidates from making applications for the posts advertised.

16. It is averred by the opposite parties 1 and 2 in the counter affidavit that the advertisement No. 1/2004 inviting application for recruitment to the post of Lecturer in different Oncological disciplines had been published as per the provisions of the Bye law of AHRCC, which has been duly approved by the Government of Orissa in the Health and Family Welfare Department. It is further averred that the advertisement was published in three Oriya dailies having wide circulation, namely, i) The Samaj, ii) Sambad and iii) Prajatantra and apart from

these publications, the advertisement was also published in "Times of India" (English) having wide circulations throughout the country.

17. On consideration of the aforesaid facts, we obviously cannot accept the contention of the Petitioner either that the time limit of one month is inadequate or that the applicants throughout the country could not apply as noted hereinabove. There has been wide publicity given throughout the State of Orissa as well as throughout" the country and no objection on this score can be entertained.

18. We next come to consider the question of maintainability of the present writ application (PIL) at the behest of the Petitioner. In the writ application, it is averred that the Petitioner being a public-spirited young man and being perturbed with the mishandling of the Cancer Institute and particularly, the appointment of Lecturers in the said Institute as not being in accordance with the guidelines/ qualifications as prescribed by the Medical Council of India, he has filed the present writ application (PIL). Learned Counsel for the Petitioner argued that the petition is maintainable as it raises questions and issues of "real and genuine public interest" and that the main object of the Petitioner is that the Cancer Institute should be manned by qualified doctors and therefore, the Petitioner acting bona fide had sufficient interest in the proceeding of the PIL to achieve the above mentioned object.

19. In this respect the Petitioner placed reliance upon the judgment of the Hon"ble Supreme Court in the case of Kushum Lata Vs. Union of India (UOI) and Others, and in particular, paragraph 15 thereof, wherein the Hon"ble Apex Court has laid down the following conditions as parameters for entertaining the PIL. Learned Counsel for the Petitioner averred that the present writ application satisfies the following requirements stipulated by the Hon"ble Apex Court:

- (a) The credential of the applicant.
- (b) The prima facie correctness or nature of information given by him.
- (c) The information being not vague and indefinite.

20. Learned Counsel for the Petitioner, thereafter contended that the Cancer Institute is amenable to writ jurisdiction and in support of such contention he has referred to various case laws which are not being noted herein since such an issue has not been raised in the present case for our consideration.

21. Learned Counsel for the Petitioner further contended that the present writ application (PIL) does not deal with the service matters. It is argued by the learned Counsel for the Petitioner that the present PIL deals with the advertisement and cannot be said to be a service matter as this does not come within the purview of appointment.

22. Learned Counsel for the opposite parties, on the other hand, seriously questioned the maintainability of the present writ application (PIL) on the ground

that the prayer made by the Petitioner in the writ application itself, sought for extension of time for making application pursuant to the said advertisement. This itself establishes the fact that the Petitioner has, in essence, raised questions regarding appointment to the said post and, therefore, this PIL is nothing else but the PIL in a service matter, which the Hon"ble Supreme Court has repeatedly reiterated, should not be entertained. In this respect, learned Counsel for the opposite parties placed reliance upon the judgment of the Hon"ble Supreme Court in the case of Gurpal Singh Vs. State of Punjab and Others, and in particular paragraph 8 thereof wherein the Hon"ble Supreme Court has directed that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.

23. After having taken note of the contentions of the learned Counsel for both the parties, we test the facts of the present case on the criteria laid down by the Hon"ble Supreme Court in the case of Kusumlata (supra). We have to first satisfy ourselves that the conditions and parameter as laid down in the said judgment have been satisfied by the Petitioner.

24. In so far as "credentials of the Petitioner" are concerned, the writ petition contains no details whatsoever regarding the Petitioner's academic and other qualifications. Except describing himself as a "public-spirited young man" in the writ application in the note of argument filed by the Petitioner, the learned Counsel for the Petitioner has stated that "the Petitioner is a young graduate of 36 years old and has sound knowledge in every aspect of life with strong commonsense. He has fair knowledge of the rules and Regulations of the Medical Council of India because of the unique aspirations of knowing the things".

25. We are afraid and constrained to note that neither the writ application nor the note filed by the Petitioner satisfies the requirement of the law regarding the "credentials of the applicant. Except making very general statement regarding the Petitioner being a public spirited young man having sound knowledge in every aspect of life with strong commonsense, these averments cannot/ does not meet the requirement of law as laid down by the Apex Court. Therefore, we are constrained to observe that the Petitioner has failed to satisfy us regarding his credential for the purpose of initiating the present writ application. Admittedly, the Petitioner is not a medical student nor possesses the necessary educational qualification to be considered as an applicant for the post advertised. The prayer of the Petitioner in the writ application, seeks extension of time for making applications itself, disclosed the real purpose behind the writ application. We are constrained to observe that the Petitioner is nothing else other than a busy body who has no connection with the list.

26. The next criteria that has to be considered, relates the "prima facie correctness or nature of information" given by the Petitioner. In this respect the contention in the note of argument that incorrect eligibility criteria had been

fixed by the Cancer Institute for the post of Lecturer is, based upon the advertisement made by the Cancer Institute and, therefore, it must be held that the prima facie correct information has been stated by him.

27. The Petitioner's entire case is based upon its understanding that the Post-Graduate Medical Education Regulation, 2000 apply to the posts advertised, whereas the said rules have no application to the present case. The Cancer Institute is not a PostGraduate College. Further, since the documents appended as Annexure-2 to the writ application claims to be a "Summary" of the Teachers Eligibility Qualification as downloaded by the Petitioner from the Medical Council of India Web-site, the complete document of which has been annexed by the Petitioner under Anneuxre-6 to the rejoinder affidavit. On a perusal of Annexure-6, it would be clear that the document is not a complete document and refers to only the "salient features of the 1998 Regulation" and even in the said document, the table in which the Petitioner has based its knowledge of eligibility criteria, applies only to "super-specialty courses" and not to "graduate courses", Further, Annexure-6 itself indicates a "disclaimer" and, therefore, neither Anneuxre-2 nor Annexure-6 being prima facie correct documents or information, the Petitioner does not satisfies the requirement of prima facie correctness or nature of information as stipulated by the Hon"ble Apex Court.

28. The third criteria is recorded by the Supreme Court, i.e., "information is not vague and indefinite". Although it is contended by the Petitioner that the writ application has been filed basing on the information which the Petitioner believed to be true and derived from the advertisement made by the Cancer Institute and the information obtained from the Medical Council of India Website. For the reason as noted hereinabove and not repeating the same for the sake of brevity, it is clear that the Petitioner has sought to pass off the eligibility criteria as stipulated under the Post-Graduate Medical Education Regulation, 2000 as the requirement for teachers in Under-Graduate Institutions.

29. The Medical Council of India has prescribed the "Minimum qualification for Teachers, Medical Institutions Regulations, 1998" which apply to the case of the Cancer Institute and, therefore, the information on the basis of which the writ application has been filed, is not only vague and indefinite but also based upon a complete misreading of the 2000 Rules. Whereas, under the 1998 Regulation, the Medical Council of India has laid down the stipulations and requirements for appointments to Under-Graduate Institutes. It is repeated once again that the AHRCC is a Graduate Institute to which the 1998 Regulation apply and the Regulations 2000 have no applicability. The Petitioner has clearly misconstrued and misunderstood the said Rules which forms the basis of the writ application. Therefore, the Petitioner does not satisfy this requirement of law and the information relied upon by the Petitioner is vague and indefinite.

30. Apart from not meeting the requirements as stipulated by the Hon"ble Supreme Court in the case as noted hereinabove, the Hon"ble Supreme Court in a latter case of Gurpal Singh (supra) by a judgment delivered by Hon"ble Justice

Arijit Pasayat has categorically directed as follows:

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives. High Courts are entertaining such petitions and wasting valuable judicial time which as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the Petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the Petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs, as afore stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

31. In view of the directives of the Hon'ble Supreme Court, as noted hereinabove, the writ application needs no further consideration and stands dismissed. We further hold that the appointments of the opposite parties (interveners) as Lecturers, pursuant to the advertisement under Annexure-1 in the Cancer Institute are in consonance with the Medical Council of India Regulation, 1998 and we affirm the same. No costs.

L. Mohapatra, J.

32. I agree.