
(2004) 12 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 5548 of 2004

Surya Deo Narain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 —
Section 3, 6

Citation : (2005) 2 PLJR 87

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ambar Nath Banerjee and Satyendra Kumar Singh, for the
Appellant; Satyavrat Verma for State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 4.3.2003 (Annexure-13) whereby the prayer of the petitioner for his absorption as Lecturer in Maharani Rameshwari Bhartiya Chikitsa Sansthan, Darbhanga, has been rejected. According to the petitioner, he possesses the qualification of Prachinacharya (Ayurveda) from Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, hereinafter referred to as the University and was appointed as Demonstrator in Maharani Remeshwari Bhartiya Chikitsa Sansthan Darbhanga, hereinafter referred as the Institute. The State Government enacted the Bihar Private Medical (Indian System of Medicine) College (Taking over) Act, 1985, hereinafter referred to as the Act, for taking over the private medical colleges imparting education in the Indian System of Medicine. The Government of Bihar, in the department of Health, in exercise of the powers conferred u/s 3 of the Act, took over the aforesaid Institute. Section 6 of the said Act, inter alia, provided for determination of the terms and conditions of the Teaching Staff and other employees of the Institute taken over. In the light of the aforesaid provision, the State Government, by notification dated 22nd of May, 1985, constituted a

Screening Committee for the purpose of determining the terms and conditions of employment of teaching and other employees.

2. According to the petitioner, when no decision in regard to the regularisation of the service of the petitioner was taken in spite of the report of the Screening Committee, he preferred a writ application before this Court which was registered as C.W.J.C. No. 11462 of 1993 (Dr. Surya Dev Narain vs. The State of Bihar & Ors.) this Court, by order dated 12.4.1995, disposed of the writ application with direction to the petitioner to file representation before the Commissioner, Health and Medical Education Department of Government of Bihar, who in turn was directed to examine the grievance of the petitioner and pass order in accordance with the law.

3. When the aforesaid direction was not carried out, petitioner filed an application for initiating a proceeding for contempt which was registered as MJC No. 2090 of 1995 (Dr. Surya Deo Narain vs. The State of Bihar & Ors.) The aforesaid contempt application was disposed of by order dated 1.5.1997 on the assurance by the contemner that the representation filed by the petitioner shall be disposed of as early as possible and not later than three months from the date of the said order. The respondents, as undertaken, passed the order dated 20.5.1997 and directed for absorption of the petitioner to the post of Laboratory Technician in the Institute.

4. The petitioner, aggrieved by the same, preferred C.W.J.C, No. 5087 of 1998 (Dr. Suraya Deo Narain vs. The State of Bihar & Ors.). The plea of the petitioner in the aforesaid writ application was that while absorbing him to the post of Laboratory Technician, he has been demoted from the post of Lecturer and in the aforesaid premise, prayer was made to quash the order by which the petitioner was absorbed as Laboratory Technician. this Court, by order dated 3.7.2000 (Annexure-9), dismissed the writ application and while doing so, it observed as follows:

" xxx The impugned decision has been taken in accordance with the aforementioned provisions particularly Subsection (3) of Section 6. It is apparent that the petitioner was not entitled to any opportunity of hearing. His case was considered by the Screening Committee and the order has been passed on the basis of the report of Screening Committee, no further opportunity of hearing was required. Rules of natural justice are not rigid formulae which can be put in strait jacket. Their application depends on facts and circumstances. By the impugned order the petitioner has been absorbed in government service albeit against the post of Laboratory Technician and not Lecturer. But from bare reading of the provisions it is evident that no person can claim absorption as a matter of right muchless in the post held by him; which inter alia depends on his possessing the requisite qualifications."

5. Petitioner assailed the said order of this Court dismissing, the writ application in L.P.A. No. 1121 of 2000 (Dr. Surya Deo Narain vs. The State of Bihar & Ors.)

and a Division Bench of this Court, by order dated 22.8.2000 (Annexure-10), dismissed the appeal.

6. The Department of Indian System of Indigenous Medicine in the Ministry of Health and Family Welfare published notification dated 8th of October, 2001 and in the second schedule, in Part I of the Indian System of Medicine Central Council Act, 1970 relating to Ayurveda under the heading Bihar at serial number 9 relating to Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, in column (2), for the existing entry "Ayurvedacharya", the entry "Prachinacharya (Ayurveda)" was substituted.

7. It is relevant here to state that the petitioner claims to have Prachinacharya (Ayurveda) qualification from the University in question and according to him on substitution of the entry Ayurvedacharya by Prachinacharya (Ayurveda), petitioner has become eligible for absorption as lecturer. Accordingly, he filed representation again for consideration of his case for absorption as the lecturer. The Secretary to the Government of Bihar in the department of Health, by the impugned order, rejected the plea of the petitioner, inter alia, on the ground that the notification in question shall be prospective in nature and shall not enure to the benefit of the petitioner. It is this order of the Secretary which has been impugned in the present case.

8. Mr. Ambar Nath Banerjee, appearing on behalf of the petitioner contends that the entry Ayurvedacharya has been substituted by Prachinacharya Ayurveda and the petitioner having the qualification of Prachinacharya Ayurveda, is entitled to be absorbed as lecturer in the Institution. He submits that the entry has been substituted and therefore, it shall be deemed to have been substituted right from the beginning. I do not find any substance in the submission of Mr. Banerjee. It is relevant here to state that the petitioner earlier came to this Court, aggrieved by his absorption as Laboratory Technician and claimed absorption as Lecturer. A learned Single Judge of this Court rejected his plea and the decision rendered by him has been affirmed in the Letters Patent Appeal. Thereafter, the Government of India had come out with a notification dated 8th of October, 2001 substituting an entry in the Indian Medicine Central Council Act. It is well settled that any substitution made in the notification, has to be prospective unless it is specifically made retrospective or by necessary implication. The notification, nowhere, whispers that the substitution made, shall be effective from retrospective date. In that view of the matter, the notification which is the basis in the petitioner's case, shall not enure to his benefit. Further this Court in the earlier writ application filed by him has clearly held that "no person can claim absorption as matter of right, much less in the post held by him". Any interference by this Court in the face of such a conclusion rendered intra party would be wholly inappropriate, may impermissible. I do not find any merit in this application and it is dismissed, in limine.