

(2015) 07 JH CK 0068
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2824 of 2014

Tulsi Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 3 AJR 754

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Senior Advocate and Sidhartha Roy, for the Appellant; Ajit Kumar, A.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J—Aggrieved by notification dated 27.05.2014 whereby, one Dr. Satyendra Kumar Choudhary, was directed to take additional charge of Director, RIMS till further orders and seeking a direction upon the respondents to permit the petitioner to act as Professor-cum-Head of Department, FMT, RIMS, the present writ petition has been filed. The learned Senior Counsel for the petitioner stated that order dated 09.02.2015 has been issued by the respondent-State of Jharkhand whereby, the petitioner has been permitted to work on the post of Professor-cum-Head of Department, FMT, RIMS and vide letter dated 01.05.2015, the Accountant General (Accounts and Entitlement) of Jharkhand has been directed to issue salary slip to the petitioner for the said post. Thus, the second prayer in the writ petition has become infructuous.

2. Briefly stated, the facts narrated in the writ petition are that, the petitioner who was appointed as Director, RIMS vide notification dated 23.12.2010, successfully completed his tenure of three years on 23.12.2013. The tenure as Director, RIMS was however, extended vide notification dated 26.12.2013, till further orders. The petitioner claimed that his tenure should have been extended for further two years because on the date when he completed his three years' tenure as Director, RIMS, he was below 60 years. It is asserted that, respondent

No. 5 is not borne in the teaching cadre of RIMS and therefore, he is not eligible to hold the post of Director, RIMS.

3. Mr. Anil Kumar Sinha, the learned Senior Counsel for the petitioner submitted that the appointment of the petitioner was pursuant to decision of the Selection Committee and advertisement dated 18.09.2010 provided that the tenure of three years as Director, RIMS may be extended for further two years after evaluation of service rendered, subject to maximum age of 62 years. The petitioner thus was entitled for extension for further two years as, he had not completed 60 years as on 23.12.2013. However, vide notification dated 27.05.2014, the respondent No. 5 has been directed to take additional charge of Director, RIMS. It is submitted that the appointment of respondent No. 5 is not in terms of Rajendra Medical Institute Rules, 2002 and in the garb of holding additional charge of Director, RIMS, the respondent No. 5 cannot be permitted to function on the said post for an indefinite period. Referring to various notifications by which the respondent No. 5 has been transferred and finally given additional charge of Director, RIMS, the learned Senior Counsel for the petitioner submitted that permitting a person who is not eligible for appointment on the post of Director, RIMS, for an indefinite period, is not in public interest.

4. Mr. Rajesh Kumar, the learned counsel for the respondent-RIMS submitted that, the writ petition suffers from suppression of material facts. The respondent No. 5 was appointed as Superintendent, RIMS who was latter transferred from RIMS. A writ petition being W.P.(S) No. 535 of 2014 has been filed challenging appointment of the petitioner however, this fact has not been disclosed by the writ petitioner in the present proceeding. The learned counsel further submitted that appointment of respondent No. 5 is not an appointment on regular basis and he has been given charge of In-charge Director, as a temporary measure.

5. Mr. Rupesh Singh, the learned counsel for the respondent No. 5 also raised a preliminary objection on the ground of suppression of material facts and submitted that W.P.(S) No. 535 of 2014 might have become infructuous however, this itself cannot be a reason for suppressing pendency of W.P.(S) No. 535 of 2014 in this Court. It is submitted that successive transfers of respondent No. 5 in quick succession may give rise to a cause of action for respondent No. 5 to challenge the same however, the petitioner cannot raise a grievance in this regard. Referring to letter dated 17.12.2013, it is submitted that the petitioner himself submitted an application seeking extension and on the said application, the Departmental Minister vide order dated 20.12.2013 ordered that the petitioner would continue on the post of Director, RIMS, till further orders. It is thus submitted that the claim of the petitioner that his performance as Director, RIMS has been evaluated is not substantiated from the materials brought on record. The minutes of 35th meeting dated 03.12.2013 of the Governing Body, RIMS has not been brought on record. Only the said document can disclose whether the Minister was authorised to pass order dated 20.12.2013 or not. It is further submitted that the respondent No. 5 has in fact, worked as subordinate

to the petitioner in RIMS. The claim of the petitioner that he was entitled for extension for further two years is denied and disputed.

6. In reply, the learned Senior Counsel for the petitioner submitted that the Departmental Minister is the Chairman of the Governing Council who has passed order dated 20.12.2013 which is perfectly legal. It is further submitted that the respondent-State of Jharkhand has not answered challenge to the competence of respondent No. 5 to hold the post of Director of RIMS and the only plea urged on their behalf is that till regular appointment on the post of Director, RIMS is made, the respondent No. 5 can continue to function as In-charge Director, cannot be accepted.

7. I have carefully considered the contentions raised on behalf of the parties and perused the documents on record.

8. It is not in dispute that appointment on the post of Director of the Institute is governed by Rejendra Medical Institute Rules, 2002. Rule 9 provides as under:

9. Appointment of Director of the Institute:-

(i) The minimum educational qualification and educational experience for the appointment to the post of the Director of Institute shall be the same as prescribed by the Medical Council of India for the appointment of Director for any Medical Institution. Non-medical personnel could not be appointed to the post of the Director.

(ii) The Post of Director shall not be promotional post. This post shall be filled by advertisement.

(iii) Appointment to the post of Director shall be done by the Governing Council after getting prior approval from the State Government. The Governing Council shall appoint the Director for three years. If work and character of post-holder remain satisfactory in the eye of the Governing Council, the Governing Council may increase their tenure by two years after getting prior approval of the state government provided their age is not more than 60 years.

(iv) The State Government may appoint first Director of the Institute for one year or till the appointment made by the Governing Council to the post of Director under Rule 9(iii), whichever is earlier.

(v) In the event of vacancy of post of the Director on account of his going on leave, resignation, superannuation or any other reasons, the Chairman of the Institute can appoint a Senior Professor (as Director) for a period of not more than six months to look after the works of the Director till appointment of new Director. Further, if the period of such appointment exceeds for more than six months, the prior approval of the state government shall be necessary for such appoint.

(vi) Notwithstanding any thing prescribed in these rules, if in view of the Institution, such act is in the interest of the public, there shall be right to remove

the Director of the Institute even before expiry of his tenure by giving three months advance notice in writing or in lieu of it, after giving pay and allowances for the three months.

9. Rule 9(i) provides that the minimum educational qualification and experience for appointment on the post of Director would be the qualifications fixed by the Medical Council of India for the post of Director of a Medical Institute. It is not in dispute that the Medical Council of India has framed Minimum Qualifications for Teachers in Medical Institution Regulation, 1998 whereunder, the academic qualification for Director of Medical Institution has been fixed as under:

"Should possess the recognised post graduate medical qualification and other academic qualification from a recognised institution with a minimum of ten years" teaching experience as Professor/Associate Professor/Reader in a medical college/Instt. out of which atleast five years should be as Professor in a department. Preference for these appointments may be given to the Heads of the Departments."

10. The petitioner has challenged the qualification of respondent No. 5 for appointment on the post of Director, RIMS. The appointment of respondent No. 5 as In-charge Director, RIMS, it is contended that, has been made as a temporary arrangement. In the counter-affidavit the respondent No. 5 has not claimed that he is eligible for appointment on the post of Director, RIMS. The respondent No. 5 has asserted that he has been given additional charge of Director, RIMS, in the exigency of work. However, it is not in dispute that the respondent No. 5 has continued to hold the charge of Director, RIMS for more than one year. Earlier, Advertisement No. 1 of 2014 was issued however, selection for the post of Director, RIMS could not be completed and now Advertisement No. 1 of 2015 has been issued on 11.06.2015 inviting applications for appointment on the post of Director, RIMS. Rule 9(v) contemplates a situation that the post of Director may fall vacant. It provides that if the post of Director falls vacant, till appointment of a new Director, the senior-most Professor would be appointed to act as Director though, such appointment shall not be more than six months. If the period extends beyond six months, prior approval of the State Government is necessary. In view of the specific provision under Rule 9(v) of the Rajendra Medical Institute Rules, 2002, appointment on the post of Director which fall vacant has to be made in terms of the said Rule. As noticed above, Rule 9(v) of the 2002 Rules provides for a temporary/working arrangement for appointment of Director, RIMS and therefore, adhoc/temporary arrangement must be in tune with Rule 9(v) of the Rules. It is well settled that adherence to statutory rules for appointment, is in the public interest. It is essential also for the reason that rule of law must prevail in a democratic set-up. The respondent-State of Jharkhand cannot plead and justify continuance of respondent No. 5 on the post of In-charge Director, RIMS as an ad hoc arrangement. Advertisement No. 1 of 2015 has been issued inviting applications for appointment on the post of Director, RIMS however, the submission of its counsel that respondent No. 5 may be permitted to continue till

appointment on the post of Director, RIMS is made, cannot be accepted. The respondents have not disclosed the reason for not resorting to Rule 9(v) of 2002 Rules. It is not the case pleaded by the respondents that there is no eligible person who can be appointed in terms of Rule 9(v). Considering the aforesaid facts, whether respondent No. 5 is eligible to hold the post of Director, RIMS or not and whether the petitioner is guilty of suppression of material facts, are not required to be examined. Though, the respondent-State of Jharkhand has taken a stand that respondent No. 5 has been given additional charge of Director, RIMS as an ad hoc arrangement, I am of the opinion that in view of specific provision under Rule 9(v), continuance of respondent No. 5 holding the post of Director, RIMS, additionally, is in breach of the statutory rules and thus, against the public interest.

11. In the result, the writ petition stands allowed. Impugned order dated 27.05.2014 is quashed. The respondent No. 4 is directed to select a person in terms of Rule 9(v) of Rajendra Medical Institute Rules, 2002 who shall act as Director, RIMS till regular appointment on the post of Director, RIMS is made. If the regular appointment on the post of Director, RIMS is not made within six months, the respondent No. 4 shall take necessary approval from the State Government. However, it is made clear that such person would not have any legal right to claim continuance beyond six months. Though, the petitioner has made specific prayer for a direction to the respondents to permit him to work as Professor-cum-Head of Department, FMT, RIMS, no prayer for reinstatement as Director, RIMS has been made. Moreover, his extension on the said post was only till further orders and accordingly, it is also clarified that the petitioner cannot claim reinstatement as Director, RIMS however, he may apply for his appointment as Director, RIMS, if eligible in terms of Advertisement No. 1 of 2015.