

Dr. Amrit Pattojoshi Vs Union Of India

Court: Jharkhand High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Constitution of India, 1950 Article 317, 318

Hon'ble Judges: M. S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Biswaroop Bhattacharya, Sambuddha Dutta, Vibhor Mayank, Anil Kumar, Abhijeet Kumar Singh

Final Decision: Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. This Public Interest Litigation has been filed challenging an advertisement issued vide Circulars dt. 14.12.2023 and dt.04.03.2024 by the Ministry of

Health and Family Welfare, Government of India (respondent No.2) for filling up the post of Director of the Central Institute of Psychiatry

(respondent No.7) and also the appointment made to the said post of one Dr. Tarun Kumar pursuant to the above advertisement.

2. The petitioner in the Writ Petition claims to be a renowned Psychiatrist currently serving as a Professor at Hi-tech Medical College, Bhubaneswar

and acting as a visiting consultant at various hospitals. He also claims to be holding a position of Honorary General Secretary of Indian Psychiatric

Society, Joint Secretary in SAARC Psychiatry Federation. He further claims to have been a Speaker and Researcher with numerous publications in

National and International journals.

3. We may however note that the petitioner does not claim that he had also applied for the said position of Director of the 7th respondent institute

along with Dr. Tarun Kumar and he should have been selected to the said post instead of Dr. Tarun Kumar.

4. Apart from this, Dr. Tarun Kumar, whose appointment to the post of Director of the 7th respondent institute is being challenged, is not made eo-

nomine a party in the writ petition though he would undoubtedly be affected if the Writ Petition is allowed.

5. Undoubtedly, he is a necessary party in an individual capacity in the writ petition and no reason has been assigned for his non-impleadment in the

Writ Petition.

6. Moreover, a reading of the pleadings in the Writ Petition indicate that the challenge to the appointment of Dr. Tarun Kumar is on the ground of his

alleged non-fulfillment of certain requirements for holding of the post of Director of the 7th respondent Institute prescribed under the National Medical

Commission Act, 2019 read with Teachers Eligibility Qualifications in Medical Institutes Regulations, 2022.

7. Thus, essentially a service dispute is being raised in the guise of a Public Interest Litigation.

8. The Supreme Court in several cases has held that Public Interest Litigation would not be maintainable in Service law cases and a pure and simple

Service dispute cannot be camouflaged in Public Interest Litigation (Bholanath Mukherjee and others Vs Ramakrishna Mission Vivekananda

Centenary College and others (2011) 5 SCC 464, Dr. Duryodhan Sahu and others Vs Jitendra Kumar Mishra and others (1998) 7 SCC 273,

Gurpal Singh Vs. State of Punjab and others(2005) 5 SCC 136, Girjesh Shrivastava and others Vs. State of Madhya Pradesh and others)

(2010) 10 SCC 707.

9. In Girjesh Shrivastava (4 supra), it was held that the persons who would be vitally affected by the judgment in the Writ petition should be made

parties and their non-impleadment goes to the root of the matter as it violates the principle of audi alteram partem.

10. However, counsel for the petitioner placed reliance on the judgment of the Supreme Court in the State of Punjab Vs. Salil Sabhlok and others

(2013) 5 SCC 1 to contend that a Public Interest Litigation can be entertained in even in a Service dispute.

In para 62 of the said judgment, the Supreme Court had however, held that position of the Chairperson of a Public Service Commission is a

constitutional position in view of Article 316 and 317 of the Constitution of India and not a mere statutory position.

Also in Para 84, the Supreme Court held that serious constitutional functions and obligations cast on the Chairperson and the Members of the Public

Service Commission would indicate that it is not possible to equate their appointment with a statutory appointment and slotting their appointment in the

category of a Service matter would reduce the Constitution also into just another statute, which is not permissible.

11. Admittedly, the position of Director of the 7th respondent institute is not a constitutional post like that of a Chairperson or Member of a Public

Service Commission.

12. Therefore, the said judgment cannot be relied upon by the petitioner.

13. The decision in University of Mysore and another Vs. C.D. Govinda Rao and another AIR 1965 SC 491 cited by counsel for petitioner is also not

applicable because in that case, the writ petition seeking a writ of quo warranto, was filed by rival candidate to the person appointed to the post in

question.

14. Since admittedly, the petitioner was not a rival applicant to the post of Director of the 7th respondent institute, the said decision cannot be of any

assistance.

15. Lastly, counsel for the petitioner also placed reliance on the judgment in Indian Banks' Association, Bombay and others Vs. Devkala

Consultancy Service and others (2004) 11 SCC 1.

In that case, a Chartered Accountant-firm had challenged in a Public Interest Litigation a circular letter dt. 02.09.1991 issued by the Reserve Bank of

India advising all scheduled commercial Banks that incidence of interest tax under the Interest Tax Act, 1974 should pro rata be passed on to the

borrowers, and on the basis of the said circular letter, the Indian Bank Association advised the Banks that the rate of interest be loaded with interest

tax of 3% and rounded upto the next higher 0.25%.

In that context, the Supreme Court held that a person having knowledge in the subject matter of the lis and having an interest therein such as

Chartered Accountant-firm as contradistinguished from busy body, for the welfare of the people, can file a Public Interest Litigation.

The said decision does not relate to a service dispute and cannot therefore, be relied upon by the petitioner.

16. For the aforesaid reasons, we are of the opinion that the challenge to the appointment to the post of Director of the 7th respondent institute, and in

particular the appointment of Dr. Tarun Kumar, cannot succeed.

17. Therefore, the Writ Petition fails and is dismissed.

18. Pending interlocutory application, if any, stands disposed of.