

(2004) 05 JH CK 0004

Jharkhand High Court

Case No: Writ Petition (C) No. 5334 of 2003

Junior Doctor Association

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: May 14, 2004

Acts Referred:

- Constitution of India, 1950 - Article 243G

Citation: (2005) 2 JCR 507

Hon'ble Judges: P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: V.P. Singh, Rajesh Shankar and K.K. Singh, for the Appellant; A.K. Sinha, A.G. and R.N. Sahay, Senior Standing Counsel II, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. As we are satisfied that Public Interest is involved, this case is entertained and heard, keeping aside the objection about the locus standi of the petitioner.

Stand of the petitioner

2. The grievance is that the decision to recruit and the process adopted to select the doctors on contractual basis is wrong and against public interest. As no appointments were made since 1990, the Government should have taken steps for regular appointments as has been done for appointing about ten thousand teachers through the Jharkhand Public Service Commission, after creation of this new State. There is no justification for such hurry in making such ad hoc appointments in the field of public health. The cadre bifurcation pursuant to the Bihar Reorganisation Act, 2000 of the Medical Officers has almost been finalized and the tentative list has been published. The State cadre posts are sought to be filled up by District Level Selection Committees. Fixing upper age limit as 60 years is also contrary to the law

regarding State services where the maximum age of a State Government servant is 58 years. The chances of unfair and improper selection at the District Level Selection Committees are more. The process of selection is faulty and a fair and proper selection is not possible. Without improving the infrastructural facilities, there is no justification for such recruitment as the object will not be achieved and the public exchequer will be burdened without corresponding gain. Buildings and basic facilities are lacking. The Government should take immediate steps to fill up the vacancies in a regular manner if it is serious about providing medical facilities to the public, especially at rural level.

Stand of the respondents

3. The stand of the respondents is that there is dire need to provide medical facilities to the rural areas. Regular appointments will take time and, therefore, this ad hoc recruitment is being done. These are not regular appointments and, therefore, the District Level Selection Committees can select such candidates to avoid delay. The candidates interested in working in a district, will apply in that district and, therefore, later on there will be no delay in appointing them. The District Level Selection Committees have been constituted for speedy recruitment as the medical and health facilities in the State are in very poor shape and the service requires immediately a good number of doctors to extend the health service facilities to the poor and needy people in the far flung rural areas of the State and keeping that in view and the availability of doctors, the present project was visualized. It is the need of the hour. Filling up the vacancies in a regular manner in the near future was not found possible, as the cadre bifurcation has not been finally done. The State is very serious about providing medical facilities and improving the welfare services etc. at the earliest. The recruitment is a stop gap arrangement before making the regular appointments. When the regular appointments will be possible or if the work of the person recruited, is not found satisfactory, they will be removed on three months' notice. The maximum age of 60 years is fixed for having experienced persons also.

4. The learned Advocate General submitted that in view of Article 243G read with Item 23 of Schedule XI of the Constitution of India and the Jharkhand Panchayat Raj Act, the Panchayats are authorized to establish and maintain the health centers. The selection process is completed on 12th November, 2003. In these circumstances, he submitted that the writ petition is against public interest and should be dismissed. He also submitted that a better policy or process is no ground for interfering with the impugned recruitment. However, if any individual raises any grievances about unfair and Improper selection in a particular case, then the same can be looked into. If the process of selection already undertaken is not approved by this Court, it will create problems for all.

5. Mr. Delip Jerath, learned counsel appearing for one of the selected candidates submitted that the candidates who have been selected, will suffer if the process is disapproved by this Court.

The Background facts

6. On 30.10.2003, the impugned notice was published inviting the interested persons to apply for recruitment to the post of doctors and para-medical staff, on contractual basis for two years on the terms and conditions mentioned therein. It appears that a representation was made by the petitioner on 5.11.2003 to the Health Secretary, Government of Jharkhand, questioning the said decision and the process of selection. On 6.11.2003, this writ petition as filed. On 8.11.2003 a notice supplementary to the earlier notice for selection was published. When this writ petition as taken up on 12.11.2003, it was referred to the Division Bench.

7. It appears from the notices that the criteria for appointment on regular basis will apply to such recruitment also. The contract can be terminated by either party on "three months" notice and the contract will be no basis for claiming regular appointment. The candidates will have to apply before the District Level Committee. The Committee consists of the Deputy Commissioner as the Chairman, the Civil Surgeon-cum-Chief Medical Officer of the District as Member Secretary, one representative of the Indian Medical Association, District Welfare Officer and one representative of Scheduled Tribe/Scheduled Caste of the rank of Additional Collector.

8. It was argued by learned Advocate General that the State was anxious to provide medical facilities to the rural and urban population and it was that anxiety that led it to resort to the present contractual appointments without waiting for a proper selection process to be gone through. It was submitted that there has been no recruitment of doctors after the year 1990 and if, in such a situation, the Government took a decision to resort to contractual appointments, the bona fides of the decision could not be doubted. Normally, the argument could have been found to be appealing if the Government had also exhibited equally the anxiety to find out proper persons or duly qualified persons for appointment by getting them selected by a panel of persons, competent in that behalf. There was no explanation on the side of the State why a centralized panel consisting of medical experts could not have been entrusted with the task of making the selection from among the candidates appearing for interview and why a uniform standard for selection was not set. Equally baffling is the decision to have the doctors selected by the District Committees in various districts leaving only one doctor in the body, to select his own colleague as it were. It is a State Cadre Post and the selection Committee consists of the Deputy Commissioner as the Chairman, the Civil Surgeon-cum-Chief Medical Officer of the District as Member Secretary and an officer of equal rank as a person to be selected, one representative of the Indian Medical Association and one Welfare Officer for Scheduled Tribes/Scheduled Casts. The field of medicine is a specialised field and a doctor serves a great public need and unless he has competence in the field the consequence of his being entrusted with the tasks would be disastrous. Should not a State apparently having great concern for public

health we go by its assertion not also exhibit equality a concern for selecting the proper people? It is not merely a question of a better method being available for selection. It is a question of public health and safety of those who are expected to be treated by the doctors appointed. Having waited from the year 1990, we see no reason why the Government could not have resorted to a written test and interview conducted through the State Public Service Commission for a proper selection. Learned counsel for the petitioner submitted that this was a gimmick in connection with the so called celebration of the Third Anniversary of the birth of the State and it had nothing to do with concern for public health or for providing medical facilities to the rural people. Counsel pointed out that the appointments are made to State Cadre Posts and the appointments are made even to Institutions and Hospitals in towns including the capital town of Ranchi. He also pointed to the alleged improprieties in selection and referred to the selection made in Deoghar of a person who was the daughter of one of the selectors himself.

9. In the normal circumstances, the State should not have embarked upon an appointment of more than 1300 doctors on contract basis. Even if they wanted to make such large scale appointments it behavod the State to ensure to proper uniform selection of the candidates to be appointed on contract, albeit for two years, with a right in each other to terminate the contract by three months notice. No yard stick is provided. No proper and uniform guideline is prescribed for selection. It varies from District to District and from Committee to Committee. Since the method of selection adopted is seen to be so varied as to border on arbitrariness, we are left with no option but to strike down the selections made.

10. Mr. Jerath appearing for one of the candidates selected at one of the centers, argued that pending the writ petition the process of selection has been completed, the list has been published and some doctors have even executed bonds and some might have even entered the service and hence, this Court should not interfere. We cannot appreciate this submission. This writ petition was filed in this Court on 6.11.2003. Copy was served on the Advocate General on 6.11.2003. The interview is shown to be held on 10.11.2003, 11.11.2003 and 12.11.2003. On a mention, the writ petition was directed to be listed on 12.11.2003. But it appears that the writ petition came up for admission on 11.11.2003 before one of us (R.K. Merathia, J). His Lordship heard the arguments and was inclined to pass an order to hold up the actual selection until the disposal of the writ petition but permitting the interviews which had started on 10.11.2003 to go on. But on the request of the learned Advocate General who informed the Court that the matter was to come up only on 12.11.2003 and he had sought instructions on that basis, the learned Judge adjourned the proceedings to 12.11.2003. On that day, after hearing both sides, the case was referred to a Division Bench since the learned Judge felt that the matter is of general public interest and should be heard by a Division Bench. This order of the learned Judge was brought to the notice of the Chief Justice on 12.11.2003 itself and it was ordered that the case be listed on 14.11.2003 before the Division Bench. Thus,

the matter came up before the Division Bench on 14.11.2003 and the matter was heard in full, the same day. Thus, the Court had dealt with the case with utmost expedition.

11. Normally, the State should have, after completing the interviews, postponed further action until the matter was finally disposed of by the Court. No doubt, there was no formal order staying the selection or appointment. But the fact remains that the whole process was under challenge and on the last day of interview, dated 12.11.2003, the learned Single Judge had referred the case to a Division Bench in view of the importance of the question canvassed therein. In such a situation, one would have expected the State which had appeared through the Advocate General before the learned Single Judge, to desist from entering into formal contracts and from making appointments until orders were obtained one way or the other from the Division Bench. Be it marked that the case came up before the Division Bench on 14.11.2003 itself. Obviously anything done after the filing of the writ petition on 6.11.2003 can only be subject to the result of the writ petition. No separate order in that behalf is necessary. That is the principle of jurisprudence. There is also the question of propriety involved in proceeding further after the interviews were completed apparently with a view to over-reach any decision that may be rendered by the High Court. Such an attitude has to be condemned and any action taken on the basis of such an approach, cannot be upheld. Therefore, the argument of Mr. Jerath that it is too late for the High Court to do anything in the matter has only to be rejected. No rights will accrue to the candidates allegedly selected or with whom contracts have been entered into subsequent to the filling of the writ petition, since the whole process would be subject to the decision in the writ petition. On the aspect of propriety, it appears to us that the State Government should have completed the interview and awaited the decision of the High Court or further orders from the High Court before proceeding further with the process. This argument of *falt accompli* raised by Mr. Jerath cannot, therefore, prevail. We must remind counsel that it is not as if this Court could not have stayed the whole process when the writ petition originally came up. Merely because this Court thought that since the interviews have been fixed, people need not to be inconvenienced by the interviews being stayed, would not enable either the candidates allegedly selected or the State to contend that no effective order can be passed by the High Court in this writ petition.

12. Mr. V.P. Singh, learned counsel for the petitioner argued that there was rampant corruption in the selection made in different districts by different bodies and the standards used were totally arbitrary and varied from place to place. Learned Advocate General refuted this contention and submitted that even if there may be individual cases as alleged by the counsel for the petitioner, that would not enable the Court to nullify the entire selection process and the question like the one sought to be raised by the learned counsel for the petitioner has to be decided in individual cases based on the materials that are made available in that case. We find that it is

neither necessary nor desirable to go into that question in this writ petition at this stage especially since we find that even otherwise the process requires to be interfered with.

13. Nothing has been brought before us to show that there are sufficient and good infrastructural facilities for achieving the goal by recruiting doctors and par medical staff on contractual basis. The Government should undertake the process of regular appointments as early as possible. Equality before the law, demands a fair selection. Right to life demands proper treatment. Keeping in view these basic principles, if the Government thinks that it is necessary and urgent, it can make a stop gap arrangement but at the same time it must ensure that the infrastructure is improved and recruitment is fair and proper so that the purpose can be achieved. We find that the selection process now adopted is not proper. A team of proper qualified and impartial persons should be there to select the candidates centrally and then post them at the required places. Of course, the preference regarding districts can be asked of the candidates and the selection can also be done district-wise. Even if some criteria are fixed for selection by the District Level Committees, the yardstick of selection is bound to vary widely. Therefore, in our view, for a proper and fair selection a State Level Central Committee should do the exercise, if needed. This is not for a better selection but this is for a proper and fair selection.

14. We are not impressed with the argument advanced and behalf of the respondent-State that as the panchayats are authorized to establish and maintain the Health Centres etc., the District Level Committee can be said to be the proper body to make selection in such recruitments. After all, proper health care of the public is involved and that too where the people are innocent. The selection is also not confined to panchayat. It is a contractual appointment State wide to cadre posts.

15. The claim that this method is being adopted since the Cadre Division as envisaged by the Bihar Reorganisation Act has not been completed does not appear to be justified. The vacancies have been identified and the selection is for 1300 posts. There was no difficulty in ascertaining this need. Equally, a proper selection process could have been set in motion and a list prepared and appointments made as per need.

16. In the result, we quash the impugned notice dated 30.10.2003 and 8.11.2003 and the process of selection undertaken thereupon. The Government is directed to proceed with the regular appointments at the earliest. However, a stop gap arrangement can be made, but it must be ensured first that infrastructural facilities are available and the object is achieved by a uniform and proper recruitment. The Government also must ensure that a fair and proper selection is done by a State level body with competent and proper persons.

The writ petition is thus allowed.