

(2002) 06 JH CK 0048

Jharkhand High Court

Case No: LPA No. 10 of 2001

Dr. Nandjee Singh

APPELLANT

Vs

State of Jharkhand
and Others

RESPONDENT

Date of Decision: June 13, 2002

Hon'ble Judges: M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench: Division Bench

Advocate: N.N. Tiwari, R.R. Tiwari and O.P. Tiwari, for the Appellant; B. Poddar, AAG,
Deepak Kumar Prasad, JC to AAG and Nisha Thakur, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 20.11.2001 passed in WP(S) No. 3970/2001 [see 2002 (1) JCR 182 (Jhr)] whereby the writ petition filed by the petitioner-appellant, Dr. Nandjee Singh challenging the notification of his transfer from teaching post of the Medical College to the Health Centre as a Medical Officer, has been dismissed.

2. It appears that the impugned notification was also challenged by another two doctors, namely, Dr. Ram Sewak Sahu and Dr. Satya Ram Singh in WP(S) No. 4028/2001 and 4054/2001 [see 2002 (1) JCR 182 respectively and all these writ applications were disposed of by the impugned judgment. However, this appeal has been filed only by Dr. Nandjee Singh challenging the impugned judgment passed by the learned Single Judge.

3. The case of the appellant. Dr. Nandjee Singh is that he completed MBBS in 1973 and was appointed as a Civil Assistant Surgeon, Chapra through Bihar Public Service Commission in 1976. He did his M.D. in Pathology in January, 1982 and by a notification dated 8.2.1982 issued by the Health Department, Government of Bihar, he was posted as Bio-Chemist in Artificial Kidney Unit, Rajendra Medical College &

Hospital, (shortly RMCH). The appellant was sent for specialised training in Nephrology in PGI Chandigarh on Government expenses for which an order was issued by the Government of Bihar vide Memo No. 56 dated 28.9.1984. Appellant's further case is that in 1985 he was sent from Chandigarh college to All India Institute of Medical Sciences for the said training where he had completed his said course on 8.9.1985. The petitioner-appellant was then posted in Artificial Kidney Unit, department of Medicine. RMCH and was allotted ward teaching classes by the Head of the Department of Medicine. The petitioner started getting teaching allowance at the rate of Rs. 75/- per month. The petitioner contended that he was registered as a teacher candidate by the Government as far back as in 1984 for doing M.D. in Medicine. According to the writ petitioner the post of Bio-Chemist in Artificial Kidney Unit in RMCH was a teaching post in which the appellant was posted since 1982. It is stated that in 1997 department of Health, Medical Education and Family Welfare, invited option from the teaching staffs of the Medical colleges for fixing their cadres and in response thereto the appellant who was holding a teaching post for about 20 years, opted for Bihar Medical Education Service Cadre by his letter dated 25.6.1997. petitioner's case is that despite the fact that the cadre of post has not yet been finalised either by the State of Bihar or the State of Jharkhand, the impugned notification was issued transferring the petitioner and other similarly situated persons from teaching post in the Medical Colleges to the post of Medical Officer, Health Centre. The petitioner, therefore, claimed that the impugned notification transferring the petitioner from teaching post to Medical Health Centre is absolutely illegal, arbitrary and mala fide.

4. The case of the respondent-State is that the Bihar Medical Teaching Service Cadre & Appointment on Cadre Post Rules, 1997 very clearly prescribes that the post of Resident Doctors (RMO/RSO), Registrar, Assistant Professor, Associate Professor, Principal, Deputy Director (Medical Education) Joint Director-cum-Controller of Examination, Additional Director or Director (Medical Education) were brought in the Cadre of Bihar Medical Education Service since 1.4.1997 and, therefore, the post of Bio-Chemist cannot be said to be a teaching post. It is contended that as the petitioner was not brought in the cadre of "Bihar Medical Education Service" there was no need for the petitioner to give any option under the rule for his retention in the Bihar Medical Education Service Cadre. As the petitioner has not been brought in the cadre of Bihar Medical Education Service, he has no right to claim for his posting against a teaching cadre post of Bihar Medical Education Service.

5. The learned Single Judge, in the impugned judgment, has held that neither the post of Bio-Chemist was brought in the cadre of Bihar Medical Education Service nor the petitioner brought any document to suggest that he is performing the teaching job as Bio-Chemist in Artificial Kidney Unit. The learned Judge, therefore, held that the petitioner cannot claim to be a teacher and consequently the notification cannot be said to be illegal and unconstitutional. The learned Single Judge held 2002 (1) JCR

"So far as the post of Bio-Chemist is concerned, no specific document brought on record to suggest that the post is a teaching post, though it appears that the petitioner, Dr. Nandjee Singh is performing the teaching job, as Bio-Chemist in Artificial Kidney Unit of General Medicines Deptt. RMCH, Ranchi. The letter dated 8th June. 1994 issued by the Principal, RMCH, Ranchi (Annexure 5) to WP(S) No. 4054 of 2001 while deals with teaching posts, petitioner. Dr. Satyaram Singh has been shown to be a Medical Officer of a Mobile Unit.

None of the aforesaid posts of Bio-Chemist or Medical Officer as distinct from Resident Medical Officer have been shown as teaching post of Medical Institutions in the regulation framed by the Medical Council of India.

In absence of relevant evidence, it is not possible for this court to declare whether Dr. Nandjee Singh and Dr. Satyaram Singh are teachers in Medical Institutions or not, though they may be teaching the students.

In this context it may be mentioned that some times teaching work is also taken from the members of the Health Service while persons working on supernumerary posts."

The learned Single Judge further observed : 2001 (1) JCR 184

"Further the posts against which the petitioners were functioning as on 1st April, 1997/21st May, 1997 having not brought in the cadre of Bihar Medical Education Service, they have no right to claim posting against a teaching post of Bihar Medical Education Service, nor can oppose to their transfer, if made against parent cadre post of State Health Service (now Jharkhand State Health Service), as made vide notification dated 18th August, 2001."

6. We have heard Mr. N.N. Tiwari, learned counsel appearing on behalf of the appellant and Mr. Deepak Kumar Prasad, JC to learned AAG.

7. Mr. Tiwari has drawn our attention to a series of documents annexed with the writ petition in support of the case of the appellant, Dr. Nandjee Singh that he had been holding a teaching post for the last 20 years.

8. Admittedly the appellant was appointed as a Civil Assistant Surgeon through Commission in 1976. He did his M.D. in Pathology in 1982 and by notification dated 8.2.1982 issued by the Health Department, Government of Bihar, he was posted as Biochemist in Artificial Kidney Unit, RMCH, Ranchi. The appellant was sent for specialised training in Nephrology in PGI, Chandigarh on Government expenses in 1984. In 1985 he was sent from Chandigarh College to All India Institute of Medical Sciences for the said training and after completion of the training the appellant was posted in Artificial Kidney Unit, Department of Medicine. RMCH and was allotted ward teaching classes by the Head of the Department of Medicine. In 1984 when the appellant was registered as a teacher candidate by the Government for doing M.D. in medicine, some objection was raised about his registration as a teacher

candidate. The dispute was finally settled by the Supreme Court in SLP filed by the appellant being SLP No. 11584/90 (Civil Appeal No. 2909/93). The controversy whether the appellant was entitled to appear for M.D. examination as a teacher candidate, was decided by the Supreme Court in favour of the appellant. A copy of the judgment passed by the Supreme Court was made Annexure 7 to the writ application. The Supreme Court held that the post of Bio-Chemist in Artificial Kidney Unit of RMCH is a teaching post and the appellant was posted on that post since 1982. Their lordships observed as follows :--

"It must be remembered in this connection that the State Government itself by its letter of 17th September, 1984 written to the Principal, RMC and had asserted that the post which the appellant was holding, viz. that of Bio-Chemist in the Artificial Kidney Unit of RM College and Hospital, was a teaching post and that the appellant was posted to that post since 12th February, 1982. The letter further proceeded to state that the Principal and the Head of the department of Medicine of RM College and Hospital had also given written certificate that the appellant was posted on a teaching post and, therefore, his teaching experience would be counted with the Kidney Unit. A request was, therefore, made in the letter that the appellant's application for his registration as M.D. General Medicine candidate (teacher) be forwarded to the University and further action in that regard be intimated to the Regional Additional Commissioner-cum-Principal Secretary. There is no dispute further that according to the rules, 5 years' teaching experience in the college and the hospital (which is always combined with practice in the hospital) is considered equivalent to one years' house-job experience. In the face of these facts, it is difficult to understand that the stand taken by the State Government in the present case is correct. There is no doubt in our mind that some interested persons were to obstruct the appellant's career on one ground or the other. The State Government should not become a party to this game.

In the circumstances, we allow the appeal, set aside the decision of the High Court and hold that the appellant was qualified to appear for the M.D. (General Medicine) Examination as a teacher candidate. Hence, we direct the University to declare his result in M.D. (General Medicine) examination for which he has appeared forthwith. There will be no order as to costs."

9. It has been categorically stated by the appellant that he has been holding a teaching post for the last 20 years and he had opted for Bihar Medical Education cadre but the cadre was never finalised by the State of Bihar or even by the State of Jharkhand,

10. The respondents, in their counter affidavit, have not denied or disputed these facts. We are, therefore, of the view that the learned Single Judge has not correctly appreciated the case of the appellant. The learned Single Judge is not correct in law in holding that the appellant did not bring any evidence on record to suggest that he is holding a teaching post. In the light of the judgment passed by the Supreme

Court the learned Single Judge was not correct in taking a different view that the post of Bio-Chemist in Artificial Kidney Unit of General Medicine is not a teaching post.

11. As noticed above, the appellant has been continuously working for the last 20 years on the teaching post and he has been getting teaching allowances. Not only that it was clarified by the Government by issuing a circular that sanctioned teaching post held for more than 20 years was equivalent to the post of Resident/Registrar which are teaching posts. The learned Single Judge is not correct in law in holding that the post of Bio-Chemist in Artificial Kidney Unit has not been brought in the cadre of Bihar Medical Education Service.

12. Considering the entire facts of the case and the law discussed hereinabove, the judgment passed by the learned Single Judge cannot be sustained in law. This appeal is, therefore allowed and the impugned judgment passed by the learned Single Judge is set aside. We, accordingly, hold that the appellant was holding a teaching post and, therefore, the notification dated 18th August, 2001 transferring the petitioner-appellant outside the Medical Teaching Cadre is illegal and unjustified and, consequently, the said notification so far the petitioner/appellant is concerned, is quashed.

H.S. Prasad, J.

13. I agree.