

Dr. Arun Kumar Agrawal And Ors. Etc vs State Of Bihar And Ors on 26 April, 1991

Equivalent citations: 1991 AIR 1514, 1991 SCR (2) 491, AIR 1991 SUPREME COURT 1514, 1991 AIR SCW 1273, 1991 (1) SCC(SUPP) 287, (1991) 2 JT 352 (SC), 1991 SCC (SUPP) 1 287, 1991 (2) JT 352, 1991 (2) UJ (SC) 224, 1991 UJ(SC) 2 224, 1991 (2) BLJR 801, 1991 BLJR 2 801, (1991) 2 SCR 491 (SC), (1991) 62 FACLR 821, (1992) 2 LABLJ 321, (1991) 2 LAB LN 59, (1991) 2 PAT LJR 58, (1991) 2 SERVLR 772, (1991) 16 ATC 931, 1991 SCC (L&S) 1060, (1991) 2 CURLR 184

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Bench: N.M. Kasliwal, M.M. Punchhi

PETITIONER:

Dr. ARUN KUMAR AGRAWAL AND ORS. ETC

Vs.

RESPONDENT:

STATE OF BIHAR AND ORS.

DATE OF JUDGMENT 26/04/1991

BENCH:

KASLIWAL, N.M. (J)

BENCH:

KASLIWAL, N.M. (J)

PUNCHHI, M.M.

CITATION:

1991 AIR 1514 1991 SCR (2) 491

1991 SCC Supl. (1) 287 JT 1991 (2) 352

1991 SCALE (1) 812

ACT:

Civil Services-Bihar Medical Service-Post of Assistant Professor of Neurosurgery-Appointment-Panel prepared by Selection Committee approved by Government-Special, Parent speciality and super speciality-Distinction of-Selection of appellant-Justification of.

HEADNOTE:

An advertisement was made for an appointment to the post of Assistant Professor in Neurosurgery in the Patna Medical College and Hospital. In the panel prepared by the Selection Committee, which was approved by the State Government, the appellant was placed at No. 1 and the Respondent No.5 was placed at No.4.

The Respondent No.5 filed a Writ Petition in the High Court challenging the panel, contending that he alone was eligible for being appointed as Assistant Professor Neurosurgery in terms of the advertisement.

The State Government stated in its counter that the appellant had post-graduate qualification of M.Ch. in Neurosurgery and research work and working experience in Neurosurgery and he got preference vide clause 19 of the advertisement; whereas Respondent No. 5 neither had post-graduate degree nor three years teaching experience.

The allegation of Respondent No. 5 that the degree of M.Ch. in Neurosurgery obtained by the appellant was not recognised, was not accepted by the State Government.

Construing the clauses of the advertisement, the High Court found the appellant eligible for the post of Assistant Professor, however, it held that the appellant secured 14 points while the Respondent No. 5, 28 points and as such the appellant was not entitled to any preference and allowed the Writ Petition of Respondent No.5, against which the appeal has been filed.

The controversy before this court is limited between the appellant and the Respondent No. 5.

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Allowing the appeals, this Court,

HELD :1. The appellant is holding a degree of M.Ch. in the super speciality of Neurosurgery itself as well as research work and working experience in the super speciality. Respondent No. 5 is M.S.(General Surgery). None of the persons is having more than three years teaching experience in order to get an over-riding preference. [499B-C]

2. The Selection Committee consisting of experts in Neurosurgery considered the appellant more meritorious and he was placed at No. 1 in the panel and the State Government also approved the same. [499C-D].

3. The post of Assistant Professor is a teaching post in the subject of Neurosurgery and it is beyond comprehension as to how the Respondent No. 5 who is only M. S.(General Surgery), can teach candidates for the degree of M.Ch. (Neuro Surgery), which is much higher degree than M.S for even a person having M.S degree has to further pass M.Ch. Part II and Part III examinations before obtaining M.Ch. degree in Neuro Surgery [499A-B].

4. While the MBBS is a basic degree, its classification in different branches can be labelled as parent specialities like Orthopaedics, General Surgery, Medicine etc. The parent specialities are manned by those who are recipients

of post graduate degree in that particular speciality like M.S (General Surgery), M.S. (Orthopaedics) M.D. (Medicine). Further growth of medical sciences resulted into more and more super specialities, as for example, Neuro Surgery , Paediatrics, Surgery, Plastic Surgery , Neurology, Cardiology etc. The candidate who complete the course of super specialities are conferred with the degree of M.Ch. (Master of Chirurgery)in case the super specialities relate to surgery, and the degree of D.M. (Doctor of Medicine) if the same relates to Medicine. [497A-C].

JUDGMENT:

CIVIL APPELLATE JURISDICTION (Civil Appeal Nos. 2069- 2070 of 1991).

From the Judgement and Order dated 20.12.1990 of the Patna High court in C.W.J.C No. 7789 of 1988.

Kapil Sibal, Ranjit Kumar, B.B. Singh, Harish N. Salve and L.R. Singh for the appearing parties.

The Judgement of the Court was delivered by KASLIWAL, J. Special Leave granted.

These appeals by Dr. Arun Kumar Agrawal (appellant) and the State of Bihar are directed against the Judgement of the Patna High Court dated 20th December, 1990. The dispute relates for an appointment on the post of Assistant Professor in Neurosurgery in the Patna Medical College and hospital, Patna in pursuance to an advertisement dated 19.12.1987. The Selection Committee prepared a panel on 4.7.1988 which was approved by the State Government on 26.9.88. In the aforesaid panel the appellant was placed at No.1 Dr. Chandra Shekhar Kashyap No.2, Dr. Shankar Bhuwan Prasad at No.3 and Dr. Chandra Mohan Jha at No.4. Dr. Chandra Mohan Jha filed a writ petition in the High Court challenging the above panel on grounds inter alia that Dr. Agrawal, Dr. Chandra Shekhar and Dr. Shankar Bhuwan Prasad placed above him in the panel did not fulfil the minimum eligibility criteria laid down in the advertisement for the appointment to the post of Assistant Professor, Neurosurgery. His contention was that he ought to have been placed at No.1 and he alone was eligible for being appointed as Assistant Professor, Neurosurgery in terms of the advertisement. It may be mentioned at this stage that the controversy before us is between the appellant and Dr. Chandra Mohan Jha. Respondent No. 5 . In order to appreciate the controversy it would be proper to reproduce the relevant provisions of the advertisement as translated in English and extracted in the Judgement of the high Court:

Clause 2(C) :

"For the post of Assistant Professor and Registrar it will be essential for the candidate to have obtained in the same speciality for which the application is being made, M.D., M.S., F.R.C.S. (U.K.), M.R.C.O.G, (U.K.) or American Board of speciality or any other post graduate qualification, considered by the Medical Council of India as equivalent

to the aforesaid degrees. Post graduate qualification obtained from the U.K. after November 11, 1976 shall not be granted recognition".

Clause 3 "For Assistant Professor: (a) Resident/Registrar in the same speciality or officers having worked on the two posts in an educational hospital, having worked on the two posts in an educational hospital, having obtained recognition from the Medical Council of India for conducting M.B.B.S course, alone can apply. (b) Service on any other accepted/acknowledged teaching post (Jr. Surgeon/Jr. Physician) in the same subject for which the application is being made shall be considered equivalent to Registrar/Resident.(c) In addition to the other conditions Resident/Registrar in the concerned subject or medical officers having a minimum of three years experience on the two posts shall alone be eligible to apply. This, however, shall not be essential for Radiology, Skin & V.D. , Anaesthesia, Neurology, Neurosurgery, Plastic Surgery or any speciality to be constituted in future, nor shall it be essential to obtain the prescribed minimum of 15 points for being posted in these subjects. In these subjects, however, in case one or more than one such candidates are available who have obtained three years teaching experience in the concerned speciality, than in that situation, the Medical Officers having such experience shall be entitled to foremost consideration for appointment and they shall be appointed although they might have obtained less points than those candidates who do not possess three years teaching experience.

Clause 3(f) (Cha) :

"It is essential to obtain 15 points for appointment to the post of Assistant Professor, however, for the specialities enumerated in the aforesaid clause 3 the minimum point shall be 6. In case, candidates obtaining the aforesaid points are not available in the desired number then the Government, in order to fill up the vacancies, shall have the right to relax the minimum points".

Clause 18 :

"For the post of Registrar and Resident Doctor in the units (specialities) of Cardiology, Cardiothoracic Surgery, Neuro Surgery, Gastro Entrology, Paediatric Surgery and Kidney in addition to the necessity of fulfilling the conditions, contained in clauses 4 and 6 respectively, preference shall be given for working experience in the concerned subject."

Clause 19 :

"For appointment to the post of Assistant Professor in the aforesaid major super specialities, the degree and the teaching experience in the related basic (parent) subject as enumerated in clause 3 will be essential. However, those having degrees, research work or working experience shall be given preference."

The appellant passed his M.B.B.S. in 1977, did his internship in all subjects in 1977-78, one year's housemanship in general surgery in 1978-79 and another term of one year paid housemanship in

Neurosurgery. The appellant opted for M.Ch. five years degree course in 1980. He passed M.Ch. Part-I University examination in General Surgery in 1982, M.Ch. Part-II University Examination in Basic Neuro Science in 1984 and M.Ch. Part-III University Examination in Clinical Neurosurgery in 1985. He entered the State Health Services in 1983 and was posted on study reserve post in the department of Neurosurgery at Ranchi Medical College. He was posted at Hilsa Block in 1985 and deputed to do full work as Resident Casaulty Neuro Surgeon in September, 1987.

Dr. Chandra Mohan Jha passed his M.B.B.S. in 1974 and M.S. (General Surgery) in 1979. He joined Bihar Health Services through Public Service Comission on 20th April 1978 and remained in rural services upto 1983. He worked as Resident Surgical Officer (General Surgery) including Neurosurgery at DMCH Lahera Sarai from 23.8.83 to 26.9.86. He was then posted as Resident Surgical Officer (Neuro surgery) at Patna Medical College Hospital, Patna from 27.9.86 till the last date of making application i.e. 31.1.1988 . It is not necessary to mention further postings as we are concerned only upto the date of making application.

The State Government in its counter affidavit filed in the High Court inter alia stated that the appellant had post graduate qualification of M.Ch. in Neurosurgery and research work and working experience in Neurosurgery and , therefore, he got preference vide clause 19 of the advertisement. Dr. Chandra Mohan Jha , Respondent No. 5 neither had post graduate degree, nor three years teaching experience in the subject, i.e. Neurosurgery and, therefore, he was placed at Sl.No. 4 of the merit list. It was also stated that the course of M.Ch. in Neurosurgery was being run only in the Rajendra Medical College, Ranchi, which the State Government recognised, and, therefore, the allegations of the writ petitioner (Respondent No. 5) that the degree obtained by the appellant was not recognised, was baseless and incorrect.

The High Court held that according to the various clauses of the advertisement the requirements for the post of Assistant Professor in Neurosurgery could be broadly classified under three heads. The first related to the group to which the applicant must belong and that was confined to the cadre of the Medical Officers of the State Health Service and Junior Teachers and Medical Officers working in the erstwhile private medical colleges. The second condition related to the academic qualification required and according to that the candidate must have a post graduate degree in the same clinical subject, in which he had applied for the post of Assistant Professor. The High Court illustrated that a candidate for Assistant Professorship in Medicine must have a M.D. Degree in Medicine; a candidate for Assistant Professorship in general surgery must have a M.S. degree in general surgery and a candidate for Assistant Professorship in Neuro Surgery must have in Neurosurgery a post graduate degree. The third condition related to experience and called for a careful consideration. The High Court came to the conclusion as per sub clause (c) of Clause 3 that with the exception of Neuro Surgery and six other clinical subjects, a candidate in all other subjects had to have three years minimum teaching experience in the same clinical subject. Further, in the clinical subject of Neurosurgery and six other subjects, there was no minimum period of time attached to it but the only condition was that he ought to have working as a Resident/Registrar in the subject of Neurosurgery or the other six, as the case may be. While construing the two provisos of sub clause (c) of clause 3, the High Court found that a candidate for Neurosurgery having teaching experience for three years would receive the foremost consideration and shall be offered appointment. The

High Court further held that clauses 2 & 3 of the advertisement were to be understood without involving any distinction of speciality, parent speciality and super speciality. The said clauses treated all the clinical subjects at par and the requirements contained therein applied to each subject. The High Court found the appellant eligible for the post of Assistant Professor in terms of the advertisement. However, it held that the appellant secured 14 points while the Respondent No. 5, 28 points and as such the appellant was not entitled to any preference.

In order to appreciate the controversy, it would be proper to explain the courses of M.Ch. degree possessed by the appellant and the M.S. (General Surgery) degree possessed by Respondent No. 5. M.Ch. course was initiated in the Rajendra Medical College, Ranchi by the State Government. M.Ch. Part I examination consists of General Surgery and it is held after a period of two years. Part II and III courses of the M.Ch. degree consists of specialisation in Neuro Surgery. During the course of examination for Neuro Surgery in Parts II and III a candidate has to undergo viva voce test by experts in Neurosurgery. While the MBBS is a basic degree, its classification in different branches can be labelled as parent specialities like Orthopaedics, General Surgery, Medicine etc. The parent specialities are manned by those who are recipients of post graduate degree in that particular speciality like M.S. (General Surgery), M.S. (Orthopaedics), M.D. (Medicine). Further growth of medical sciences resulted into more and more super specialities as for example Neuro Surgery, Paediatrics, Surgery, Plastic Surgery, Neurology, Cardiology, etc. The candidates who complete the course of super specialities are conferred with the degree of M.Ch. (Master of Chirurgery) in case the super specialities relate to Surgery, and the degree of D.M. (Doctor of Medicine) if the same relates to Medicine. Now so far as the post graduate degree courses in parent specialities called M.S. or M.D. are concerned are of two years duration, whereas those for super specialities conferring degrees like M.Ch. and D.M. are of five years duration after internship. In many universities for obtaining degree of M.Ch. in the particular super speciality, one has to be M.S. in the related parent speciality and the course is of three years for such post graduate degree holders.

The Ranchi University kept the duration of M.Ch. course of five years and it was provided that if a person having basic degree of M.B.B.S. joined such course, he would have to pass M.Ch. Part I examination after devoting two years to General Surgery and only after passing the said M.Ch. Part I examination in General Surgery, he would be promoted to M.Ch. Part II and then M.Ch. part III course, to be completed in three years. This includes specialisation and research in basic Neuro Sciences and Clinical Neuro Surgery, to qualify for appearing at the university examination of M.Ch. Part II and Part III. The University, however, also kept the doors open for M.Ch. (Neuro Surgery) course, having a span of three years for those who were already holders of M.S. degree in General Surgery/Orthopaedics Surgery and they were directly admitted for M.Ch. Part II course and they had to study only for three years for M.Ch. Part II and Part III course. Initially M.Ch. courses were started by All India Institute of Medical Sciences only but later on other universities also followed the same. The Government of Bihar started M.Ch. (Neurosurgery) five years degree course in Rajendra Medical College, Ranchi in the year 1980 and only one seat was confined for this course every year in the whole state of Bihar. Since admission to M.Ch. Course in Neuro Surgery was made only after completion of one full year as house surgeon in Neuro Surgery, the course remained of four years duration thereafter.

The controversy has been raised before us that the M.Ch. degree course in Neurosurgery awarded by Rajendra Medical College, Ranchi University is not yet recognised for the purposes of Indian Medical Act, 1956 and a letter of Medical Council of India dated 27.2.1991 has been placed on record in this regard. Learned counsel for the respondent No. 5 has tried to contend that M.Ch. degree obtained by the appellant was of no value as the same has not been recognised so far by the Medical Council of India. We find no force in this contention, as this course was started by the Ranchi University in 1980 with the consent of Medical Council of India and the State of Bihar has recognised such degree imparted by the Ranchi University and even before this Court learned counsel appearing for the State of Bihar has admitted this position. We are not concerned in this case about the value of such degree for places outside State of Bihar, but so far as the present case is concerned which relates to the post of Assistant Professor in Patna Medical College and Hospital, Patna which post is under the Bihar Government, no such objection can be maintained by the respondent No. 5.

Before advertisement to the various clauses of advertisement it would be worth mentioning that the Medical Council of India in its recommendations published in 1983 for the posts in the department of Neuro Surgery has laid down as under :

Post Academic Teaching / Research Qualification Experience

- a) Professor M.Ch. Neurosurgery i) As reader in Neurosurgery for 5 years in medical college
- b) Reader -do- ii) As Lecturer in Neurosurgery for 5 years in a medical college
- c) Lecturer -do- iii) Requisite recognised postgraduate qualification in the subject.

d) T u t o r / R e g i s t r a r / R e s i d e n t

Thus for the post of Lecturer in Neuro Surgery a degree of M.Ch. in Neuro Surgery is necessary. Admittedly, the post of Assistant Professor in question before us is a teaching post in the subject of Neurosurgery and it is beyond our comprehension as to how the respondent No. 5 who is only M.S. (General Surgery), can teach candidates for the degree of M.Ch. (Neurosurgery) which is a much higher degree than M.S. and even a person having M.S degree has to further pass M.Ch. Part II and Part III examination before obtaining M.Ch. degree in Neurosurgery.

The appellant is holding a degree of M.Ch in the super speciality of Neuro Surgery itself as well as research work and working experience in the super speciality. Respondent No. 5 is M.S (General Surgery) . None of these persons is having more than three years teaching experience in order to get an over riding preference. It is not in dispute that the Selection Committee consisting of experts in Neurosurgery considered the appellant more meritorious and he was placed at No. 1 in the panel and the State Government also approved the same.

A reading of exceptions in sub-clause (c) goes to show that for a person having a super speciality in the subjects mentioned therein which included Neurosurgery, it was not necessary to have experience but if there was a candidate available with such super speciality and three years experience, then he would be given preference. Sub clause

(f) of Clause 3 provided that for appointment to the post of Assistant Professor the minimum number of points required was 15 but for super speciality, as aforesaid, the minimum required points were six only. The Government of Bihar who issued the advertisement has also put the same interpretation to the Clauses of the advertisement. Though the High Court at one stage held that a candidate for Assistant Professorship in Neurosurgery must have a post graduate degree in Neurosurgery and having held that the degree of Neurosurgery of the appellant was recognised and valid, yet committed a serious error in giving preference to respondent No. 5, who was having a degree of M.S. in General Surgery over the appellant who was holding much higher degree of M. Ch in the super speciality of Neurosurgery itself. The High Court further committed an error in holding that clause 2 and 3 of the advertisement did not evolve any distinction of speciality, parent speciality and super speciality. A mere perusal of the said clauses would show that clause 2(c) and 3(c) does talk of parent speciality and super speciality and the finding of the High Court in this regard was clearly erroneous. Clause 3(c) carved out an exception in favour of super speciality vis a vis experience and, therefore, Clause 3 clearly speaks about super speciality. The High Court in our view committed a further error in not appreciating Clause 19 in its correct perspective. Clause 19 envisaged that preference would be given to a person who had a degree in super speciality along with research or working experience. Thus the appellant having a degree in super speciality and also having research work or working experience has been rightly given preference in the matter of appointment to the post of Assistant Professor in Neurosurgery over respondent No. 5 who did not have a degree in super speciality.

The State Government has also taken a clear stand that there was an acute shortage of qualified Neuro Surgeons in the State and therefore in order to induct qualified Neuro Surgeons, the Government had provided certain relaxation and priorities in the criteria for appointment to junior teaching posts in various medical colleges of Bihar, so that such candidates could be appointed. The appellant had been given preference by virtue of his having M.Ch degree in Neurosurgery with research work and working experience. The State Government has further stated that appellant is qualified Neuro Surgeon and has been rightly appointed as Assistant Professor of Neuro Surgery vide notification no. 1144 (17) dated 28.12.1990 and the appellant joined the said post on 28.12.90 itself.

Thus taking in view the entire scheme of the degree of M.Ch. and the relevant clauses of the advertisement, we are clearly of the view that the appellant was rightly put in the Select Panel at No. 1 and the Government of Bihar rightly appointed him on the post of Assistant Professor of Neurosurgery.

In the result, we allow the appeals, set aside the order of High Court of Patna dated 20.12.90 and dismiss the writ petition filed by Dr. Chandra Mohan Jha respondent No.

5. In the facts and circumstances of the case, there would be no order as to costs.

V.P.R.

Appeals allowed.