

Dr. Thingujam Achouba Singh vs Dr. H. Nabachandra Singh on 17 April, 2020

Equivalent citations: AIRONLINE 2020 SC 616

Author: R. Subhash Reddy

Bench: Mohan M. Shantanagoudar, R. Subhash Reddy

C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc.

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2250-2252 OF 2020

[Arising out of S.L.P.(C)Nos.15093-15095 of 2017]

Dr. Thingujam Achouba Singh & Ors.

....A

Versus

Dr. H. Nabachandra Singh & Ors. etc.

....Resp

WITH

CIVIL APPEAL NOS. 2253-2255 OF 2020

[Arising out of S.L.P.(C)Nos.4853-4855 of 2019]

JUDGMENT

R. Subhash Reddy, J.

Civil Appeal Nos. of 2020 [Arising out of S.L.P.(C)Nos.15093-15095 of 2017]

1. Leave granted.

2. These civil appeals are filed, aggrieved by the judgment and order dated 27.03.2017 passed in W.P.(C) No.676 of 2016; W.P.(C)No.722 of 2016; and W.P.(C)No.766 of 2016, passed by the High Court of Manipur quashed advertisement dated 16.08.2016, inviting applications to fill up Date: 2020.04.17 15:26:08 IST Reason:

C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. the vacant post of Director in Regional Institute of Medical Sciences, Imphal.

3. The Regional Institute of Medical Sciences (hereinafter referred to as, 'RIMS'), Imphal is registered as a Society under the Societies Registration Act, 1860 in the year 1975. The said Society was initially registered as 'North Eastern Regional Medical College' and same was subsequently re-registered and changed its name as 'Regional Institute of Medical Sciences' (RIMS). The said Society runs one of the biggest public health care institutions in the north eastern region of India. The affairs of RIMS are governed and regulated by the Memorandum of Association (MOA), Rules, Regulations and Bye-Laws of the RIMS.

4. The post of Director of RIMS was last held by Dr. S. Sekharjit Singh and same has fallen vacant on 14.09.2015. Since then the post of Director was given to some senior professors of the Institute on In-charge basis from time to time. At first instance on 24.06.2015, an advertisement was issued by the Ministry of Health and Family Welfare, Govt. of India for filling up the post of Director, RIMS, Imphal by direct recruitment. In the said advertisement, the upper age limit was notified at 50 years, relaxable for Govt. Servants/RIMS officers and specially qualified candidates and retirement age was notified at 62 years. The writ petitioners in W.P.(C)No.676 of 2016 and some others have made a representation dated 01.07.2015 to the Ministry of Health & Family Welfare, Govt. of India for changing the age of superannuation from 62 years to 65 years. All the petitioners in W.P.(C)No.676 of 2016 have C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. either completed the age of 62 years or are nearing completion of 62 years. They again submitted representations on 08.07.2015 and 16.07.2015. Having failed to get any positive response they approached the High Court by filing writ petition in W.P.(C)No.617 of 2015 for quashing the advertisement with a direction to respondents to fill up the post of Director, in accordance with Clause 12 of the Rules and Regulations of RIMS, by fixing the upper age limit for eligibility at 60 years. In the said writ petition, some interim orders were passed but in the meantime, Office Memorandum No.B/1734/96-RIMS(Pt.-I) dated 20.04.2016 was issued by the Director of RIMS notifying the age of superannuation at 65 years, with the approval of Ministry of Health & Family Welfare, Govt. of India. The said writ petition was withdrawn. It appears that, in view of the enhancement of age of superannuation to 65 years, another advertisement dated 16.08.2016 was issued by prescribing the upper age limit of 62 years in the eligibility criteria without any relaxation, for Government servants/RIMS officers, also.

5. When fresh advertisement dated 16.08.2016 was issued by the Ministry of Health & Family Welfare, Govt. of India inviting applications for the post of Director, writ petition in W.P.(C)No.676 of 2016 was filed before the High Court of Manipur, mainly on the ground that in the said notification relaxation for upper age limit was not provided for. As such, in the said writ petition relief was sought for quashing the advertisement dated 16.08.2016, so far as it relates to non-providing of relaxation in upper age limit as illegal, with a consequential direction to the C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. respondents to allow the petitioners therein to participate in the selection process. Questioning the very same advertisement, one other professor working in RIMS has filed another writ petition in W.P.(C)No.722 of 2016, mainly on the ground that the experience for eligibility, as notified in the advertisement dated 16.08.2016, was contrary to

the criteria prescribed by Medical Council of India. It was pleaded in the writ petition that as per the criteria prescribed by the Medical Council of India, to hold the post of Director, one must have minimum of ten years' teaching experience as Professor/Associate Professor/Reader, out of which at least five years should be as professor in a Department. It was his grievance that instead of notifying the criteria as mentioned above, the respondents have merely notified fourteen years of experience without there being a condition of five years of teaching experience as professor. In the said writ petition, relief sought is to quash the notification dated 16.08.2016 and to renotify the same afresh by prescribing the experience as prescribed by the Medical Council of India and other institutions under the control of Ministry of Health & Family Welfare, Govt. of India.

6. One other candidate who was serving as a professor also filed another writ petition in W.P.(C) No.766 of 2016 challenging the very same advertisement mainly pleading that the vacancy to the post of Director has fallen vacant on 14.09.2015, as such, said post has to be filled up by applying the Rules and Regulations which were existing on the date of vacancy. He was also one of the applicants who applied for C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. the post of Director in response to the advertisement dated 24.06.2015 and also advertisement dated 16.08.2016. It was his case in the writ petition that though he has applied in response to both the advertisements, he has noticed that rules regulating appointment of Director, pursuant to advertisement dated 16.08.2016 were different than the rules contained as per advertisement dated 24.06.2015. It was the case of the sole petitioner that as the post fell vacant on 14.09.2015, rules as on the date of vacancy ought to be applied to fill up the vacancy and not the amended rules. Incidentally, it was also pleaded that amendment to the rules was made without following due procedure as contemplated under Rules and Bye-Laws of the Society.

7. In all these writ petitions, affidavit in reply was filed by the respondent therein opposing the relief sought for and denying the various allegations made.

8. In spite of the fact that in all the three writ petitions, advertisement dated 16.08.2016 inviting applications to fill up the post of Director was under challenge, and no challenge to the Rules and Regulations governing the recruitment to the post of Director was made; the High Court however has gone into the validity of recruitment rules and recorded finding that rules were not amended as per the Rules, Regulations and Bye-Laws of the Society. Further, notification is quashed on the ground that after amendment to the Rules, such rules were not notified to public at large, as such, they were not in the public domain. The High Court has also held that the experience criteria as C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. prescribed by the Medical Council of India Regulations was not prescribed in the advertisement and such regulations would have a binding effect, for filling up the post of Director in RIMS. Consequently, further direction is issued to the competent authority to consider providing relaxation in respect of upper age limit or the qualification as sought by the writ petitioner therein.

9. We have heard Sri Sanjay R. Hegde, learned senior advocate appearing for the appellants and Dr. Rajiv Dhavan, learned senior advocate appearing for the RIMS and perused the impugned order and other material placed on record.

10. Before we proceed further, we deem it appropriate to refer to interim orders passed by this Court on 07.05.2018 and 24.07.2018. By order dated 07.05.2018, this Court permitted the respondent authorities to proceed with the selection to the post of Director, RIMS, in terms of the recruitment rules, as existed on the date of the order, making it subject to result of the Special Leave Petitions. By further order dated 24.07.2018, this Court permitted the competent authority to finalise the selection by declaring the result and make the appointment forthwith provisionally, making it subject to the result of the Special Leave Petitions.

11. During the course of arguments, we were informed that pursuant to aforesaid two orders passed by this Court, selection process is completed and one Dr. Ahanthem Santa Singh was appointed as C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. Director, RIMS on 05.10.2018, in terms of advertisement dated 16.08.2016, subject to the outcome of the present appeals. Same is also challenged subsequently before the High Court by way of writ petition in W.P.No.1181 of 2018 and same is pending consideration.

12. Having heard the learned counsel on both sides, we have carefully gone through the common impugned order passed by the High Court and other material placed on record.

13. At the outset, it is to be noticed that though, in none of the writ petitions, rules governing appointment to the post of Director was under

challenge, the High Court has gone into the validity of the Rules, as amended, and held that amendments to the Rules were not carried out by following the Rules, Regulations and Bye-Laws of the Society. The specific plea of the respondent authorities in the writ petitions, that there is no challenge to validity of the rules but same has been brushed aside by the High Court by merely stating that such an objection is of technical in nature. At this stage, it is relevant to note that such objection raised should not have been brushed aside by the High Court by holding that such objection is of a technical nature. In all these writ petitions in which common order is passed by the High Court, validity of advertisement dated 16.08.2016 alone was under challenge. We are of the view that the High Court has committed, an error in going into the validity of the Rules, in absence of any challenge to the same. In any event, it was the case of the respondent authorities that the rules governing appointment were amended by following the rules and such amendment was also C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. approved by the competent authority, of Ministry of Health & Family Welfare. Further, the fact of not notifying the amended rules has also been made basis for grant of relief by the High Court. In this regard, the High Court has held that not notifying the amended rules would strike at the root of the amendment process of the recruitment rules, as such, unless such rules are notified, the same cannot be enforced. It appears from the impugned order itself that it was the specific plea in the counter affidavit filed before the High Court that the said rules were not framed under Article 309 of the Constitution of India and further there is no specific provision in the Rules, Regulations and Bye-Laws of RIMS for notifying the same. It is true that in a public

institution, rules are required to be made available, but at the same time not notifying to public at large cannot be the ground to invalidate the notification, in the absence of any provision to that effect in the Bye-Laws of the Society or the Rules and Regulations framed for recruitment to the post of Director.

14. The High Court has also noticed that the experience for eligibility notified in the advertisement dated 16.08.2016 was not in conformity with the Medical Council of India Regulations. In reply affidavit filed before the High Court, while denying such allegation, it was pleaded that the qualifications and experience, as notified in the advertisement dated 16.08.2016, was in accordance with the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended from time to time), framed by the Medical Council of India. It was the specific contention of the respondent authorities that as the RIMS is affiliated to C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. Manipur University, the requirement as prescribed by Medical Council of India for Director of affiliated hospital should be applied. Such plea is not accepted by the High Court on the ground that there is no proper pleading in this regard. A copy of the Regulations titled as, “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended upto 11th March 2017) issued by the Medical Council of India is placed before us. As notified in the said Regulations, the academic qualifications and experience applicable for the post of Director of medical institutions differ from those applicable for the post of Director/Medical Superintendent of affiliated teaching hospital. For the post of Director in a medical institution, apart from the academic qualifications, ten years’ experience as Professor/Associate Professor/Reader in a medical college, out of which at least five years should be as Professor in a department, is prescribed. However, for the post of Director/Medical Superintendent of the affiliated teaching hospital the required experience is ten years only. It is the specific case of the respondents that the RIMS is an affiliated teaching hospital. In view of such stand of the respondents it cannot be said that the experience for eligibility notified in the advertisement dated 16.08.2016 is contrary to the Regulations of Medical Council of India. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.

15. For the aforesaid reasons, we allow these appeals and set aside the impugned common judgment and order dated 27.03.2017 passed in W.P.(C) No.676 of 2016; W.P.(C)No.722 of 2016; and W.P.(C)No.766 of 2016 by the High Court of Manipur at Imphal. Consequently, the above said writ petitions stand dismissed.

Civil Appeal Nos. of 2020
[Arising out of S.L.P.(C)Nos.4853-4855 of 2019]

16. Leave granted.

17. These civil appeals are filed by the Union of India and RIMS challenging the very same order of the High Court by which the advertisement dated 16.08.2016 has been quashed. For the reasons recorded while dealing with the appeals arising out of S.L.P. (C)Nos.15093-15095 of 2017, these appeals also stand allowed and the abovementioned impugned order of the High Court is set aside.

.....J. [R. BANUMATHI]J.
C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. [R. SUBHASH REDDY] New Delhi.

April 17, 2020.