

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18630 of 2013

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1. Dr. Arun Kumar Baranwal S/O Sri Sahdeo Lal Permanent Resident Of House No. 5145/2, Mehak Apartment, Modern Housing Complex, P.S- Manimajra, Chandigarh- 160101 Presently Working At Additional Professor And Head Of The Department Of Paediatrics, All India Institute Of Medical Science, Patna And Residing At Flat No. 102, Type-V, AIIMS Residential Complex, Patna- 801505

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry Of Health and Family Welfare, Government Of India, Nirman Bhawan, New Delhi- 110011
2. The Joint Secretary, Ministry Of Health And Family Welfare, Government Of India, Nirman Bhawan, New Delhi- 110011
3. The Director, Pradhan Mantri Swastha Suraksha Yojna, Ministry Of Health And Family Welfare, Nirman Bhawan, New Delhi- 110011
4. All India Institute Of Medical Sciences, Phulwarisharif, Patna- 801505 through Its Director.
5. The Administrative Officer, All India Institute of Medical Sciences, Phulwarisharif, Patna- 801505
6. Post Graduate Institute of Medical Education and Research Chandigarh- 160012 Through Its Director
7. The Governing Body Of Post Graduate Institute Of Medical Education And Research, Chandigarh- 160012 Through Its Member Secretary, I.E. The Director, Post Graduate Institute Of Medical Education And Research, Chandigarh- 160012
8. The Director, Post Graduate Institute Of Medical Education And Research, Chandigarh- 160012
9. The Deputy Director, Post Graduate Institute of Medical Education And Research, Chandigarh- 160012
10. Senior Administrative Officer (I) Post Graduate Institute Of Medical Education And Research, Chandigarh- 160012
11. Assistant Administrative Officer, Post Graduate Institute of Medical Education And Research, Chandigarh- 160012

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Pushkar Narain Shahi, Sr. Advocate
Mr. Mritunjay Kumar

For the Union of India : Mr. Sujeet Kumar Sinha, CGC

For Respondents 4 & 5 : Mr Sudhir Kumar Singh

For Respondents 6 to 11: None

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 29-01-2015



After issuance of Annexure- 6 dated 2.9.2013 as well as an office order contained in Annexure- 7 also dated 2.9.2013 by the Postgraduate Institute of Medical Education and Research, Chandigarh, petitioner is between the devil and the deep blue sea. This is so because the petitioner after due recommendation by the selection committee has already joined All India Institute of Medical Sciences, Patna as Additional Professor, Department of Paediatrics and by virtue of Annexures 6 and 7 that appointment on deputation is being snatched away by a hasty and a cursory kind of decision, that too in violation of principles of natural justice. This is the primary submission of the learned senior counsel representing the petitioner.

The facts are that Union of India had set up AIIMS in six places. Patna happens to be one of the fortunate city to have such an institution. Since institutions cannot be run only by structure and equipments, advertisement was issued in terms of Annexure- 1 to hire manpower in various positions and faculty. The advertisement is Annexure- 1 to the writ application. The advertisement envisages many a things but we are concerned with the issue related to the petitioner since his deputation is the bone of contention.

A reading of the advertisement, especially clause (V) and (VI), does indicate that appointment could also be made of successful candidates, on deputation. It is the stand of the petitioner



that he filed an application online after due intimation of his desire to his parent department at Chandigarh and he wanted his claim to be considered for deputation in the department of Paediatrics at AIIMS, Patna. Petitioner was one of the candidates, who was selected and recommended for appointment as Additional Professor, which would be evident from the communication made to him on 13.3.2013. The said document is Annexure- 3. Petitioner also made a request for issuance of a No Objection Certificate for his deputation in writing, which is dated 22.3.2013, annexed as Annexure- 4. His request for deputation was considered because the Director of PGI, Chandigarh issued a letter dated 6.6.2013 relieving the petitioner with effect from 6.6.2013. This order of the Director of PGI, Chandigarh is Annexure- 5. Petitioner did join but within months Annexures 6 and 7 have been issued making an allegation that the Governing Body of PGI, Chandigarh has decided that the petitioner by misleading facts has taken appointment as Additional Professor on deputation and the Governing Body decides to annul the permission of deputation and petitioner was directed to report back forthwith. Annexure- 7 is a formal order of cancellation of deputation.

Stand of the senior counsel for the petitioner is that the petitioner has gone through the process in terms of the advertisement and the requirement. His application was processed and his



selection was made by the committee set up by Ministry of Health and Family Welfare, Government of India. Only on their recommendation did Director of AIIMS, Patna give him a letter of appointment/ offer setting a time frame for his joining. It is also his case that he informed his parent department of his desire to make an application and he also made a request for issuance of No Objection. But as usual, such decision making got wrapped up in red tapeism and got delayed so was his joining. He made a formal request in writing again reminding the authorities in terms of Annexure- 4, thereafter, Annexure- 5 was issued.

Counsel for the Union of India has filed a counter affidavit. Despite notice, nobody from PGI, Chandigarh bothered to respond or even file any kind of affidavit explaining their position. In other words, it can be safely presumed that they have nothing to add beyond the two annexures, which have been issued detrimental to the interest of the petitioner. The responsibility has been left upon the shoulder of Union of India, Ministry of Health and Family Welfare to explain and defend the conduct of PGI, Chandigarh.

Learned counsel for Union of India submits that appointment in AIIMS including Patna was required to be made on direct recruitment basis. There is no provision envisaged for appointment on deputation. The appointment of the petitioner on



deputation has been managed by the Director of AIIMS, Patna, which is a clear transgression on his part and for which he is being proceeded departmentally. The affidavit also talks in terms of shortage of hands and patient care, availability of people as such and the gap which may be created by allowing the petitioner to continue on deputation basis with AIIMS, Patna. Counsel for Union of India also harps on the basis of Annexure- A, which is a communication dated 11.3.2013 issued under the signature of Joint Secretary, Government of India, Ministry of Health and Family Welfare. Emphasis is on the subject of the said letter, which reads thus-“filling up of posts through direct recruitment in Faculty of different subjects in six new AIIMS under PMSSY”.

The Court fails to appreciate as to how a communication contained in Annexure- A can dilute the terms and conditions of advertisement contained in Annexure-1 of the writ application. The Court has already taken note in the earlier part of the order that appointment even on deputation basis was envisaged and terms and conditions for such deputation or the requirements thereof has also been indicated in the advertisement. Therefore, Annexure- A cannot have an overriding effect for establishing the point of Union of India that appointments were only required to be made on a direct recruitment basis and no other mode. Such a stand

of the Union of India, therefore, is required to be negated.

Further, the appointment and selection of the petitioner was not a cat and mouse game. Petitioner has gone about responding to the advertisement in the mechanism so provided including applications online. His application indicates his desire for such an appointment on deputation basis. His selection was made by the committee set up by Government of India on deputation basis and the letter of appointment is also on deputation basis. Considering all this the Director of PGI, Chandigarh issued the office order contained in Annexure- 5 relieving him with effect from 6.6.2013 (AN). If the Board of Directors of PGI, Chandigarh had some kind of misgiving or misunderstanding of things then taking a unilateral decision by cancelling Annexure- 5 and by issuing Annexures 6 and 7 is not the answer. Obviously the petitioner has made out a case for interference, if not quashing of the impugned Annexes 6 and 7.

The least which the respondents i.e. authorities of PGI, Chandigarh should have done is asked for an explanation from the petitioner before taking a decision unilaterally, which has civil consequences for him. Once the petitioner had relocated himself at Patna and joined AIIMS, Patna, where requirement of new hands to set up various faculties was as imperative the minimum which was required was a show cause before Annexures 6 and 7 was issued.

This act is clear breach of rules of audi alteram partem. It is also not the case that the petitioner was selected by the Director of AIIMS, Patna. He was chosen by the committee of the Ministry of Health and Family Welfare, Government of India. Obviously the authorities or the Board of Directors have taken a hasty decision in clear breach of rules of natural justice and may be in ignorance of facts, if not oversight.

If this is so, the writ application of the petitioner is allowed. Annexures 6 and 7 are quashed. It is left open to the authorities to proceed in accordance with law.

(Ajay Kumar Tripathi, J)

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