

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.365 of 2014

Dr. Asok Chakraborty,
son of late Abani Mohan Chakraborty,
resident of Ramnagar Road No.1, P.O.
Ramnagar, P.S. West Agartala, Sub-
Division- Agartala, District – West
Tripura

..... **Petitioner**

V e r s u s

- 1. The State of Tripura,**
represented by the Secretary to the
Health & Family Welfare Department,
Government of Tripura, having his
office at Secretariat Complex, P.O.
Kunjaban, P.S. New Capital Complex,
Agartala, District – West Tripura
- 2. The Director of Health Services,**
Government of Tripura, having his
office at Secretariat Complex, P.O.
Kunjaban, P.S. New Capital Complex,
Agartala, District – West Tripura
- 3. Tripura Medical College & Dr. BRAM Teaching Hospital,**
Represented by its Chairman, having
his office at Hapania, P.O. & P.S. A.D.
Nagar, District – West Tripura
- 4. The Chairman,**
Tripura Medical College & Dr. BRAM
Teaching Hospital, having his office at
Hapania, P.O. & P.S. A.D. Nagar,
District – West Tripura
- 5. The Chief Executive Officer,**
Tripura Medical College & Dr. BRAM
Teaching Hospital, having his office at
Hapania, P.O. & P.S. A.D. Nagar,
District – West Tripura
- 6. Dr. Nilratan Majumder,**
son of not known, resident of Ker
Chowmuhani, P.O. Ramnagar, P.S.
West Agartala, Sub-Division- Agartala,
District – West Tripura

..... **Respondents**

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioner : Mr. Somik Deb, Advocate
For the respondents : Mr. T.D. Majumder, Advocate
Mr. S. Chakraborty, Addl. G.A.
Date of hearing and : **24.06.2015**
delivery of judgment & order
Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. T.D. Majumder, learned counsel appearing for the Tripura Medical College & BRAM Teaching Hospital, the T.M.C in short, and its officers, the respondents No.3,4 & 5 and Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents No.1 and 2.

[2] The grievance of the petitioner as canvassed in this writ petition, is that even though he was eligible for consideration for recruitment as the Associate Professor in Paediatrics in view of the recruitment criteria, but his application for appointment was not even considered on unintelligible grounds. Rather on purported consideration, by way of selection process, which is under challenge, the respondent No.6, namely, Dr. Nilratan Majumder has been selected but for granting an interim order by this Court the respondent No.6 could not be appointed by the T.M.C.

[3] For such brazen non-consideration, the petitioner has challenged the recruitment process set in by the notification dated 28.22.2013, Annexure-P/4 to the writ petition, and the order dated 20.08.2014, Annexure-P/8 to the writ petition. The petitioner has also prayed for a writ of mandamus for directing the T.M.C to appoint him as the Associate Professor in Paediatrics on promotion in tune with the representations, Annexures-P/9 & P/10 to the writ petition. The respondent-T.M.C. had reviewed the entire process and approached this Court for leave to issue necessary administrative order, recalling the impugned notification. The said prayer was granted by this Court by the order dated 20.02.2015 and in view of the leave so granted, by the notification dated 18.03.2015, Annexure-R/1 to the counter affidavit filed by the respondents No.3,4 & 5 though in the cause title it has been written as the counter affidavit by the respondents No.1,2 & 3, the notification for recruitment as stated was withdrawn.

[4] Mr. Majumder, learned counsel appearing for the T.M.C. and its officers has stated that as consequence of the withdrawal of the said notification dated 18.03.2015, the selection of the respondent No.6 has also been recalled by the notification dated 23.03.2015, Annexure-R/4 to the said counter affidavit filed by the respondents No.3,4 & 5. Mr. Majumder, learned counsel at this juncture has contended that for withdrawal of the impugned notification and for consequential

recall of the selection of the respondent No.6, this writ petition has become infructuous and nothing has been left to be adjudicated by this Court.

[5] From the other side, Mr. Somik Deb, learned counsel appearing for the petitioner on inviting attention of this Court to the Note No.63 of the relevant file as annexed with the said counter affidavit has contended that withdrawal of the recruitment notification has its own nefarious object of depriving the petitioner herein unlawfully. He has pointed out to a part of Note No.63. Part of Note No.63 which has been highlighted reads as under:

In this context, it is to be mentioned that the recruitment notification dated 02.12.2014 has been for 1 vacant Post of Associate Professor in Paediatric Department along with some other categories of posts. On scrutiny, it is revealed that there are 2(two) sanctioned posts of Associate Professor in Paediatric Deptt. One for MBBS Course and another, recently created Post for Post Graduate Course. First one has already been occupying by Dr. Jayanta Pooder since 2012. In fact the vacant Post is meant for Post Graduate teaching. But in the aforesaid notification it has not been mentioned specifically that the post is vacant for Associate Professor for Post Graduate course. In case of post graduate teaching 7 years teaching experience out of which 4 years must be as Asstt. Professor will be required to be appointed as Associate Professor. But Dr. Ashok Chakraborty does not have such long teaching experience.

[Emphasis supplied]

[6] Mr. Deb, learned counsel has categorically submitted that the said note is not only misconceived but stands contrary to what the Medical Council of India (MCI) has modified by way of relaxation of the experience criteria for the teachers taking

MBBS classes to be eligible to teach the PG students having MBBS degree, which can be gathered from the MCI Relaxed Eligibility Criteria for Teachers in Medical Colleges dated 31.01.2013, Annexure-R/4 to the counter affidavit filed the respondent No.6. For purpose of reference, the relevant part of the notification is extracted hereunder:

The Medical Council of India (MCI) has relaxed the experience criteria required for teachers taking MBBS classes to be eligible to teach PG students.

Earlier, a PG teacher needed to have a total of seven years of experience of which five years were supposed to be as Assistant Professor. The relaxed norms now mandate only a four-year experience as Assistant Professor which means a relaxation of one year.

The move is to meet the shortage of PG teachers, said a senior official in the Union Health Ministry. A decision in this regard was taken recently at a meeting of the Board of Governors of the MCI which is an autonomous body under the Health Ministry to regulate the medical education standard in the country.

The official explained, "The existing regulations provides that a medical teacher can become postgraduate teacher after eight years of teaching experience out of which five years should be as Assistant Professor. This regulation was made when teaching experience of five years was required for promotion to the post of Associate Professor from Assistant Professor."

However, according to the existing Teacher's Eligibility Qualifications Regulations, 1998, the Assistant Professor can become Associate Professor with five years of teaching experience along with two publications to his or her credit.

"Hence, to remove the anomaly, the Board of Governors have decided that accordingly now a medical teacher will be considered as postgraduate (PG) teacher with total of seven years teaching experience out of which 4 years must be as Assistant Professor."

[Emphasis supplied]

[7] Mr. Deb, learned counsel has also stated that the said relaxed criteria is also applicable for the recruitment of the

Associate Professor in the Paediatric department of the TMC inasmuch as the Medical Council of India is the solitary statutory body which has the power to regulate the criteria required for the recruitment of teacher in various medical colleges. Mr. Deb, learned counsel has continued to contend that the petitioner has obtained his PG degree in medicine (Paediatric) on 31.07.1999. It would apparent from the certificate issued by the Manipur University. Further, it would transpire from the appointment details issued by the TMC on 01.07.2008 that the petitioner was appointed as the Assistant Professor in Paediatrics on 14.07.2008. Thus, Mr. Deb, learned counsel has contended that on the date of issuance of the impugned notification, the petitioner had requisite 5(five) years experience of teaching as the Assistant Professor in the relevant discipline to qualify for selection to the post of Associate Professor. He has emphatically underlined that the Note No.63 of the Chief Executive Officer of the TMC is entirely in contrast to the relaxed eligibility criteria issued by the Medical Council of India. The petitioner has the required eligibility to be appointed as the Associate Professor in Paediatrics and his exclusion was entirely illegal.

[8] This is not directly the subject matter of this writ petition. But there cannot be any amount of doubt that the dispute is countenanced in such a fashion to embrace this issue. Thus, it cannot be held that this submission is wholly irrelevant

and as such, this Court is of the view that this writ petition can be disposed of, with the following direction:

At the time of making recruitment against the vacant post of Associate Professor to teach the PG students in Paediatrics in TMC & Dr. BRAM Teaching Hospital, the relaxed criteria of the Medical Council of India (MCI in short) shall scrupulously be followed. The rules which were relevant on the day when that post fell vacant shall be applied. All the eligible candidates shall be considered along with the petitioner, if the petitioner is found eligible in terms of the relaxed criteria of the MCI on the day when the post fell vacant. For that purpose, a fresh notification for recruitment shall be issued. Since the post fell vacant long before, it is expected that TMC & Dr. BRAM Teaching Hospital shall fill up the said post as expeditiously as possible.

There shall be no order as to costs.

JUDGE

Sujay