

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPUR**WRIT PETITION NO. 3427 OF 2000.****(C.H. Sharma & others .vs. The State of Maharashtra & others)**

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Mr. Anup J. Gilda, Advocate (*Amicus Curiae*) for petitioners,
Mrs. Bharti Dangre, G.P. for respondent nos. 1 to 3 & 7,
Mrs. Mugdha Chandurkar, Advocate for respondent no.6,
Mr. P.D. Sharma, Advocate for intervenor/applicant.
Mr. N.B. Kalwaghe, Advocate for intervenor/applicant.

CORAM : B.R. GAVAI & KUM. INDIRA JAIN, JJ.

DATED : MARCH 16, 2017.

Vide our order dated 16.2.2017 we had directed the State Government to take a decision on the proposal submitted by the Dean for posting a faculty member who possesses requisite qualification in the Department of Cardiology.

We had further directed the State Government to file an affidavit as to what steps the State Government proposes to take for filling up the post in the Department of Gastroenterology by a qualified faculty member.

In the meantime, the matter was circulated by the learned *Amicus Curiae* on 7.3.2017, thereby pointing out newspaper reports pertaining to transfer of Dr. Manish Shrigiriwar, who was working as Officer on Special Duty to Government Medical College, Yavatmal.

Today, an affidavit is filed on behalf of the respondent no.2 stating therein that since Dr. Shrigiriwar was much junior in

the cadre of Professor as compared to other persons, there was problem in smooth functioning of the hospital. It is also stated that certain complaints were received with regard to functioning of Dr. Shrigiriwar from some of the Heads of the Department. In the affidavit, it is stated that it was, therefore, found necessary for smooth functioning of the Super-Speciality hospital that a senior Professor should be given charge of the O.S.D.

In so far as the direction with regard to filling up the post of Associate Professor in the Department of Cardiology by an eligible faculty member and the steps to be taken for filling up the post in the Gastroenterology Department by a qualified person is concerned, the learned Government Pleader seeks ten days time to comply with the direction issued by this Court.

In so far as the decision of the Government that a senior person should be posted as an Officer on Special Duty in the Super-Speciality Hospital is concerned, we do not find any error in the said decision. However, the perusal of the affidavit itself would reveal that the person to whom the charge of O.S.D. is given is not the seniormost Professor in the Hospital. The list would show that there are at least two Professors who are senior to the Professor who is being given charge of the O.S.D. We fail to understand the logic of the State Government, in on one hand transferring the O.S.D. on the ground that he is the junior Professor and on the other hand, again giving the charge of the O.S.D. to a Professor above whom there are two other Professors.

If it is the logic of the State Government that it is the seniormost Professor who should head the institution and be appointed as an O.S.D., then the State Government should take

the same to a logical end. It is further to be noted that giving an ad-hoc charge to the Head of the Department of some clinical department, would again come in the way of efficient functioning of the hospital. If the Head of the Department decides to give more time to the administration, the clinical department would suffer. Per contra, if the Professor to whom the charge is given is engrossed in the work of the Department concerned, the administration would come to a standstill. We find no rationale in this ad-hocism.

We clarify that we are not directing any particular person to be appointed as an O.S.D. However, we are of the considered view that in order to ensure effective functioning of the Super-Speciality Hospital, an independent person who does not have an additional charge of any other clinical department should be posted as an O.S.D. so that the administration of the hospital as well as all the clinical departments function efficiently.

We, therefore, direct the State Government to appoint a faculty member who is senior to all other Heads of the Department in the Super-Speciality Hospital as an O.S.D. We are issuing this direction since it is the say of the Government itself that on account of a junior person being given charge of the O.S.D., there is a problem in smooth functioning of the hospital. The aforesaid direction is, therefore, issued to ensure the smooth functioning of the Super-Speciality Hospital as well as the Departments.

In so far as posting a faculty member who possesses the necessary qualification on the post of Associate Professor in the Department of Cardiology is concerned, we fail to understand as to why such an inordinate delay should be caused when the

proposal is pending with the State Government duly recommended by the directorate for months together. Be that as it may, at the request of the learned Government Pleader we grant two weeks' time by way of last chance for posting a qualified person on the post of Associate Professor in the Department of Cardiology.

We further direct the State Government to file an affidavit within the aforesaid period as to what steps it proposes to take for filling up the post in the Department of Gastroenterology by a qualified person. Needless to state that if the aforesaid directions are not complied with by the next date, the Principal Secretary, Medical Education & Research shall personally remain present in this Court and show-cause as to why an action should not be taken for not complying with the directions of this Court which pertain to an important issue with regard to the health of the citizens.

Civil Application (CAW) No. 663/17 for intervention is allowed.

S.O. to 30.3.2017.

Judge

Judge

J.