

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 1764 OF 2018

In the matter of an application under Article 227 of the
Constitution of India.

AFR

Dr. Srikanta Kumar Patra Petitioner

-Versus-

Orissa Public Service Commission
and Others Opp. Parties

For Petitioner : M/s Sameer Kumar Das,
and Pratik Dash, Advocates.

For Opp. Parties : Mr. P.K. Mohanty, Sr. Advocate,
along with M/s. D.N. Mohapatra,
(Smt.) J.Mohanty, P.K. Nayak,
S.N. Dash, P. Mohanty and
P.K. Pasayat, Advocates
[O.P.No.1]
Mr. J. P. Pattnaik,
Government Advocate
[O.P.Nos.2 and 3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE V. NARASINGH**

Date of hearing and judgment :: 11.07.2022

DR. B.R. SARANGI, J. The petitioner, who was an applicant for the post of Assistant Professor in General Surgery, pursuant to advertisement no.15 of 2015-16 dated 23.11.2015 at Annexure-1 and corrigenda dated 18.12.2015, 03.02.2016 and 25.05.2016 at Annexure-2 series, by means of this writ petition, seeks to quash the order dated 12.12.2017 passed in O.A. No. 2836 (C) of 2016 at Annexure-10, whereby the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, while declining to interfere with the action of the Odisha Public Service Commission (OPSC)-opposite party no.1 in rejecting the candidature of the petitioner for want of three years teaching experience, has dismissed the Original Application. The petitioner also seeks direction to the opposite parties to treat him as an eligible candidate for the post of Assistant Professor in General Surgery.

2. The factual matrix of the case, in a nutshell, is that petitioner completed his Post Graduate in General Surgery from SCB Medical College and

Hospital, Cuttack in the year 2009. On being duly selected, he was appointed as Senior Resident in Surgery w.e.f. 07.01.2010 in VSS Medical College, Burla, where he continued till 12.10.2010. Thereafter, petitioner worked as Senior Resident in Surgical Oncology in Acharya Harihar Regional Cancer Centre, Cuttack from 12.10.2010 to 04.08.2012. Then, he came to SCB Medical College and Hospital, Cuttack, where he worked as Senior Resident from 04.08.2012 to 04.08.2015.

2.1 The Odisha Public Service Commission (OPSC)-opposite party no.1 issued advertisement no.15 of 2015-16 for recruitment to the posts of Assistant Professors in Super Speciality, Speciality and Dentistry in different disciplines for Government Medical Colleges under Orissa Medical Education Services (Method of Recruitment and Conditions of Services) Rules, 2009 (for short "Rules, 2009"). Thereafter, Rules, 2009 were superseded and subsequently Orissa Medical Education Services (Method of Recruitment and Conditions of

Service) Rules, 2013 (for short “Rules, 2013”) came into existence on 20.12.2013. As dispute cropped up as to whether the recruitment to the posts of Assistant Professor would govern under the new Rules, 2013 or the old Rules, 2009, several applications were filed before the State Administrative Tribunal as well this Court. The matter having been disposed of by this Court, parties aggrieved by the said order, moved to the Supreme Court. As such, the matter was finally settled by the Supreme Court, vide judgment dated 10.08.2015 passed in Civil Appeal No.6157-6158 of 2015 (arising out of SLP No.17074-17075 of 2015). The issue with regard to applicability of old Rules, 2009 or new Rules, 2013 having been settled that the selection for the post of Assistant Professor would be governed under the old Rules, 2009, in pursuance of the order of the apex Court, opposite party no.1 issued advertisement vide Annexure-1 for filling up of 262 posts of Assistant Professors in Speciality, apart from other posts, inviting applications from the eligible candidates to submit online applications by 23.12.2015 to be followed by

submission of documents by 11.01.2016. The advertisement also prescribed the method of selection, according to which selection would be made taking into account the academic career and performance of the candidates in the viva voce test. So far as eligibility criteria are concerned, it was stipulated in the advertisement to the following effect:-

“ELIGIBILITY:- The following categories of persons are eligible to apply for the post of Assistant professors in different disciplines (, Super and Dentistry);-

i) Those who has been working as Assistant Professors in the three Government Medical Colleges and SCB Dental College on Ad hoc/Contractual basis since the period prior to 18.12.2013 in the concerned disciplines;

ii) Assistant Professors of any other Sepciality on Super Specialist, appointed as such prior to 18.12.2013 subject to the condition that seniority in the new discipline shall be determined from the date of appointment in accordance with the placement given by the Commission, and accepted by Government;

iii) persons other than the Ad hoc/Contractual Assistant Professors who have acquired the following qualifications and teaching experience from any Medical Institutions recognized by the MCL/DCI prior to 18.12.2013”

a) Post Graduate Degree with three years of teaching experience as

Tutor or Senior Resident in the concerned discipline from any medical institution recognized by the medical Council of India (MCI)/Dental Council of India (DCI) for the post of Assistant Professor in or Dentistry;

b) D.M../M.Ch. Degree with three years of teaching experience as Tutor or Senior Resident in the concerned discipline from a MCI recognized institutions for the post of Assistant Professor in Super disciplines.

NOTE:- “Teaching Experience means the period of service rendered in teaching in any in a medical college or teaching institution recognized by the MCI/DCI to be reckoned from the date of appointment to the junior or senior teaching post.”

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“20 Surgery M.S. (Gen. Surgery) with 3 years teaching experience in the subject from a recognized Medical College as Tutor or Sr. Resident.”

संयुक्त न्याय

2.2 So far as number of vacancy in the discipline of Surgery is concerned, the same has been prescribed under Clause-(ii) of the Vacancy Position of the advertisement at sl.no.20 which is extracted hereunder:-

“(ii) As per requisition filed by the Health & Family Welfare Department of Government of Odisha the vacancy position along with reservation thereof for disciplines are given below:-

“SL No	Name of the Discipline	No. of vacancies reserved for			Un- Reserved	Total Vacancies
		S.T.	S.C.	S.E.B.C		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
xx	xx	xx	xx	xx	xx	xx
20.	Surgery	3(w-1)	4(w-1)	0	8(w-2)	15(w-4)”

2.3 Pursuant to the advertisement under Annexure-1 issued by the OPSC, petitioner submitted his application online, followed by hard copy of the application along with copies of certificates/documents. Subsequently, corrigenda were issued on different dates where the vacancy positions were changed and date of submission of application was also extended. The petitioner was working as Senior Resident from 07.01.2010 to 04.08.2015 in VSS Medical College, Burla, AHRCC, Cuttack and SCB Medical College and Hospital, Cuttack, which is for more than three years, before the cut-off date, i.e., 18.12.2013 and, as such, to substantiate the same, he submitted relevant documents. The AHRCC, Cuttack in its Governing Body Meeting held on 18.06.2013 decided that the experience of Senior Resident of different departments of AHRCC, Cuttack would be taken into account towards

recruitment in other Government Medical Colleges of Orissa. Since the petitioner was working as Senior Resident and has possessed teaching experience of Post Graduate Degree for more than three years, he claims to be eligible for consideration for appointment as Assistant Professor in Surgery. His candidature having been rejected by the OPSC, the petitioner approached the tribunal, but the tribunal, vide order impugned order dated 12.12.2017, affirmed the order passed by the OPSC. Hence, this application.

3. Mr. S.K. Das, learned counsel for the petitioner contended that the petitioner has got requisite teaching experience of three years and, as such, he is otherwise eligible to be considered for appointment as Assistant Professor in General Surgery, pursuant to the advertisement issued under Annexure-1. But, without considering the same in proper perspective, the candidature of the petitioner was rejected by the OPSC, which has also been affirmed by the tribunal and, as such, the same cannot be

sustained in the eye of law. Therefore, the petitioner has approached this Court by filing the present writ petition.

4. Mr. P.K. Pasayat, learned counsel appearing for opposite party no.1 contended that the petitioner has no requisite qualification and, as such, the experience of three years he possessed as Senior Resident under AHRCC, Cuttack, cannot be taken into consideration, as AHRCC, Cuttack is not recognized by Medical Council of India. It is further contended that in absence of requisite teaching experience in the institution recognized by the Medical Council of India, the authority was well justified in rejecting the candidature of the petitioner for appointment as Assistant Professor in General Surgery. Thereby, the tribunal has not committed any patent error in affirming the action of the authority so as to call for interference with the same. Thus, it is contended that the writ petition filed by the petitioner cannot be

sustained in the eye of law and is thus liable to be dismissed.

5. Mr. J.P. Pattnaik, learned Government Advocate appearing for opposite parties no.2 and 3 contended that since Rules, 2009 are applicable to the petitioner and, as such, he had no requisite teaching experience in the institution recognized by the Medical Council of India, the application submitted by the petitioner for being appointed as Assistant Professor in General Surgery should have been rejected. More so, AHRCC, Cuttack is an autonomous body and the said institution has been regulated by their own guidelines and regulations and the same having not been recognized by Medical Council of India, the period for which the petitioner had worked there should not have been counted towards his teaching experience to be eligible for appointment as Assistant Professor in General Surgery.

6. This Court heard Mr. S.K. Das, learned counsel for the petitioner; Mr. P.K. Pasayat, learned

counsel appearing for opposite party no.1-OPSC; and Mr. J.P. Pattnaik, learned Government Advocate appearing for opposite parties no.2 and 3 by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. On the basis of undisputed facts, as narrated above, it is made clear that as per Clause-(iii) of the Eligibility Criteria persons, other than the Ad hoc/Contractual Assistant Professors, who have acquired qualifications prescribed under sub-clause-(a) thereof and teaching experience from any medical institutions recognized by the MCI/DCI prior to 18.12.2013, shall be eligible for the post of Assistant Professor in Speciality. Sub-clause-(a) of Clause-(iii) of Eligibility Criteria prescribes that a candidate having Post Graduate Degree with three years of teaching experience as Tutor or Senior Resident in the concerned discipline from any medical institution recognized by

the Medical Council of India (MCI) for the post of Assistant Professor in Speciality, shall be eligible for consideration. The advertisement is very clear that "Teaching Experience" means the period of service rendered in teaching in any Speciality in a medical college or teaching institution recognized by the MCI to be reckoned from the date of appointment to the junior or senior teaching post. The petitioner may have got some teaching experience as Senior Resident, but when the same was confronted to learned counsel for the petitioner as to whether the experience gained by the petitioner as Senior Resident is teaching experience or not, nothing was placed from the record to construe the same as teaching experience, as per the eligibility criteria stipulated in the advertisement itself.

8. It is of relevance to note that Rules, 2009 are applicable to the recruitment under consideration.

Clause-2(xi) thereof specifically provides as follows:-

"Clause-2 (xi) "Teaching Experience" means the period of service rendered in teaching in any or Higher in a teaching institution recognized by the Medical Council of India to be reckoned from the

date of appointment to the junior or senior teaching post, in consultation with the Commission or otherwise as the case may be.”

In the counter affidavit filed by opposite party no.3, in paragraph-8, two questions have been formulated to the following effect”

“8. That, it is pertinent to mention here that, in the present writ petition, the following points need to be clarified for the better appreciation of the Hon’ble Court,

(I) If, the AHRCC, Cuttack is a recognized Medical Institution by MCI.

(II) If the period of Senior Residency done by the petitioner in the discipline of Surgical Oncology can be reckoned for the discipline of General Surgery as pre-requisite for the post of Asst. Prof. in the discipline of General Surgery.”

To answer the above questions, in paragraphs-9 and 10 of the counter affidavit, it has been stated as follows:-

“9. That, in the response to the point No.(1), the deponent humbly submits that, the AHRCC, Cuttack is not a recognized teaching institution either for Surgical Oncology or General Surgery by the MCI at the time when the petitioner was working as a Senior Resident. Hence, the period of service rendered by petitioner in said institution can’t be taken in to consideration as an eligible qualification/experience for the post of Asst. Prof.

10. That, in the response to the point No.(II), it is humbly submitted that, the discipline of General Surgery is a Speciality subject where as the Surgical Oncology in AHRCC, Cuttack is a super subject and can't be equated as same."

It is the specific stand of the opposite party no.3 that AHRCC, Cuttack is not a recognized teaching institution either for Surgical Oncology or General Surgery by the Medical Council of India at the time when the petitioner was working as a Senior Resident. Therefore, the period of service rendered by the petitioner in said institution cannot be taken into consideration as an eligible qualification/experience for the post of Assistant Professor. While answering the second question formulated in paragraph-8 of the counter affidavit, it has been specifically asserted that **discipline of General Surgery is a Specialty subject, whereas the Surgical Oncology in AHRCC, Cuttack is a Super Specialty subject and cannot be treated as same.**

In paragraph-12 of the counter affidavit filed by opposite party no.3, it has been stated as follows:

“12. That, in response to point No.9 of the averments of the Writ Petition read with Annexure-4 series, the deponent humbly submits that the petition has misconceived the letters of Director AHRCC, Cuttack, wherein, it has been categorically mentioned that, the experience of Senior Residents of different Department of AHRCC, Cuttack will be taken into accounts towards recruitments of others Medical Colleges or Odisha. This means, the Departments which are existing both in AHRCC, Cuttack as well as in other govt. Medical Institution, the experience may be taken into consideration. But, the Department of Surgical Oncology is not existing in other Govt., Medical Colleges and as such the experience can't be taken into consideration for the post of Asst. Prof. in General Surgery in other Govt. Institution. That, so far the Acharya Harihar RCC, Cuttack has got no approval as a teaching institution for surgical oncology from Medical Council of India and therefore not fulfilling the “Note” to “Eligibility” as per OPSC advertisement and the teaching experience can not be taken into consideration as per advertisement.”

9. Pleading shall include original application, reply statement, rejoinder and additional statements supplementing the original application and reply statements, as may be permitted by the Court.

Considering Order-VI Rule-1 and Order-VII of Civil Procedure Code, 1908 the apex Court in **Vidyawati Gupta v. Bhokti Hari Nayak**, (2006) 2 SCC 777 held ‘pleading’ under Order-VI Rule-1 and Order-VII of the Code means ‘plaint’ or ‘written statement’.

Therefore, pleading is the statement in a logical and legal form of the facts which constitute plaintiff's course of action or defendant's ground of defence.

10. In response to the pleadings made in paragraphs-8, 9, 10 and 12 of the counter affidavit, the petitioner filed rejoinder affidavit and in paragraph-6 of the rejoinder affidavit, stand has been taken by the petitioner that the petitioner has got three years of teaching experience continuing together, namely, experience of different service at VSS Medical College, Burla, then AHRCC, Cuttack and SCB Medical College and Hospital, Cuttack. But that itself has no justification because if the period of service rendered at VSS Medical College, Burla and SCB Medical College, Cuttack is taken into consideration, it does not satisfy the requirement of three years by the cutoff date, i.e., 18.12.2013. As such, if the only experience gained in AHRCC, Cuttack is taken into consideration, in that case also the petitioner does not satisfy the requirement of three years. Thereby, if the petitioner rendered

service as Senior Resident in three different institutions at three different places, that does not satisfy the requirement of three years of teaching experience, so as to make him eligible for consideration for appointment as Assistant Professor. So far as non-recognition of AHRCC, Cuttack by the Medical Council of India, as stated in the Counter Affidavit, is concerned, nothing has been controverted by the petitioner in the rejoinder affidavit. As a consequence thereof, in absence of any material to the contrary, the stand taken by the opposite parties is well justified.

Furthermore, if Rules, 2009 is read along with the advertisement, it would be evident that, three years teaching experience in the institution recognized by the Medical Council of India is required and in absence of the same candidature of a candidate for the post of Assistant Professor in Speciality shall not be considered by the authority concerned.

11. In the above view of the matter, this Court is of the considered view that the tribunal has not

committed any error in considering the pleadings on record in rejecting the candidature of the petitioner for the post of Assistant Professor in General Surgery, as ex-facie the petitioner does not satisfy the requirement of “three years teaching experience from the institution recognized by the Medical Council of India”, as per the advertisement read with Rules, 2009.

12. In the result, the writ petition merits no consideration and the same is thus dismissed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

V. NARASINGH, J.

I agree.

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V. NARASINGH,
JUDGE

Orissa High Court, Cuttack
The 11th July, 2022, Ashok/Balaram/GDS