

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 14989 OF 2010

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Government of Orissa

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Petitioner

-Versus-

Dr. Urmila Kumari Devi
& Anr.

.....

Opp. Parties

For Petitioner : Mr. A.K. Mishra,
Addl. Govt. Advocate

For Opp. Parties : M/s. S. Swain, D.P. Mishra
and M. Pagal, Advocates
[O.P.No.1]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE G. SATAPATHY**

DECIDED ON : 10.10.2022

DR. B.R. SARANGI, J. The Government of Orissa through its Commissioner-cum-Secretary, Health and Family Welfare Department, has filed this writ petition seeking

to quash the order dated 13.04.2009 passed in O.A No.1295 of 1998, by which the Odisha Administrative Tribunal, Bhubaneswar, has disposed of the said O.A. directing the petitioner to issue appointment order in favour of opposite party no.1 in the post of Demonstrator in the Drabyaguna discipline, in pursuance of the merit list dated 30.09.2007, and the entire exercise shall be completed within a period of three months from the date of receipt of the copy of the order.

2. The factual matrix of the case, in brief, is that opposite party no.1 was initially appointed as Ayurvedic Medical Officer under the State Service during the year 1992. While continuing as such, she represented to DIM&H(O), Bhubaneswar to utilize her higher qualification in the interest of teaching in Ayurvedic Colleges, as she was a Post Graduate Degree Holder. Considering her grievance, DIM&H(O) deployed her temporarily at Gopabandhu Ayurveda Mahavidyalaya, Puri and assigned her duty to assist in teaching as Demonstrator in the discipline of Dravyaguna vide

DIM&H(O) Order No.7756 dated.13.06.95. In the said order it was categorically mentioned that such posting of opposite party no.1 to impart teaching was a temporary arrangement and she would not claim her appointment to the post of Demonstrator as a matter of right.

2.1 An advertisement was published on 05.08.1997 by DIM&H(O) for filling up of 7 vacant posts of Demonstrator in different teaching disciplines of Government Ayurvedic Colleges of the State, out of which 2/3rd of the vacancies were to be filled up from service., i.e., from among the Ayurvedic Medical Officers of Government of Orissa prescribing no age limit for them. So far as Dravyaguna discipline is concerned, two vacancies were advertised to be filled up. The opposite party no.1, being a P.G. holder, had applied for the post of Demonstrator in Dravyaguna discipline.

2.2 In order to select suitable candidates to the post of Demonstrator of Government Ayurvedic Colleges of the State, a Selection Board was constituted by the Government of Orissa in Health & Family Welfare

Department, vide Resolution No. 26485/H, dated 29.07.1989. So as to make the selection, prominent expert members of different teaching subjects were nominated by the Government vide G.O. No. 1723/H, dated 26.01.1997. The criteria for selection of Demonstrator were also decided vide G.O. No.26898/H dated 02.08.1989.

2.3 Before conducting interview, the Selection Board examined the applications of the candidates and accordingly a programme was drawn up to call for the candidates for attending the interview on 28.09.1997 and 29.09.1997. As regards filling up of 2 vacant posts in the Dravyaguna discipline, total 6 eligible candidates including opposite party no.1 had applied. All of them were intimated to appear the interview as per programme. All the six candidates belonging to Drvayaguna discipline attended the interview on 28.09.1997 and 29.09.1997. As per the advertisement, 2/3rd vacanccies were required to be filed up from among the in-service candidates and balance 1/3rd vacancies

were to be filled up from eligible direct candidates pursuant to criteria fixed by the Government as per G.O.No.32670/H dated 19.09.1992. Out of six candidates of Dravyaguna discipline, 4 were in-service Ayurvedic Doctors and 2 were direct candidates. On performance of those six candidates in the interview, the Board prepared a merit list containing the names of three candidates, out of which one direct and one in-service were enlisted against two vacant posts, and one in-service candidate was in the waiting list. The said select list was published in the notice board on 30.09.1997.

2.4 The selection procedure was received by Govt. vide G.O. No. 14447/H dated 14.04.1998 and after reviewing the same, it was directed by Government to fill up 6 posts of Demonstrators out of seven posts advertised for different disciplines (except one post Prasutitantra and Kaumarbhritya discipline), after thorough revision of the merit list in accordance with Govt. instruction communicated in G.O. No.31472 dated

15.09.89. Thereafter, the Government decided to award marks for the performance of the candidates in their academic career beginning from Matriculation to Post Graduate degree and weightage marks for the experience of in-service doctors in the total marks for the interview for the post of Demonstrator. Accordingly, the DIM&H(O) was instructed to prepare a fresh merit list by awarding career marks of all candidates with the marks they obtained in the interview and submit the same for approval of the Government vide G.O. No. 18688/H dated 22.05.1998.

2.5 In order to award career marks of candidates, the Government decided to award 90% marks for career and 10% marks for viva voce test for Ayurvedic doctors in the criteria vide G.O. No.31471/H dated 15.09.1989 and in G.O. No.26898/H dated 02.08.1989 for selection of Demonstrators, which were followed by the Selection Board. As the Selection Board had awarded career marks for only degree qualification of the candidates, the Government instructed to award career marks of the

candidates beginning from Matriculation to the P.G. Degree qualifications and weightage mark for experience of in-service doctors vide G.O. No.18688/H dated 22.05.1998. Since opposite party no.1 stood second in the merit list and one post was already filled up and subsequently one post was abolished, she was not given appointment even though two posts were advertised. Thereby, she approached the Tribunal by filing O.A. No.1295 of 1998.

2.6 The Tribunal, on careful examination of the rival submissions of the parties and the pleadings available on record, disposed of the said O.A. directing the petitioner to issue appointment order in favour of opposite party no.1 to the post of Demonstrator in the Drabyaguna discipline, in pursuance of the merit list dated 30.09.2007, and the entire exercise shall be completed within a period of three months from the date of receipt of the copy of the order, which is the subject matter of challenge before this Court.

3. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the petitioner contended that even though two posts were advertised in the discipline of Dravyaguna, but subsequently one post was abolished. As a result, even though opposite party no.1 stood second in the merit list, she could not be appointed. Thereby, the Tribunal has committed gross error apparent on the face of the records by issuing direction to the petitioner to give appointment to opposite party no.1 against the second post, as she stood second position in the merit list.

4. Mr. S. Swain, learned counsel appearing for opposite party no.1 contended that admittedly opposite party no.1 participated in the selection process as an in-service candidate and stood second position in the merit list. Since two posts were advertised, she has a right to claim to be appointed against the second post in the discipline of Dravyaguna. Thereby, the Tribunal has not committed any error, by directing the petitioner to give appointment to opposite party no.1, so as to cause

interference of this Court at this stage. It is further contended that at present opposite party no.1 is continuing as Medical Officer and being an in-service candidate in the event she is given appointment she will be benefited financially and, thereby, he seeks for dismissal of the writ petition.

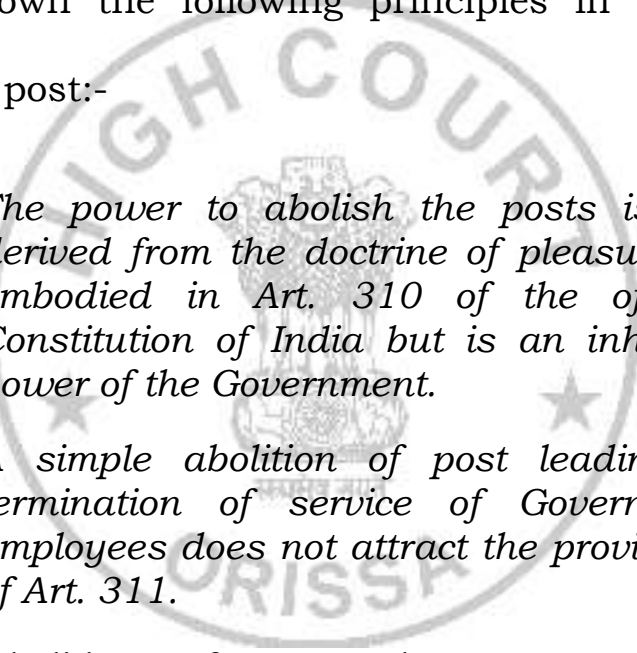
5. This Court heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the petitioner and Mr. S. Swain, learned counsel appearing for opposite party no.1 in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. On careful appraisal of the materials available on record, including the judgment impugned herein, this Court finds that pursuant to an advertisement issued on 05.08.1997 for filling up of 7 vacant posts of Demonstrator in different teaching disciplines of Government Ayurvedic Colleges of the State, opposite

party no.1, being a P.G. holder, had applied for the post of Demonstrator in Dravyaguna discipline, for which two posts were advertised. As per advertisement, 2/3rd of the vacancies were to be filled up from the Service, i.e., from amongst the Ayurvedic Medical Officers of Government of Orissa prescribing no age limit for them. As regards filling up of 2 vacant posts in the Dravyaguna discipline, total 6 eligible candidates, including opposite party no.1, had applied. All of them were intimated to appear at the interview as per the programme. All six candidates belonged to Drvayaguna discipline attended the interview on 28.09.1997 and 29.09.1997. As per the advertisement, 2/3rd vacancies were required to be filled up from among the in-service candidates and balance 1/3rd vacancies were to be filled up from eligible direct candidates pursuant to criteria fixed by the Government. Accordingly, the Selection Board prepared a merit list, wherein the name of opposite party no.1 was found place at serial no.2. But fact remains, after issuance of advertisement, one post in respect of Dravyaguna discipline was abolished by the State Government.

Thereby, only one post was filled up pursuant to such advertisement. Consequentially, opposite party no.2 could not get appointment, as she was in second position in the merit list.

7. In ***M. Ramanatha Pillai v. State of Kerala***, (1973) 2 SCC 650: AIR 1973 SC 2674, the apex Court has laid down the following principles in relation to abolition of post:-

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- “(1) The power to abolish the posts is not derived from the doctrine of pleasure as embodied in Art. 310 of the Constitution of India but is an inherent power of the Government.*
 - (2) A simple abolition of post leading to termination of service of Government employees does not attract the provisions of Art. 311.*
 - (3) Abolition of post does not violate Art.19(1)(f) and Art.31 of the Constitution.*
 - (4) Abolition of posts does not violate Art. 14 of the Constitution when it is not shown that employees similarly situated have been allowed to remain in service.*
 - (5) Doctrine of estoppel is not applicable against the State while acting in public or sovereign capacity except where it is necessary to prevent a fraud or manifest injustice.*

(6) *Whether an employee who was holding the abolished post should be offered any other employment in the State is a matter of policy decision of the Government and the employee cannot claim alternative post as of right."*

8. In **S.S. Dhanoa v. Union of India**, 1991 (3) SCC 567: AIR 1991 SC 1745, the apex Court held that the State has unfettered power to create posts and so also the power to reduce or abolish them.

9. The above being the settled position of law, the order impugned passed by the Tribunal directing the petitioner to give appointment to opposite party no.1 cannot sustain in the eye of law. As such, the post of Lecturer has to be filled up by way of direct recruitment to be conducted by OPSC. Therefore, the claim made by opposite party no.1 to give her appointment pursuant to advertisement cannot sustain in the eye of law.

10. In the above view of the matter, the Tribunal has committed gross error by directing the petitioner to give appointment to opposite party no.1. Consequentially, the order dated 13.04.2009 passed by

the Odisha Administrative Tribunal, Bhubaneswar in O.A No.1295 of 1998 cannot sustain in the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed.

11. The writ petition is thus allowed. However, there shall be no order as to costs.

G. SATAPATHY, J.

I agree.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 10th October, 2022, Alok

