

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8460 of 2020

Dr. Tribikram Debata

....

Petitioner

*Mr. Sidheswar Mallik along with Miss
S. Devi, Advocates*

-versus-

State of Odisha & others

....

Opp.parties

Mr. R.N.Mishra, AGA for O.P.Nos.1 & 2

Mr. Avijit Mishra, Advocate for Intervenor.

Mrs. Soma Pattanaik, Advocate for Intervenor

**CORAM:
JUSTICE M.S.SAHOO**

ORDER

05.05.2022

Order No.

- 11.** 1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the parties.
3. The writ petition has been filed with the following prayer:

“Petitioner therefore most humbly prays that your lordships may be graciously pleased to issue a Rule Nisi calling upon the opposite parties to show cause as to why the 2nd corrigendum notice dated 26.02.2020 at Annexure-6 should not be declared as illegal and consequentially quashed;

And as to why the authorities should not be directed to publish the final merit list of Asst. professor SCB Dental College & Hospital relating to Oral Pathology and Micro Biology discipline in terms of the Advertisement at Annexure-2 read with corrigendum notice dated 24.02.20220 at Annexure-5.”

- 4.** The facts as pleaded in the writ petition that also remain uncontroverted are that the petitioner after completing Bachelor degree in Dental Surgery in 2011 did his Master Degree in Dental Surgery (Oral Pathology and Microbiology). In the year 2016 on the recommendation of

the OPSC as per notification dated 30.01.2016 (Annexure-1 to the writ petition), he was appointed as Dental Surgeon Class-1, Jr. Branch of the Odisha Medical Service (Dental Surgeon) Cadre.

The Director, Medical Education & Training, Odisha published an advertisement dated 18.02.2020 vide Annexure-2 for filling up vacant posts of Asst. Professor in SCB Dental College on contractual/deputation basis “in view of D.C.I. urgency” (DCI: Dental Council of India).

The petitioner applied for and participated in the selection process for Asst. Professor (Contractual) in the discipline Oral Pathology and Microbiology and his name finds place in the provisional merit list dated 27.02.2020 (Annexure-7) to the writ petition)

5. It would be evident from the advertisement that there were 8 vacancies and the discipline of Oral Pathology and Microbiology is at Sl.No.7 for which the petitioner applied. In Clause-6 of the Advertisement it has been specifically stated that all terms and conditions as per Govt. letter no.6547/H & Resolution No.5202/H dated 26.02.2019 (Annexure-3 to the writ petition) shall be applicable and the selection was to be based on the basis of percentage of marks secured. The percentage of marks for which weightage was to be given was stated under the heading procedure of the selection. The same was in consonance with Resolution dated 26.02.2019 (Annexure-3).

6. Objects and reasons for recruitment on contractual basis as stated in the said Resolution dated 26.02.2019 (Annexure-3) is quoted herein :

“Whereas Government in a step to generate more doctors in the State and to address the dearth of doctors, has established four new Medical Colleges and still more are in pipeline. To accomplish the recruitment of adequate faculties so as to get the MCI non, active recruitment process is needed to engage the faculties at all levels, i.e., Assistant Professor, Associate Professor and Professor. As the selection by the Odisha Public Service Commission takes time to select faculties contractual engagement has become inevitable. At present there are no approved guidelines for such contractual engagement of faculties. Hence, steps have been taken to frame guidelines to be followed to get candidates on basis of uniform criteria.

Government after careful consideration has been pleased to formulate the following guidelines for selection of faculties of Government Medical Colleges, at level of Assistant Professor, Associate Professor and Professor on contractual basis in conformity with the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” of Medical Council of India notified from time to time in force.”

7. The eligibility and qualifications for Assistant Professor is indicated at paragraph-5 of the resolution dated 26.02.2019 which is quoted herein :

“5. Eligibility and qualifications for Assistant Professor:

5.1 The candidate must be a citizen of India.

5.2. Qualification:

5.2.1 The candidates must possess MD/MS/MDS/DNB Degree in the concerned discipline from any MCI/DCI permitted/approved/recognized

Medical/Dental College and/or any other academic qualification with such additional teaching experience in the subject as may be prescribed by MCI/DCI from time to time in force.

(underlined to supply emphasis)

5.2.2 Candidates having M.Sc. (Medical subjects) in Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology subjects will be considered if sufficient candidates with PG degree/DNB are not available and subject to the limitations as may be prescribed by MCI from time to time.

5.3. The Medical Graduates must have registered their Medical Qualification at Central/State Medical/Dental Council. (Permanent Registration)

5.4 The above qualifications must have been obtained on or before the date of counseling/interview.”

8. Counter affidavit dated 19.08.2022 on behalf of opposite party no.2 has been filed which forms part of record.

Rejoinder has been filed in response to the said counter by the petitioner by way of filing affidavit dated 25.09.2022.

9. Affidavit (hard copy) filed by opposite party no.2 on 30.04.2022 is filed in Court today which was filed earlier by E-filing. Copy of the affidavit is served on the learned counsel for the petitioner and learned counsel for the Intervenor-Ms. Soma Pattnaik and Mr.Avijit Mishra.

10. The learned counsel for the intending intervenors submit that as per the first advertisement (Annexure-2), the intervenor is to be in the “Category-I”. Annexure-7 to the writ petition, i.e., the provisional merit list pursuant to the Walk-in-interview held for Assistant Professor (contractual),

SCB Dental College & Hospital, (held on 27.02.2020 which has been annexed and marked as Annexure-7).

11. In the discipline of Oral Pathology, after the selection process respective ranks of the petitioner as well as the intervenors is mentioned as quoted herein below :

“Provisional Merit List Assistant Professor Walk in interview 27.02.2020, SCB DCH, Cuttack

XXX

XXX

XXX

Rank	Appln.Sl No.	Name	MDS/MD	Discipline	Discipline applied for	Total	Category	Wanting	Remarks
1	17	Trikbram Debata	MDS	Oralpath	Oralpath	69.08	II		
2	12	Suryakanti Nayak	MDS	Oralpath	Oralpath	67.38	I		
3	7	Sambit Sarangi	MDS	Oralpath	Oralpath	64.45	I		

XXX

XXX

XXX

”

From the above provisional merit list, it is indicated that the petitioner has been placed as number one in the merit, the intervenor-Dr. Suryakanta Nayak at-2 and Dr. Sambit Sarangi at -3. However, the petitioner is kept in category-II and the intervenors-2 and 3 are kept in category-I. The purported objective of such categorization is the category-I candidate is to be preferred to the category-II irrespective of the higher merit as in the present case.

12. It is contended by the learned counsel for the Intervenors that as per the first advertisement (Annexure-2) dated 18.02.2020, both the intervenors were kept in category-I though having lower rank than the petitioner in the merit list (Annexure-7).

13. It is submitted by the learned counsel for the petitioner that the petitioner is eligible as per the

corrigendum (to the First Advertisement) dated 24.02.2020 (Annexure-5), which is in accordance with the Statutory Guidelines of Dental Council of India(DCI) for recruitment of Assistant Professor in Dental College.

14. The corrigendum as published in the notification dated 24.02.2020 (Annexure-5) is reproduced herein which in fact is an exact reproduction of the DCI guidelines for appointment as Assistant Professor in the Dental College:

“A Bachelors Degree in Dental Surgey from an Indian University with Masters in Dental Surgery/Diplomate of National Board recognized by the Government of India on the recommendations in the specialty.

(underlined to supply emphasis)

Note:

1. All the regular teaching faculty shall be full time.
2. Teaching experience gained in medical college, where there are no dental courses, shall not be accepted for teaching post graduate students. Dental faculty with post graduate qualification in dentistry, shifting from the dental department of a medical college shall have to complete minimum of three years of teaching experience in a dental college or institution before being accepted as post graduate faculty.
3. In exceptional cases, the teaching experience, in Government dental colleges, may be considered for further promotion on the basis of total teaching experience.
4. The Reader/Associate Professor in a dental college shall attend teachers training programme once in three years.
5. The Senior Residents with post graduate qualification or Diplomate of National Board recognized by the Council, in the specialty having teaching experience in dental colleges

may be considered equivalent to lecturer/Assistant Professor.

6. Teaching experience in a private dental institution for less than one year shall not be considered relevant for post graduate faculty.

7. The minimum age limit up to which a person can be appointed or granted extension or reemployed in service against the posts of dental teachers or Dean or Principal, as the case shall be, sixty five years.”

15. It is submitted on behalf of the petitioner that the interview being for contractual appointment as Assistant Professor and in view of the corrigendum dated 24.02.2020 (Annexure-5), the petitioner would have succeeded having secured the first merit position in the provisional list, but due to withdrawal of the corrigendum by the second corrigendum dated 26.02.2020, the categorization of the candidates, i.e., the first candidate, as category-II and candidate at 2nd and 3rd position to be category-I was restored.

16. By the interim order dated 04.03.2020 passed by this Court in I.A.No.3646 of 2020, the following was directed :

“04.03.2020, I.A.No.3646 of 2020

Notice as above.

As an interim measure, it is directed that the merit list relating to the discipline Oral Pathology, if not finalized as of now, shall not be finalized till the next.”

17. It is contended by the learned counsel for the intervenors that though the corrigendum was in terms of the DCI guidelines as notified dated 5th November, 2017 but the condition of three years of service is as per the OMES Rules. In the counter affidavit filed by the State, the following has been stated :

“8. That it is humbly submitted that as per Minimum Qualifications for Teachers in Medical Institutions (TEQ) Regulations, 1998 of MCI to be appointed as Assistant Professor, the candidate must have a PG qualification in the concerned subject with one year of Senior Residency (SRship). Prior to 2017, when the Odisha Medical Education Service (OMES) Rules, 2013 was framed, there was a requirement of 3 years teaching experience, to be eligible to be a Medical College Teacher as per TEQ Regulations. So the clause of 3 years of Post PG Senior Residency is mandatory in OMES Rules. However, as the stipulation is changed to 1 years SRship in TEQ Regulation vide Government of India Gazette Notification Dt.08.06.2017; candidates within 1 years SRship are considered as a second category, below the candidates with 3 years of SRship during contractual appointment.

Further, it is submitted that the Teaching/Research Experience specified under the TEQ Regulations, required for Dentistry Department for the post of Assistant Professor is “Recognized PG qualification in the subject with 3 (three) years teaching experience in the subject as Resident/Registrar/Demonstrator/Tutor Post.” In the concerned subject in a recognized Medical College. Copy of extracts of the Minimum Qualifications for Teachers Regulation is annexed herewith as **Annexure-B/2** for appreciation of the Hon’ble Court.

9. That, it is humbly submitted that the Dental Wing of SCB Medical College, Cuttack was established with the faculties of Medical College, which is lately grown into a separate Dental College. But the teachers of Dental College are in the common OMES cadre & their job is inter-transferable among the Dental and Medical Colleges. As there is no separate cadre Rules for Dental College Teachers, the MCI guidelines for eligibility criteria are followed, which do not contradict the guidelines framed by Dental Council of India (DCI). Only some stringent conditions are applied. Because experience as Tutor/Senior Resident is an essential qualification, to be appointed as Assistant Professor, as per MCI Norms, this condition is kept for appointment as Assistant

Professors for Dental subjects. The candidates thus selected are fulfilling the norms of DCI. Rather, the students are getting better qualified teachers and the public service is improved by these experienced faculties.

10. That, it is humbly submitted that as per the guidelines of DCI are the minimum qualification that the candidate must have acquired to be eligible to be appointed as a teacher. The employer does not have the liberty to reduce the prescribed qualification. But, there is no bar in putting any higher/stringent condition. The Hon'ble Court may appreciate that introduction of this mandatory condition of 3 years of post PG SRship or 1 year post PG SRship in case of non availability of candidate with 3 years of post PG SRship, will attribute better & experienced candidate for the service, resulting better teaching and patient care. This has been so held by the Hon'ble Supreme Court as well as this Hon'ble Court in a series of judgments as given below:

- (i) *Dr. Preeti Srivastava & Anr v. State of Madhya Pradesh and Ors Writ Petition (Civil) No.290 of 1997 judgment Dt.10 August,1999, (1999) 7 SCC 120.*
- (ii) *State of Tamil Nadu vrs. S.V.Bracheep & ors (2004) 4 SCC 513. (sic S.V. Bratheep)*
- (iii) *Rupesh Kumar Sahoo & Anr-vrs-State of Odisha & Ors."*

(underlined to supply emphasis)

18. Taking note of the DCI guidelines, the corrigendum was issued is also admitted in the counter affidavit as at paragraph-11 which is quoted herein :

"11. That it is humbly submitted that the eligibility criteria mentioned in the Advertisement dated 18.02.2020 (Annexure-2 to the writ petition) were stipulated as per OMES Rules,2013 & TEQ Regulations. The candidates having 3 years of post PG SRship were given 1st preference as per OMES Rules, 2013 and candidates who do not fulfill this

condition but are eligible as per TEQ Regulations in force, having 1 year of Post PG SRship were given 2nd preference. Subsequently the corrigendum dated 24.2.2020 (Annexure-5 to the writ petition) was issued to relax the eligibility conditions as per revised DCI guidelines dated 05.11.2020. But as it was observed that the candidates selected as per this relaxed eligibility criteria (as per DCI) may not be eligible to be Medical College Teachers as per MCI guidelines, to which post the candidate may be transferred in future, the Corrigendum dated 24.02.2020 was immediately withdrawn by 2nd Corrigendum dated 26.2.2020 (Annexure-6 to the writ petition).” (underlined to supply emphasis)

19. In view of the stand taken in the counter affidavit that the mandatory condition of three years of post PG Senior Residency (SRship in short) or 1 year post PG SRship in case of non availability of candidate with 3 years of post PG SRship, will attribute better & experienced candidate for the service, resulting better teaching and patient care; it has to be considered whether a person with higher academic credential having one year post PG SRship can be differentiated from a person with three years of post PG SRship purportedly relying on the decisions of the Hon’ble Supreme Court in **Preeti Srivastava (supra)**, **S.V. Bratheep (supra)** and **Rupesh Kumar Sahoo (supra)**.

20. In considered opinion of this Court in **Preeti Srivastava(supra)** the Hon’ble Supreme Court was dealing with the standard of education and admission, the criteria for admission to Post Graduate Medical Education and it was held that such criteria can be laid down under the list-I Entry-66 and list-III Entry 25 of the Constitution of India, by Central Government and the States competence under

list-III Entry-25 is subject to standard so laid down by the Union of India.

Therefore, if the ratio of **Dr. Preeti Srivastava (supra)** is applied to the present case, the DCI guidelines having been laid down by the Union of India prevailing on the date of the first advertisement (dated 24.02.2020: Annexure-5), the DCI guidelines would prevail over the OMES Rules.

21. The argument of the State in the counter has also to be tested whether SRship of three years experience is better than one year, for the fact that it cannot be the general Rule that more years of SRship is better, in view of the DCI guidelines referred above. Further, there would be persons having less merit, but more than three years of SRship also. Therefore, it has to be held that **Dr. Preeti Srivastava (supra)** does not help the stand of the State as taken in paragraph-10 of the counter, rather the contention in paragraph-10 is contrary to law laid down in **Preeti Srivastava (supra)**.

22. It has also to be noticed that all the decisions referred to in the Constitution Bench decision of **Preeti Srivastava (supra)** and the subsequent decisions following it, are dealing with the admission to Post Graduate Courses in Medical/Engineering Colleges and not with appointment as an Assistant Professor in a Dental College as per the guidelines of the Government of India through Dental Council of India, which is the case being dealt with.

23. If the contention is to be accepted then, purportedly, by applying **Preeti Srivastava (supra)**, the State as per the

advertisement (Annexure-2), can select a candidate having lesser comparative merit by eliminating the candidate having higher merit as in the case at hand by a categorization on the basis of years of Post PG SRship, which amounts to creating a category amongst the category of similarly situated candidates applying for selection.

In considered view of this Court, the decision rendered in ***Preeti Srivastava (supra)*** does not lay down such a proposition.

24. S.V. Bratheep (supra) reiterates and follows the principles laid down in ***Preeti Srivastava (supra)*** and, therefore, also does not help the State in its proposition as at paragraph-10 of the counter. Somehow the counter has been filed presuming that admission to Post Graduate Courses in Medical Colleges and recruitment as Assistant Professor in the teaching cadre are to be treated alike.

25. Further, considering the interim order of this Court (Dated 04.03.2020) passed earlier and after hearing the learned counsel for the petitioner, learned counsel for the Intervenors and learned Addl. Government Advocate on 04.04.2022, 12.04.2022, 20.04.2022 and 27.04.2022, direction was issued to the opposite party-State to file affidavit indicating their stand.

26. Pursuant to the above orders affidavit dated 30.04.2022 has been filed which forms part of the records and copy has been served on the learned counsel for the appearing parties. The affidavit filed by opposite party no.2 is quoted herein :

“2. That it is humbly submitted that the post has not been filled up in pursuant to the Advertisement No.3388 dated 18.02.2020 because of the interim order granted by this Hon’ble Court in I.A. No.3646, dated 04.03.2020. The Directorate intends to fill up the posts after necessary order from this Hon’ble Court.

3. That it is humbly submitted that requisition has been submitted to OPSC for filling up the posts on regular basis, Advertisement has not been published yet.

4. That presently OMES Rules, 2021 is in force which prescribes the teaching experience of one year as SR for Medical College Teaching Faculty and as per DCI Guidelines for Dental Colleges.

5. That it is humbly submitted that the Department shall consider the teaching experience of the petitioner (three years completing in 2021) if, the Hon’ble Court so directs and proceed to conclude the recruitment.”

27. Having heard the learned counsel for the parties and considering the submissions and the pleadings, this Court takes note of the proposition that the OMES Rule 2021 prescribes teaching experience of one year as Senior Resident for Medical College Teaching faculty which is also as per the DCI guidelines for Dental Colleges.

28. Keeping in view the fact that there is dearth of faculty in the Department of Oral Pathology as mentioned in the counter affidavit of the State and the fact that the selection process for the contractual appointment has also not proceeded after filing of the writ petition and the interim order dated 04.03.2020 for more than two years, it is directed that the petitioner’s candidature for appointment (contractual) as Asst. Professor Oral Pathology, SCB Dental College and Hospital shall also be considered in the terms

as stated in the affidavit of opposite party no.2 dated 30.04.2022 (quoted at paragraph-26 above) along with the intervenors, as per the merit list (Annexure-7) pursuant to the walk in interview dated 27.02.2020,

29. The writ petition is disposed of accordingly.

(M.S.Sahoo)
Judge

Gs/dutta

