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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 872 of 2022

Dr. Mohanlal Khadia

....

Appellant

Mr. Avijit Mishra, Advocate

-versus-

State of Odisha and Others

....

Respondents

Mr. M.K. Khuntia, Addl. Government Advocate

Mr. Bijay Kumar Routray, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

28.09.2022

Order No.

03. 1. The challenge in the present appeal is to a judgment dated 31st May, 2022 of the learned Single Judge dismissing the Appellant's writ petition i.e. W.P.(C) No.27613 of 2021 in which he had challenged his non-selection as Assistant Professor in the Surgical Oncology Department of the Acharya Harihar Post Graduate Institute of Cancer, Cuttack (Respondent No.2).
2. In terms of the advertisement issued by Respondent No.2 on 3rd February, 2021 inviting applications for the said post in the Department of Surgical Oncology (Super Specialty Department), the prescribed educational qualification was that the candidate "should have PG Degree in Super Specialty or PG Degree in the concerned Broad Specialty (As per MCI) with two years special training in the concerned Super Specialty." The candidates were also expected to

have three years' experience as senior resident in the respective discipline from any recognized medical institutions recognized by MCI.

3. There is no dispute that the Appellant did not possess a PG degree in the concerned Super Specialty i.e. Surgical Oncology. However, he did possess the PG Degree in the Broad Specialty which was 'Surgery'. In other words, he had a PG Degree in MS (Surgery). It is also not in dispute that the Appellant had three years' experience as Senior Resident in the Department of Surgical Oncology in the Respondent No.2 institute itself.

4. The only portion of the above qualification that the Appellant did not possess was "two years special training in the concerned Super Specialty". The case of the Appellant was that he was not required, in terms of the MCI Regulations applicable at the relevant point in time [i.e. MCI Regulations amended up to 8th June, 2017] to possess the above special training requirement. Learned counsel for the Appellant has drawn attention to the qualification as per the MCI Regulations in terms of which such requirement of Special Training in Surgical Oncology is required only for those possessing MS in ENT or MS in Orthopedics or MD in Obstetrics and Gynecology).

5. It has been contended by Mr. Bijay Kumar Routray, learned counsel appearing for Respondent No.2, that having participated in the selection, the Appellant cannot be heard to question the above requirement after the selection is over and he was unsuccessful.

6. There is merit in the contention of Respondent No.2 as it is settled law that after participating in a selection, an unsuccessful candidate cannot challenge the conditionalities of such selection. In ***Ramesh Chandra Shah v. Anil Joshi (2013) 11 SCC 309***, the Supreme Court discussed the earlier judgments on the topic and held as under:

“In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

7. In ***Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521***, it was reiterated that:

“If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non- selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.”

8. In ***Pradeep Kumar Rai v. Dinesh Kumar Pandey (2015) 11 SCC 493***, the Supreme Court held:

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same

time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

9. In response, Mr. Avijit Mishra, learned counsel for the Appellant seeks to contend that he already fulfills all the requirements and that it is not practical to expect him to have two years special training in the concerned Super Specialty since there is no institute in the country which offers such special training. This is contested by learned counsel for Respondent No.2 who points out that such special training is available in some leading cancer institutes in the country.

10. This Court would not like to enquire whether in fact such special training is available or not. The fact remains that it is a requirement in the advertisement and the Appellant does not fulfill that particular requirement. Consequently, the Court finds no grounds to interfere. The writ appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.