

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) Nos.27620, 27613 and 27617 of 2021**

(In the matter of applications under Articles 226 and 227 of the Constitution of India, 1950).

In W.P.(C) No.27620 of 2021

Biswajeet Kar *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:
For Petitioner : *Mr. Sameer Ku. Das, Adv.*

-versus-
For Opp. Parties : *Mr. S.K. Samal, AGA*
Mr. B.K. Routray, Adv.
(for O.Ps.2 & 3)

In W.P.(C) No.27613 of 2021

Mohanlal Khadia *Petitioner*
-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:
For Petitioner : *Mr. Sameer Ku. Das, Adv.*
-versus-

For Opp. Parties : *Mr. S.K. Samal, AGA*
Mr. B.K. Routray, Adv.
(for O.Ps.2 & 3)

In W.P.(C) No.27617 of 2021

Dr. Chinmaya Rashmi Ranjan *Petitioner*
Mohapatra

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Sameer Ku. Das, Adv.*

-versus-

For Opp. Parties : *Mr. S.K. Samal, AGA*
Mr. B.K. Routray, Adv.
(for O.Ps.2 & 3)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-12.05.2022

DATE OF JUDGMENT:-31.05.2022

S.K. Panigrahi, J.

1. In these Writ Petitions, the petitioners challenge the action of the opposite parties in not considering them for appointment as Assistant Professors in Medical and Surgical Oncology, even though they are otherwise eligible for the post and they are candidates as against the vacant posts for UR, ST and SC categories pursuant to the Advertisement dated 03.02.2021. Since the issue involved in the present Writ Petitions is identical, they are taken up together and disposed of by this common judgment.

2. It is clarified that the petitioner-Biswajeet Kar in W.P(C) No.27620 of 2021 applied for the post of Assistant Professor in Medical Oncology, petitioner-Mohanlal Khadia in W.P(C) No. 27613 of 2021 applied for Surgical Oncology and petitioner-Chinmaya

Rashmi Ranjan Mohapatra in W.P(C) No. 27617/2021 applied for Surgical Oncology (All for Super Specialty Department).

I. Factual background of the case:

3. The opposite party No.2 issued Advertisement No. AHPGIC/ E-01/ 2021 dated 03.02.2021/Annexure-1 inviting applications from the eligible candidates for the post of Assistant Professors in different disciplines to work in Acharya Harihar Post Graduate Institute of Cancer (AHPGIC), Cuttack. It is stipulated that the appointment will be made in accordance with the Odisha Medical Education Service (Method of Recruitment and Conditions of Service) Rules, 2009 and as per the bye-laws of the AHPGIC, Cuttack.
4. A cursory glance at the Advertisement/Annexure-1 reflects that two categories of posts were put to advertisement, one is Broad Specialty and another is the Super Specialty. The subject Medical Oncology falls under the Super Specialty category and there is one number of vacancy put to advertisement in UR category. So far as the Surgical Oncology is concerned, it also falls under the category of Super Specialty and two numbers of vacancies put to advertisement one for SC and one for ST under this subject.
5. The relevant clause of the Advertisement dated 03.02.2021 under Annexure-1 concerning the

educational qualification and experience, which reads as follows:

“3) Educational Qualifications and Selection Criteria:

- a) **For Broad Speciality Department (MD/MS):** He/ She should have **PG Degree in the specialty with three years experience as Senior Resident in the respective disciplines** from any recognized Medical Institution recognized by the MCL. For Clinical departments, the candidate must possess MD/MS/MDS/DNB or any equivalent degree.
- b) **For Super Speciality Departments (MD/MS + MCh/DM):** MCh/DM degree will be preferred.
- c) He/ She should have **PG Degree in super specialty or PG degree in concerned broad specialty (as per MCI) with 2 years special training in the concerned super specialty.**

Also the candidates should have three years experience as Senior Resident in the respective disciplines from any recognized Medical Institution recognized by the MCI.

- c) **For the post of Assistant Professor in Medical Physics:** He/she should have M.Sc in Physics (1st class) degree with Diploma in Medical Physics from Bhabha Atomic Research Centre (BARC), Mumbai or equivalent with at least 3 years of experience in a reputed and recognized Cancer Institute.

Assessment Criteria:

Sl. No.	Career Assessment	Weightage (100%)
1.	HSC (excluding 4" optional)/ equivalent	20%
2.	+2 Science (excluding 4 optional) /equivalent	20%
3.	MBBS Examination	60%
4.	Personal Interview	10 marks

* SS: Super Specialty (MD/MS+MCH/DM) BS: Broad Specialty (MBBS+MD/MS)

Minimum 50% marks in interview must be scored in respect of each appearing candidate in order to be eligible for the post of Asst. Professor.”

6. The petitioners herein applied for the post of Assistant Professors in Medical and Surgical Oncology pursuant to the said Advertisement/Annexure-1 as they assumed themselves to be eligible. They belong to UR, ST and SC category.
7. The petitioners after their MBBS Degree completed Post Graduate in General Medicine and General Surgery in the year 2015 and 2016 which is a broad specialty subject as per the advertisement.
8. However, the petitioner-Biswajeet Kar has undergone the Senior Resident-ship from 08.02.2018 to 07.02.2021 in Medical Oncology, petitioner-Mohanlal Khadia undergone the Senior Resident-ship from 15.01.2016 to 14.01.2019 in Surgical Oncology and petitioner-

Chinmaya Rashmi Ranjan Mohapatra undergone the Senior Resident-ship from 05.10.2016 to 04.10.2019. The petitioners are also continuing on deployment basis in various departments of the opposite party No.2 till date.

9. Pursuant to the advertisement, the petitioners submitted their respective application forms along with certificates and mark sheets required for the purpose. They also submitted the experience certificates as Senior Residents in Medical and Surgical Oncology issued on different dates. As per the provisions of the OMES Rules, 2009, there was no requirement of any written test but only an interview is to be conducted for the purpose. But the Petitioners were not called for interviewed as they were falling short of the requirement of experience. Hence, these Writ Petitions.

II. Submissions of the Petitioners:

10. The counsel for the petitioners, Mr. Sameer Kumar Das, submitted that as per the conditions prescribed in the advertisement, the candidates having Post Graduate Degree in the broad Specialty with three years Senior Resident experiences are otherwise eligible for the post in the event they have two years special training in the concern Super Specialty. The MCI Regulation or the prescribed curriculum of the State Government, there is no special training course available for any medical students in the Super Specialty subject. Therefore, their

continuance in the Super Specialty Department for more than two years in any capacity as a special training for them as required under the Advertisement. In other words, the petitioners being post graduates in General Surgery, which is the Broad Specialty subject as per MCI Regulation and having three years Senior Resident experience from the Department of Medical Oncology, they are otherwise eligible for the post of Assistant Professors in Medical and Surgical Oncology as per Advertisement.

11. Mr. Das also submitted that the application forms along with certificates and mark sheets etc. for the said purpose starting from matriculation to their post graduate course. They also submitted the experience certificate as Senior Residents in Medical and Surgical Oncology issued on different dates. He further stated that pursuant to such advertisement, the petitioners having the eligibility for the post of Assistant Professor in Medical and Surgical Oncology applied in the prescribed form in the prescribed manner. The petitioners were hopeful that they would be appointed against the posts of Assistant Professors in Medical and Surgical Oncology meant for UR, ST and SC category as there was no other candidates.

12. It is further submitted that since the selection is to be made as per the provisions of the OMES Rules, 2009 there was no requirement of any written test but only an

interview is to be conducted for the purpose. In the Advertisement under Annexure-1, three posts have been advertised for Super Specialty. The petitioners were applicants for the Super Specialty. So, the petitioners waited for the interview. But surprisingly for the entire process the interview was fixed to 31.08.2021 for the Broad Specialty and the candidates were called to attend the interview by the Director in his letter dated 23.08.2021. Since the petitioners are continuing in the same organization, they ascertained that there will be no interview for the Super Specialty category on the ground there is any eligible candidates available.

- 13.** It is submitted that such a stand by the office of the opposite party No.2 taken the petitioners into surprise. Therefore, they approached the Director and it has been ascertained from the Director that the petitioners did not possess the two years special training in the concern Super Specialty. But, the fact remains the petitioners have three years experiences and training in the concern Super Specialist i.e. Medical and Surgical Oncology. The petitioners have completed their Senior Resident ship for a period of three years in the organization in the department of Medical and Surgical Oncology and therefore it justify the criteria of the advertisement in Class-3(b). In the circumstances, the stand of the opposite parties No.2 and 3 that the petitioners did not possess the two years special training experience is

misconceived and misleading and also unacceptable in law. In fact, there is no such special training course available in the State of Odisha in any institution or MCI regulation for the purpose. Furthermore OMES Rules, 2009 or the bye-law of the Opposite Party No.2 did not prescribe any such provision for recruitment of Asst. Professor. Besides, the above, the opposite party No.2 has issued advertisement in the previous years of selection of Asst. Professor in different disciplines right from 2011 to 2019, but nowhere any such a stipulation of two years special training was required. On the contrary only a PG Degree in the Broad Specialty with three years Senior Resident in the concern discipline was the eligibility criteria for appointment and the persons have already been selected and appointed as Asst. Professor is continuing in Opposite Party No.2-organization. Therefore a post Graduate in general surgery with three years Senior Resident in Medical and Surgical Oncology became eligible for appointment as Asst. Professor. The experience so required under Clause-3(b) of the Advertisement under Annexure-I did not debar the petitioners to apply because they have experience from the department i.e. Medical and Surgical Oncology for three years. In the circumstances, the petitioners are otherwise eligible for the post of Asst. Professors in Medical and Surgical Oncology.

14. It is submitted that the petitioners have the required qualification and experience to hold the post in question and otherwise eligible for the post of Asst. Professor in Medical and Surgical Oncology. They have the required experience from the department and the organization. Moreover, there is no such course of special training of two years is either available in the statute or in the institute. In such circumstances the petitioners could not have been debarred of their right of being considered for the post of Asst. Professor in Medical and Surgical Oncology as the opposite party No.2 in the post has appointed many Asst. Professor insisting for such training. Since they have the eligibility for the post, being single candidate the petitioners are to be selected and appointed. But, surprisingly on a flimsy ground the petitioners have debarred of their valuable right of consideration which causes serious prejudice to them.

III. Submissions by O.P. Nos.2 & 3

15. Learned counsel for the Opposite Parties 2 & 3 Mr. B.K. Routray, submits that the petitioners are not entitled to the relief they sought for, merely because the petitioners are candidates against the vacant posts under UR, ST and SC category. They cannot claim indefeasible rights to be appointed against the aforesaid posts since they fall short of the conditions in terms of experience.

16. The learned counsel for the Opposite Party Nos.2 and 3 further submitted that as claimed by the petitioners, it is not correct to say that the petitioners have the eligibility as per the Advertisement. The petitioners are attempting to make mountains out of a mole hill. The petitioners resorted to blatant falsehood and attempted to mislead and play fraud on the Court by stating that they have “special training” in Medical and Surgical Oncology. At the same time, the claim of the petitioners that either in the MCI regulation or in the State Government curriculum there is no special training available for any medical students in Super Specialty subject which is also wrong. Strangely, the selfsame petitioners have made an absurd interpretation/construction that, *“therefore their continuation in the Super Specialty Department for more than two years in any capacity is a special training for them as required under the Advertisement”* which is totally absurd and unacceptable.

17. He strenuously argued that under the law when a particular party stakes any claim, it is up to him to substantiate the same to avail of the said claim. The Petitioners’ claim that there is no such special training course available for any medical student in Super Specialty subject, it is up to them to discharge the onus. Moreover, the petitioners have neither impleaded the

MCI as a Party nor filed any such document in support of their claim.

18. The petitioners' submissions regarding the fact that they are being Post Graduate in General Medicine, which is the Broad Specialty subject as per MCI regulation having three years Senior Residency from the department of Medical and Surgical Oncology, the Petitioners are otherwise eligible for the post of Assistant Professor in Medical and Surgical Oncology as per Advertisement under Annexure-1 is an outrageous, wild inference. They have failed to place any material or cited any provision in support of their claims.

19. It is submitted that for the post of Assistant Professor, Medical Oncology, the candidate should have M.Ch./DM degree which will be preferred and he/she should have PG degree in Super Specialty or PG degree in concerned Broad Specialty (as per MCI) with two years special training in the concerned super specialty also. It is further provided that the candidates should have three years experience as Senior Resident in respective disciplines from any recognized medical institution recognized by MCI. Admittedly, the Petitioners got no such two years special training in the concerned Super Specialty. As such, the Petitioners have no *locus standi* to make the interpretation as per their choice and whim. He further submitted that such type of 'Special

Trainings' are available in number of Institutions such as Gujarat Cancer Research Institute (GCRI), Ahmadabad, Rajiv Gandhi Cancer Institute, New Delhi, Manipal University etc.

20. He stoutly denied that the petitioners having the eligibility for the post of Assistant Professors in Medical and Surgical Oncology applied in the prescribed Form in the prescribed manner. Moreover, the claims of the petitioners made in the Writ Petitions underlining that they are the only candidates for the single post of Medical and Surgical Oncology meant for UR, ST and SC category is absolutely of no help to them. A call letter was issued to a candidate from Broad Specialty category candidate to appear the interview on 31.08.2021 vide Annexure-8 is no way relevant to the case of the Petitioners inasmuch as it transpires from the said document that the Call Letter is concerned with Radiation Oncology/Radio Therapy. In the writ petitions, the petitioners have stated that they approached the Director and it has been ascertained from the Director that the Petitioners did not possess the two years special training in the concerned Super Specialty are false and borne out of figment of imagination.

21. The averments of the Petitioners that there is no such special training course available in the State of Odisha in any institution or MCI regulation for the purpose and

that furthermore OMES Rules, 2009 or the Bye-Laws of the opposite party No.2 did not prescribe any such provision for recruitment of Assistant Professor is also no way helpful to the Petitioners because the Assistant Professor in the Super Specialty of Medical and Surgical Oncology is indispensably required to teach and guide students pursuing PG and Doctoral training as provided in the Rule-3 of the AHRCC Rules and Bye-Laws and not to merely accommodate the petitioners.

22. It is further submitted that the petitioners are unreasonably compared the Advertisement of the previous years for selection of Assistant Professors in different Disciplines right from the 2011 to 2019 with the present one (Annexure-1 of the Writ Petition). In fact, the Advertisement in the year 2019 was cancelled. He further stated that in respect of the Advertisement up to 2018 for Recruitment of Assistant Professors of Odisha Medical Education Services Rules, 2009 was being followed and thereafter as per the Medical Councils of India/ National Medical Council and at present National Medical Commission Guidelines, the Advertisement (Annexure-1) was floated for teaching in Post Graduation (M. Ch. in Medical and Surgical Oncology) besides Clinical work and Research pursuant to which “Special Training” is mandatory when the candidate with preferential qualification is not available.

23. He ultimately submitted that the Advertisement vide Annexure-1 has become infructuous as no suitable candidate with required "Special Training" besides MS and 3 years Senior Resident-ship applied for the Post of Assistant Professors in Medical and Surgical Oncology. As such, the writ petitions are devoid of any merit and liable to be dismissed.

IV. This Court's Analysis and reasoning:

24. Heard learned Counsels for the parties. The centrality of the issue in the present case revolves around the writ petitioners pleaded that the authorities while making selection by adopting some irrational criteria which is against the norms prescribed by the MCI/ NMC. In the case at hand, ex facie, it is clear that they are being Post Graduate in General Medicine, which is the Broad Specialty subject as per MCI regulation having three years Senior Residency from the department of Medical and Surgical Oncology, the Petitioners are otherwise eligible for the post of Assistant Professor in Medical and Surgical Oncology as per Advertisement under Annexure-1" cannot be accepted as it falls short of the experience prescribed in the advertisement.

25. The Acharya Harihar Cancer Institute has become a Post Graduate Institute with effect from the education session-2017-18 and prior to that it was a hospital with Teaching Institution not inspected and supervised by the MCI. However, since 2017-18 Post Graduation in

Surgical Oncology is under strict regulatory and control regime of the MCI and any deviation will entail cancellation of the Approval/Recognition for the PG teaching. Hence the Institution cannot relax on the count of educational qualification or experience.

26. The averments of the Petitioners regarding the fact that there is no such special training course available in the State of Odisha in any of the institutions. MCI regulation for the purpose and that furthermore OMES Rules, 2009 or the Bye-Laws of the opposite party No.2 did not prescribe any such provision for recruitment of Assistant Professor is also no way helpful to the Petitioners because the Assistant Professor in the Super Specialty of Medical and Surgical Oncology is indispensably required to teach and guide students pursuing PG and Doctoral training as provided in the Rule-3 of the AHRCC Rules and Bye-Laws and not to merely accommodate the petitioners.

27. The Assistant Professor in the Super Specialty of Medical and Surgical Oncology is indispensably required to teach and guide students pursuing PG and Doctoral training as provided in the Rule-3 of the AHRCC Rules and Bye-Laws and not to merely accommodate the petitioners. Hence the petitioners claim does not have any force. Even otherwise also, ultimately, the Advertisement/Annexure-1 has become infructuous as no suitable candidate with required "Special Training"

besides MS and 3 years Senior Resident-ship applied for the Post of Assistant Professors in Medical and Surgical Oncology.

28. The Apex Court has observed in **Shankarsan Dash vs Union of India**¹ as follows:

“... Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others,; Miss Neelima Shangla v. State of Haryana and Others and Jitendra Kumar and Others v. State of Punjab and Others.”

29. In the instant case, the petitioners are not even found to be eligible for taking them into the zone of consideration as they lack experience as required by the Institution and is duly reflected in the advertisement also. The decision to not to fill up the vacancies due to

¹ 1991 SCR (2) 567

non-availability of eligible candidates forms bona fide reasons. It is necessary to make the recruitment process more inclusive so that more and more candidates can participate in the said process and high standard of selection can be maintained in order to pick the best out of the lot. But, it is to be borne in mind that any kind of compromise in the educational qualification or experience is likely to undermine the spirit of the selection process.

30. In such view of the matter, the Writ Petitions are devoid of any merit and, accordingly, dismissed.

(**S.K. Panigrahi**)
Judge

Orissa High Court, Cuttack,
Dated the 31st of May, 2022/PCD/BJ