

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C. (OA) No.912 of 2018

Dr. Abinash Kumar Panda

....

Petitioner

Mr. L. Samal, Advocate

-versus-

***Commissioner-cum-Secretary to
Govt. Health & Family Welfare
Department, Bhubaneswar &
Others***

....

Opposite Parties

Mr. P.K. Mohanty, ASC

CORAM:
JUSTICE M.S. RAMAN
ORDER
20.09.2022

Order No.

- 05.**
1. This matter is taken up through virtual/physical mode.
 2. The Original Application No. 912 of 2018 was filed before the State Administrative Tribunal, Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No. 912 of 2018.
 3. Vide order dated 7th May, 2018, the learned Odisha Administrative Tribunal has recorded that the Petitioner impugned the order dated 3rd May, 2018 of engagement of Opposite Party No.4, namely, Dr. Udayabhanu Dhal in the post of Assistant Professor on deputation basis issued by Opposite Party No.1-Commissioner-cum-Secretary to Government, Health and Family Welfare Department, Odisha (Annexure-4). The said Tribunal also recorded submission of the Petitioner to the effect that the Petitioner was at Sl. No.1

of the merit list at Annexure-3 but the authority concerned had ignored his case.

On the said date the learned Tribunal passed an interim order which is extracted here under:-

“So far as prayer for interim order is concerned Annexure-4 so far as it relates to respondent No.4 shall not be given effect to till filing of instruction.”

4. On 15th May, 2018, the said Tribunal has passed further orders, which is extracted hereunder:-

“xxx xxx xxx xxx
2. *Learned counsel appearing for respondent No.4 submitted that admittedly he is at sl. No.2 of the provisional list of eligible candidates selected for the post of Assistant Professor (Contractual) as at Annexure-3. But as per advertisement there are two number of posts in the grade of Assistant Professor (contractual) in Paediatric Surgery as at sl. No. 16 of the advertisement issued by respondent No.3 as at Annexure-2. He further submitted that at Annexure-4 it can be seen that he has been recommended for one post of Paediatric Surgery. Therefore, he should not be made to suffer on account of the respondents in issuing appointment order for the applicant as one post is available for appointment of the applicant.*

3. *Learned counsel for the applicant however submitted that name of the applicant is at serial No.1 and he should have been offered appointment letter prior to respondent No.4.*

4. *After hearing all parties interim order dated 7th May, 2018 is modified to the extent that only in case two posts are lying vacant in the rank of Assistant Professor (Contractual), Paediatric Surgery as at Annexure-2 as on date of the order the respondents shall be at liberty to implement Annexure-4 so far it relates to respondent No.4 and one post shall be kept vacant for the applicant. It is once again made clear that one post of Assistant Professor (Contractual), Paediatric Surgery advertised at Annexure-2 shall be kept vacant for the*

applicant till filing of instruction. Any question relating to inter se seniority between the applicant and respondent No.4 shall be as per the final decision of the O.A.”

5. On 8th August, 2018, the following order was passed:-

“xxx xxx xxx xxx

Learned Standing Counsel referring to instructions in letter dated 27th July, 2018 of Respondent No.1 submitted that “In view of recognition of 250 UG seats & continuance of permitted P.G. seats, Govt. has decided to fill up the vacant posts of Asst. Professor of different disciplines in SCB, MCH, Cuttack on deputation basis for a short term vide this Deptt. Letter No. 6457, dated 22nd February, 2018 wherein as per the modalities fixed for appointment of facilities at Para-13, the Asst. Professors appointed on deputation basis in other Govt. Medical Colleges of the State are not eligible to apply for the current year upto 31st May as their names have already been reflected in the inspection report of Medical Council of India for obtaining LoP for new Govt. Medical Colleges and renewal of existing Medical Colleges. It may not be out of place to mention here that the applicant Dr. Panda, whose name appeared in the merit list prepared by SCB, MCH, Cuttack in pursuance of the advertisement dated 10th July, 2017, was not considered for engagement as the post was advertised for contractual appointment and Dr. Panda was a regular Govt. servant belonging to OMHS Cadre.

Learned Counsel for the applicant, on the other hand, submitted that all the above points were not in accordance with the advertisement issued by respondent No.3 at Annexure-2. It is a settled principle of law that appointments are to be made strictly as per the advertisement. The applicant upon being selected at No.1 is willing to join in the contractual post because of his specialization. Hence regular/contractual cannot be a ground to reject his case.

Learned Standing Counsel prayed for some time to obtain further instruction in the matter.

Admit. Issue notice. Counter be filed positively by 3rd week of August, 2018.

List this matter in the 4th week of August, 2018 if by that date no counter is filed, the OA is likely to be disposed of on the basis of available materials on record.”

6. At the time of hearing today, Mr. L. Samal, counsel for the Petitioner submitted that he has no instruction and in the meantime more than four have been elapsed.

7. In view of such submission, the writ petition is dismissed.

Laxmikant



(M.S. Raman)
Judge