



Neutral Citation Number: 2023:DHC:3925-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 20.03.2023

% **Judgment delivered on: 24.05.2023**

+ **W.P.(C) 6050/2021 & CM APPL. 19148/2021**

SURESH GAUR

..... Petitioner

Through: **Mr. Avadh Bihari Kaushik, Advocate.**

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: **Mr. Anupam Srivastava, ASC with
Mr. Dhairya Gupta, Mr. Vasuh Misra
& Mr. Ujjwal Malhotra, Advocates
for Respondents No.1 to 4.
Mr. Vishal Biswas, Junior Assistant
for Respondent/ Dr. B.S.A. Hospital.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The instant Writ Petition has been filed by the Petitioner under Article 226 of the Constitution, in the form of a Public Interest Litigation (“PIL”), seeking a Writ of Quo Warranto against Respondent No. 4 herein.

W.P.(C.) No.6050/2021

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2. The crux of this matter revolves around the appointment of Respondent No. 4 as the Medical Director, Dr. Babasaheb Ambedkar Hospital (**“BSA Hospital”**) situated in Sector-6, Rohini, Delhi, vide Order No. F.11/252/H&FW/2018/HR-Med./Pt.File-I/112587809/559-71, dated 10.03.2021, by Respondent Nos. 1 & 2 (**“Impugned Order”**), and whether the said appointment was done in accordance with law, or not.

3. At the outset, it would be pertinent for the sake of comprehension to give a brief background on the basis of which the aforesaid prayer has been sought, and the basis on which contravention of statutory rules and irregularity in procedure with respect to appointment of Respondent No. 4 as Medical Director, BSA Hospital, have been alleged by the Petitioner.

4. When the Government of National Capital Territory of Delhi (**“GNCTD”**) came into existence in 1992, a number of hospitals, dispensaries and health centres were created and some existing hospitals were also placed under GNCTD for providing health services to the residents of Delhi. The doctors to tend to the residents of Delhi were either borrowed from Central Health Services (**“CHS”**) or their engagements were made on a contract basis.

5. In 2006, GNCTD constituted its own health cadre vide Cabinet Decision No. 1139 on 13.11.2006. The said decision lead to the formation of the ‘Delhi Health Services’ (**“DHS”**). Pursuant to the constitution of the DHS, ‘Delhi Health Services (Allopathy) Rules, 2009’ (**“Allopathy Rules, 2009”**) were notified vide a Notification dated 23.12.2009 in the Delhi



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Gazette, in terms of the powers conferred upon the government under Article 309 of the Constitution.

6. Thereafter, vide a notification dated 20.08.2014, the GNCTD appointed 528 doctors at the initial constitution stage of the DHS, in the General Duty Medical Officer (“GDMO”) and Non-Teaching Specialist sub-cadre of the DHS, retrospectively from 23.12.2009, i.e., the date of coming into effect of the Allopathy Rules, 2009.

7. It is submitted by the Petitioner that the Respondent No. 4 herein, being an orthopaedic, was initially recruited on contractual and temporary basis by the GNCTD and subsequently, he was regularised and absorbed into the Non-Teaching Specialist Grade-III cadre of the DHS w.e.f. 23.12.2009. It is submitted that the same was however done without carrying any seniority from his past contractual services.

8. It is submitted that a doctor such as Respondent No. 4 appointed to the feeder non-teaching specialists sub-cadre has to complete two years in the feeder cadre and thereafter, he becomes eligible to Specialist Grade-II wherein he has to serve at least for four years, and only then can he become a Specialist Grade-I officer, a level where he has to spend a minimum of seven years in service. Only upon completion of a minimum of seven years in service on the position of in Specialist Grade-I, the Respondent No. 4 would become entitled to Senior Administrative Grade(“SAG”) i.e., the Grade wherein one would meet the minimum eligibility criterion to be appointed as Medical Director, BSA Hospital. The Petitioner has relied upon Rule 4 of the Allopathy Rules, 2009 to buttress his stand with regards to the



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aforesaid procedure to be adopted for promotion within the DHS.

9. It is submitted by the Petitioner that keeping in mind the grade in which the Respondent No. 4 was inducted into the DHS and time spent in service under DHS, Respondent No. 4 is only in the grade of Specialist Grade I, further, he has not completed the requisite, stipulated period of seven years in the said grade at the time of filing of this PIL. Thus, the question of him being a Senior Administrative Grade (“SAG”) or being eligible for Super Time Scale, i.e., meeting the minimum eligibility criterion to be appointed to the post of Medical Director, BSA Hospital, does not arise.

10. It is submitted by the Petitioner that at the time of filing of this Petition, the Respondent No. 4 was working as Non-Teaching Specialist Grade – I under Grade Pay 8700 and that he can in no manner be construed to be an officer in SAG / Super Time Grade in Pay Band-4 of Rs.37400-67000+GP 10000 (pre-revised). It is submitted by the Petitioner that the Respondent No. 4 does not hold requisite seniority for being eligible to the post of Medical Director and one must hold the aforesaid SAG as Per Schedule II of the Allopathy Rules, 2009 to be considered for appointment to the post of Medical Director in BSA Hospital.

11. It has been submitted by the Petitioner that Schedule II of the DHS (Allopathy) Rules, 2009 stipulates that the post of Medical Director is a duty post which is to be filled up by an officer of GDMO sub-cadre in Senior Administrative Grade/ Super Time Grade in the Pay Band-4 of Rs.37400-67000+GP 10000 (pre-revised). Further, that the Medical Director is the



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overall in-charge and administrator of BSA Hospital. The Medical Director of the BSA Hospital is a sensitive post, *inter alia*, possessing the important power of preparing Annual Confidential Reports (“ACRs”) of the doctors/ employees/ staff of the BSA Hospital. Thus, the relevant statutory rules are required to be followed strictly, in letter and spirit whilst, considering someone for the said post.

12. It is submitted by the Petitioner that as per Schedule II of the Allopathy Rules, 2009, BSA Hospital is listed at Serial No. 20 and that in the said list of duty posts in the schedule, the post of Medical Superintendent does not find place. It is submitted that the post of Medical Superintendent and Medical Director is the same and that only the nomenclature of the post is different. It is pertinent to highlight that the said change in nomenclature was not done with any statutory sanction or approval of the competent authority, i.e., Lieutenant Governor of Delhi.

13. It has been submitted by the Petitioner that this appointment of Respondent No. 4 herein as the Medical Director, BSA Hospital, in terms of the Impugned Order of appointment, has been done in an absolutely anomalous, illegal and arbitrary manner by Respondent Nos. 1 & 2 herein, without keeping in mind the relevant statutory provisions.

14. It is submitted by the Petitioner that the Respondent No. 4 is neither competent nor eligible, and otherwise too, doesn't possess the necessary qualifications or experience to be appointed to aforesaid post. It is submitted that Respondent No. 4 does not even possess SAG which is a basic and essential requirement for doctors to qualify for appointment as a Medical



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Director.

15. It is submitted that Respondent No. 4 is merely a Grade-I Specialist, whereas, more than 100 doctors and medical officers senior to him, possessing SAG level and working in different hospitals are eligible for the post Respondent No.4 has been appointed to. It is submitted that many of these eligible candidates are also working at BSA Hospital and are also interested in the said post.

16. It is submitted by the Petitioner that in no manner can it be construed that Respondent No. 4 was appointed to the post of Medical Director, keeping in line with the statutory provisions.

17. It is submitted that Respondent No.4 has been chosen by Respondent Nos. 1 & 2 for the post of Medical Director from outside the list of doctors and medical officers possessing SAG and thus, axiomatically the impugned action of the Respondent Nos. 1 & 2 is a clear breach and violation of all norms, rules, governing seniority, eligibility and past practices. It is submitted that the action of Respondent Nos. 1 & 2 is a clear breach of service jurisprudence.

18. To buttress his contentions, the Petitioner has stated the names of doctors who are working in BSA Hospital, who are appointed through a selection process conducted by UPSC and are drawing pay in the SAG/ Super-Time Grade with a Grade Pay of 10000 (pre-revised). A list of 17 doctors was provided by the Petitioner, whom, according to the Petitioner, possess the aforesaid qualification, are working in BSA Hospital, and are eligible to be appointed to the post of Medical Director, BSA Hospital.



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19. It is submitted by the Petitioner that ever since Respondent No. 4 has been appointed as the Medical Director, there has been clear mismanagement, chaos, indiscipline, atrocity and anarchy in BSA Hospital. Despite objections and grievances being lodged with concerned authorities, no remedial action has been taken against the Respondent No. 4. In light of this, the Petitioner, being a resident of the area where BSA Hospital is located, took it upon himself to approach this Court to bring to its notice the injustice being perpetrated.

20. It is submitted that due to the illegal appointment of the Respondent No. 4 as Medical Director of BSA Hospital, the doctors and employees of the Hospital are in grave distress and are anguished. Due to the illegal appointment of Respondent No. 4 to the post of Medical Director, the Association of the BSA Hospital made a written representation dated 07.04.2021 to the office of the Lieutenant Governor of Delhi, however, no action has been taken by the authorities against the illegal appointment of Respondent No. 4.

21. The representation dated 07.04.2021 had stated that the implementation of the impugned order of appointment of Respondent No. 4 would lead to an anomalous situation and perpetrate instances of insubordination by junior doctors. The Impugned Order itself creates a situation wherein a junior doctor has been granted a post, bypassing more than 100 doctors who in fact possess SAG with the requisite grade pay for being appointed as Medical Director. It was stated in the representation that the impugned order of appointment has bypassed the norm of seniority and



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would lead to a situation wherein a doctor junior to many, would be writing senior doctors/ SAG officers' ACRs. The Association had pleaded that the Lieutenant Governor to take action against the said impugned order of appointment.

22. It is submitted by the Petitioner that there has been utter mismanagement of the BSA Hospital ever since Respondent No. 4 has taken charge as Medical Director, and that the Medical Director terribly failed at putting a system in place whilst the coronavirus pandemic was laying waste to the country and that people in the hospital could not provide an adequate response to the need of the hour, as no reasonable arrangements had been made to treat the affected people.

23. It is submitted that a short and limited issue is involved for adjudication by this Court under Writ Jurisdiction herein. That whether Respondent No. 4 possesses the relevant grade/ qualification for appointment to the post of Medical Director or not.

24. Responding the contentions put forth by the Respondent No. 2 in this Writ Petition regarding its maintainability, it is submitted that though it is settled law that the scope of PILs is limited in service matters, however, at the same time, it is also equally an equally well settled proposition of law that a non-eligible and non-qualified person has no right to remain on a post for which he is not eligible.

25. It is submitted that this PIL in the nature of a Writ for Quo Warranto is maintainable before this Court even though the subject matter of dispute pertains to a service matter as in this case, an absolutely unqualified and



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ineligible person has been appointed in clear violation of statutory rules. It is submitted that that the issue is no more *res integra* in light of the Judgement of the Hon'ble Supreme Court in the case of ***Rajesh Awasthi v. Nand Lal Jaiswal (2013) 1 SCC 501***.

26. It is submitted that the Petitioner most certainly has a *locus* to file the instant PIL and that it is a well settled position of law that a person, despite being unrelated to the matter, can move the Court under its Writ Jurisdiction praying for a Writ of Quo Warranto challenging the illegal and arbitrary appointment of any person on a government post. It is submitted that in case of the aforesaid situation arising, the person bringing the *lis* becomes a relater to the issue involved. The same was settled in the case of ***Rajesh Awasthi (supra)***.

27. It is submitted by the Petitioner that the law laid down by the Hon'ble Supreme Court has been repeatedly followed by the Hon'ble Supreme Court in a catena of Judgements which have been passed thereafter. It is submitted that the position as elucidated in the case of ***Rajesh Awasthi (supra)*** was followed in the case of ***M/s Society Standing For a You Mass Awareness and Anr. v. Union of India & Ors., W.P. (C) 10600/ 2015***, Judgement dated 23.03.2016.

28. *Per contra*, at the outset it has been submitted by Respondent No. 2 that the instant PIL has been filed in the case of a service matter and that it is no more *res integra* that PIL cannot be sustained in service matters.

29. It is submitted by Respondent No. 2 that Respondent No. 4 was appointed in a completely legal manner, following due process. Keeping in



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mind the administrative skill, vigilance report/ clearance, managerial experience and capability of the candidate, i.e., Respondent No.4, he was appointed to the post of Medical Director.

30. It is submitted by Respondent No. 2 that the Impugned Order of appointment of Respondent No. 4 is a purely administrative decision and that the post of Medical Director is not a promotional post, nor is it based on seniority.

31. The Respondent No. 2 further submitted that the instant PIL has been filed with malafide and ulterior motives for creating undue pressure on the concerned authorities. Further, there is no *locus standi* for the Petitioner to be interfering with the general functions of appointment of officials by the GNCTD, being a person who is not a concerned party and is unrelated to the management/ administration of the BSA Hospital.

32. Respondent No. 2 submitted that Respondent No. 4 is an experienced doctor, having served in the medical field for over 16 years and that he has been working with the GNCTD since 2004 with utmost diligence. It is submitted by Respondent No. 2 that the post of Medical Director of BSA Hospital is not even included within Schedule II of the Allopathy Rules, 2009 as alleged by the Petitioner. It is submitted that the position of Medical Director is an administrative position created by GNCTD and as GNCTD IS the competent authority, it is empowered to appoint any doctor to the said post based on relevant criterion it sets for eligibility, i.e., on the basis of managerial, administrative and medical skill. Further, the said appointment of Respondent No. 4 has also been confirmed by the Lieutenant Governor of



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Delhi vide notice dated 03.03.2021.

33. It is submitted by Respondent No. 2 that most of the doctors, as has been claimed by the Petitioner are eligible to the post of Medical Director at BSA Hospital, have in fact attained the age of 62 years and are thus not eligible to the post of Medical Director, as that is the outer limit with regards to age up to which one can hold the post of Medical Director.

34. The Respondent No. 2 has thereafter proceeded to give explanations categorically tackling names of doctors, whom according to the Petitioner are eligible to be considered to the post of Medical Director, giving explanations as to why the said doctors were not considered to the post of Medical Director.

35. It is further submitted by Respondent No. 2 that there are no complaints which have been received by the competent authority against Respondent No. 4, and that he has been working efficiently in BSA Hospital. Further, it is denied by Respondent No. 2 that there was any fallacy or negligence in him conducting his duties, especially during the 2nd wave of the coronavirus pandemic. The Respondent No. 2 has annexed a total count of RAT and RT-PCR tests conducted by the BSA Hospital during the months of April-June, 2021, to substantiate its submissions that Respondent No. 4 has been working with utmost diligence.

36. It is submitted by the Respondent No. 2 that Schedule II of the Allopathy Rules, 2009, would not be applicable to the post of Medical Director, BSA Hospital, as that is not a duty post which comes under the said rules. It is submitted that the post of Medical Director is an



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administrative post which was created by the GNCTD for smooth functioning of hospitals and is in no manner related to the post of Medical Superintendent, as given in Schedule II of the Allopathy Rules, 2009.

37. It is submitted by Respondent No. 2 that pay band is not the only criteria for appointment of Medical Director and that the fact that Respondent No. 4 has been given the post of Medical Director, does not entitle him to any additional perks, increments or promotion. It is stated that Respondent No. 4 would still continue to be a Specialist Grade I.

38. Heard learned Counsels for the parties and perused the material placed on record. The matter is being disposed of with the consent of the parties at admission stage itself.

39. At the outset, we shall be dealing with the preliminary contention of the Respondents with regards to the maintainability of this PIL, as it has been alleged that the same is not maintainable in light of it being preferred in a matter of service matter.

40. With regards to the preliminary objection, we do not find any weight in the same as the same is no longer *res integra*. A Writ Petition seeking a Writ of Quo Warranto is maintainable in the case of service matters, keeping in mind the Judgement of the Hon'ble Supreme Court in the case of **Rajesh Awasthi** (*supra*). The relevant paragraph substantiating the afore stated position of law is produced hereunder –

“31. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person



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holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker [(1993) 2 SCC 703 : AIR 1993 SC 1873] .”

41. Now that the preliminary objection of the Respondents has been dealt with, we can now proceed to deal with this matter on merits. For the same, it shall be useful to refer to a previous order of this Court passed in the instant matter.

42. On 04.11.2022, this Court, after perusing the relevant rules had come to the conclusion that the post of Medical Director itself, does not exist as per the relevant Recruitment Rules. In light of this, the Court had asked the Respondents to place on record how Respondent No. 4 came to be appointed as a Medical Director, when the said post does not even exist as per the Recruitment Rules. The affidavit so filed was required to also mention the qualifications for the post of Medical Director.

43. Consequently, an additional affidavit dated 06.02.2023 has been filed by Respondent No. 2 herein, attaching an Order dated 19.02.2016 issued by Respondent No. 2 after approval from the Health Minister, GNCTD. The affidavit states that the post of Medical Director was created to better coordinate and manage hospital affairs between different Medical Superintendents and officers. The affidavit further stated that the post of Medical Director is not governed by the qualification criterion under the DHS (Allopathy) Rules, 2009 and that the eligibility criterion is only governed vide aforesaid order. The Order attached with the said affidavit is



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reproduced hereunder for easy reference –

GOVERNMENT OF NCT OF DELHI

HEALTH & FAMILY WELFARE DEPARTMENT

9th LEVEL, A-WING, DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI-2

DATED

ORDER

In continuation of order no. ss2hfw/2015/Cab.Note/CD-112333566/prsecyhfw/1238-87, dated 25th July the re-organization of hospitals into smaller units of management under separate Medical Superintendents is being done as under. This shall lead to intensive management and control of Hospitals since the units shall be of a compact nature and better manageable rather than one officer managing all the Units/ Departments of Hospitals.

2. Re-organization shall be as under:-

Sl No.	Name of Hospitals/ Institutions	Name & No. of Units	Name of Speciality/ Units
1.	UCMS & Associated GTB Hospital	Medical College (Principal)	1. Medical College
		GTB (Medical Director)	1. Surgical & Allied Services
			2. Medical & Allied Services
			3. Accident & Emergency Services
			4. Maternity & Child Health (MCH)
			5. Diabetes & Endocrinology
2.	MAMC & Associated Hospitals (LNH, GBP Hospital,	Medical College (Dean)	1. Medical College
		LNH (Medical Director)	1. Surgical & Allied Services, LNH



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	GNEC)		2.	Medical & Allied Services, LNH
			3.	Accident & Emergency Services, LNH
			4.	Maternity & Child Health (MCH), LNH
			5.	Advance Paediatric Center
	GNEC GB PANT (Medical Director)		1.	Eye, GNEC
			1.	Cardiology & CTVS, GBPH
			2.	Neuro-Sciences, GBPH & LNH
			3.	Gastro – sciences (GE & GI Surgery), GBPH
3.	BSA Hospital & Medical College	Medical College (Principal)	1.	Medical College
		BSAH (Medical Director)	1.	Surgical & Allied Services, BSAH
			2.	Medical & Allied Services, BSAH
			3.	Accident & Emergency Services, BSAH
			4.	Maternity & Child Health (MCH), BSAH
4.	DDU Hospital	Medical Director	1.	Surgical & Allied Services, DDUH
			2.	Medical & Allied Services, DDUH
			3.	Accident & Emergency Services, DDUH
			4.	Maternity & Child Health (MCH), DDUH

3. For hospitals mentioned above at Sl. No. 1 to 4, a Medical Director shall be designated who shall be a coordinating officer among different MSs of hospital as well as he shall be exercising the financial powers of the existing Medical Superintendents.

4. For the hospitals mentioned at Sl. No. 5, out of two MSs one of the MS



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will be designated as coordinating MS as well as he shall be exercising the financial powers of the existing Medical Superintendent of the hospital. For the hospitals listed at Sl. No. 6, there will be one Medical Superintendent only.

Sl No.	Name of Hospitals/ Institutions	No. of Units	Name of Units	
5.	JPCH, BSH, DCBH, BMH, BJRM, SGMH, DHAS, GSGH, MVH, SRHCH, ASBGH, RTRMH	02 each	1.	Accident & Emergency Services, Medical & Allied Services
			2.	Maternity & Child Health (MCH)
6.	Attar Sain Jain Eye Hospital, DDMASC, SVBPH, Shusruta Trauma Centre, NC Joshi Hospital, AAAH, PMMM	01	1.	Only one MS

5. *The respective Medical Directors and Coordinating MSs will report to Regional Director Health Services according to the region. The orders for the different Medical Directors & Coordinating MSs will be issued separately. The Regional Directors shall however, be responsible for overall coordination and delivery of health services in the region.*

6. *All the administrative work shall be carried out by the Administration Department and other supporting Departments centrally under the Director*



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Medical/ Coordinating MSs.

7. *All the Medical Superintendents stated above shall manage their respective Units in close coordination with the Director Medical/ Coordinating MSs.*

8. *This issues with the approval of competent authority.*

(PRADEEP KUMAR)

Dy. Secretary (HR) ”

44. A perusal of the aforesaid Order dated 19.02.2016 shows that it does not in fact stipulate any qualification/ essential criterion for being considered for appointment to the post of Medical Director, BSA Hospital at all. The Respondent No. 2 has stated that the same can be done on the basis of an administrative decision, keeping in mind the administrative skill, vigilance report/ clearance, managerial experience and capability of the candidate, however, nowhere is the same stated in the afore produced Order.

45. It is an undisputed fact that the post of Medical Director does not find place in the Allopathy Rules, 2009. The post of Medical Director was created only in terms of the aforesaid mechanical Order dated 19.02.2016. The same, or any other submissions and documents put forth by the Respondents to build their case, has most certainly not satisfied the judicial conscience of this Court.

46. It is without a doubt clear to the mind of this Court, that the post of Medical Director was created without following due process. The Respondents have not placed anything on record to state that due process was followed for the sanctioning of post of Medical Director. Though it is clearly stated as per Rule 4 of the Allopathy Rules, 2009 that the



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government can include posts other than the ones mentioned in Schedule II of the Allopathy Rules, 2009 after consultation with the Union Public Services Commission, the Respondents have not placed anything on record to show that the said process was followed for creating the post of Medical Director.

47. The submission of the Respondents that eligibility to the post of Medical Director BSA Hospital, is not related to the pay band, seniority, or governed by any of the criterion as set out in the Allopathy Rules, 2009, further, that it is only an administrative decision keeping in mind the administrative skill, vigilance report/ clearance, managerial experience and capability of the candidate being considered for the post of Medical Director, does not hold weight. In the opinion of this Court, such a vague criterion affording an almost opaque discretion to the government for deciding who shall be appointed to the post of Medical Director, a sensitive and senior post in the hospital, being responsible for preparing ACRs of various employees of BSA Hospital and obtaining relevant machinery etc., cannot be allowed. The State is duty bound to act in a fair and transparent manner in matters of public employment. Any criterion which would be arbitrary in matters of public employment, would run afoul of Articles 14 & 16 of the Constitution.

48. In this instant case, the Respondents have gone ahead to appoint a candidate to one of the highest posts of BSA Hospital in an extremely arbitrary manner, bypassing many candidates who were in fact more senior to Respondent No. 4. Further, the post of Medical Director itself created by



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the Respondents, in terms of the Order dated 19.02.2016 itself was not done in accordance with due process. The Respondents were required to amend the Allopathy Rules, 2009 if they desired to include the post of Medical Director, or in the least show that due consultations were carried out with relevant stakeholders for the creation of the post of Medical Director, instead of mechanically taking out an order, one which does not even stipulate any eligibility criterion to the post of Medical Director.

49. Further, the stance of the Respondents that the Allopathy Rules, 2009 or seniority shall not be applicable to the post of Medical Director, BSA Hospital seems to be an afterthought on their part, keeping in mind the minutes of meeting dated 03.03.2021 proposing the names for Medical Director along with the Impugned Order of appointment on record. Firstly, the post itself is one which has been created without following due process, secondly, Respondents have appointed Respondent No. 4 to an irregular post, whilst not even keeping in mind the criterion they themselves have stipulated for appointment to the said post.

50. Thus, in no manner can it be construed that the appointment of Respondent No. 4 was done keeping in mind the relevant statutory provisions.

51. Public employment in a sovereign, socialist, secular, democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of procedure established. Equality of opportunity is the hallmark, and the constitution has provided



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also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.

52. The power of a State as an employer is more limited than even that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Herein, the Allopathy Rules, 2009 have been framed in exercise of the powers of the government granted under Article 309. Article 309 of the Constitution of India gives the government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the union or any of the states. It contemplates the drawing up of a procedure and rules to regulate recruitment and service conditions of appointees appointed to public posts. If rules have been made under Article 309 of the Constitution, then the government can make appointments only in accordance with the rules. The State is meant to be a model employer. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because following any other course could be disastrous inasmuch as it will deprive the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating accepted principles of service jurisprudence. Therefore, when statutory rules are framed as per Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.



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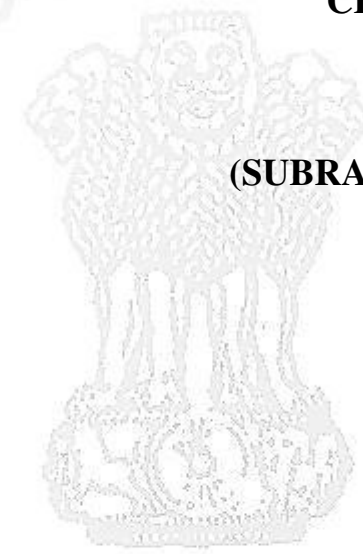
53. In light of the aforesaid, this instant Writ Petition is allowed and the Impugned Order of appointment of Respondent No. 4 as the Medical Director, BSA Hospital is set aside.

54. The Writ Petition along with any pending application(s) is disposed of in these terms.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MAY 24, 2023



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