

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

WPA 7849 of 2019

Dr. Jyotirmay Biswas & Anr.

versus

W.B. University of Health Science & Ors.

For the Petitioners	:Mr. Soumen Kr. Dutta, Adv. :Mr. Subhas Jana, Adv.
For the respondent No. 4	: Ms. Sanghamitra Nandy, Adv.
For the National Medical Commission	: Mr. Indranil Ror, Adv. : Mr. Sunit Kumar Roy, Adv.
For the respondent Nos. 1-3	: Mr. D.N. Maiti, Adv.

Hearing on : **27.09.2023**

Judgment on : **16.02.2024**

Subhendu Samanta, J.:-

1. The writ petitioners are working in the post of Demonstrator of Physiology in the College of Medicine and JNM Hospital, WBUHS, Kalyani. The petitioners challenge the order of promotion issued by the Registrar, West Bengal University of Health Sciences in favour of the private respondents. It is the contention of the present petitioners that the private respondents had to file application on the basis of notification No. OG/WBUHS/2018-19/0485 dated 11.06.2018. The present petitioners made representations before the

Registrar West Bengal University of Health Sciences regarding their grievances and demanded the cancellation of order of promotion of respondent. Their representation was not considered. Accordingly, they preferred a writ application before this Court vide W.P. No. 23784(W) of 2018. One Co-ordinate bench of this Court vide order dated 12th December, 2018 directed the Registrar (present respondent No. 2) to take a reasoned decision on the representations of the petitioners in accordance with the applicable Rules/Regulations/Circulars/Notifications within a period of six weeks from the date of communication of that order.

2. In compliance with such directions the respondent No. 2 has taken a decision containing, inter alia, that:

“Now Therefore, after careful consideration of the entire facts and circumstances of this case, it transpires, Dr. Bhaskar Saha was selected on merit on the basis of the interview where the applicants have been given equal chance to participate. Moreover, Dr. Jyotirmay Biswas and Dr. Arpan Kumar Ghosh as well as Dr. Bhaskar Saha were pursuing the M.D. Course for the same academic session (2015-2018) but from different Universities. Dr. Bhaskar Saha was allowed to apply for the said post on condition that he shall have to produce the final result of M.D. Course at the time of the said interview. The university in order to make the process of selection more democratic, broad based and to increase the talent pool for selection in the said post allowed Dr. Bhaskar Saha, who is otherwise eligible in all respect”.

3. Being aggrieved by and dissatisfied with the said decision taken by the respondent No.2, the present writ petition has been preferred.

4. It is the submission of the learned advocate for the petitioners that the Registrar, West Bengal University of Health Sciences issued the Notification on 11.06.2018 inviting applications from eligible faculty members (on Regular/Permanent Appointment) for promotion to higher academic posts of Professor/Associate professor & Assistant professor in different discipline of modern medicine in the College of Medicine & JNM Hospital. In the said notification it has been mentioned that one (1) resulted post of Assistant professor to be filled up by promotion in the discipline of physiology.
5. He further contended that petitioner Nos. 1 and 2 join in the post of Demonstrator in Physiology on 12.11.2009 whereas the private respondent herein joined in the post of Demonstrator in Physiology on 01.12.2009 as such his junior to the petitioners. Moreover, it would be evident from the record that the private respondent passed M.D. in Physiology on 23.07.2018 and even on 26.06.2008 i.e. the last date of submission of application for the post of Assistant professor in Physiology the private respondent was not eligible to apply for the said post of Assistant professor in Physiology and even on 26.06.2018 the examination of M.D. Course of the private respondent was not completed and when the examination as well as result of passing M.D. in physiology was not declared then how could the private respondent made eligible to apply for the post of Assistant professor in Physiology violating the eligibility criteria to apply for the said post.

6. He argued that the decision taken by the respondent No. 2 is violative to the law declared by the Hon'ble Supreme Court.
7. In support of his contentions, he cited a decision of **Hon'ble Supreme Court in Rakesh Kumar Sharma Versus State (NCT of Delhi) & Ors. reported in (2013) 11 SCC 58.**

“11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification”.

8. ***Mr. Ashok Kumar Sharma & Ors. Versus Chander Shekhar & Another reported in (1997) 4 SCC 18.***

“Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it”.

9. ***Mrs. Rekha Chaturvedi Versus University of Rajasthan & Ors. reported in (1993) supply 3 SCC 168.***

“The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement: mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posits” .

10. ***Bedanga Talukdar. Versus Saifudaullah Khan & Ors. reported in (2011) 12 SCC 32.***

“The selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules it must be mentioned in advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible

due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution”.

11. He also cited the similar Principle adopted by the Hon’ble Apex Court in ***Civil Appeal No 6158 of 2008 Dipitimayee Parida Vs. State of Orissa & Ors., Civil Appeal No. 7677 of 2021 The State of Bihar & Ors. V. Madhu Kant Ranjan & Anr. and also in Civil Appeal No. 8828 of 2022 Himachal Pradesh State Electricity Board Ltd. & Anr. V. Dharminder Singh.***
12. The respondent Nos. 1, 2 and 3 submits that the present writ petitioners including the private respondent were the demonstrator of the College of Medicine and JNM Hospital, WBUHS, Kalyani they are of the same batch and were pursuing the M.D. Course after obtaining necessary permission from the Government of West Bengal; though they had permitted to obtain their higher study in the same academic sessions (2016-2018) but they were pursuing their higher studies in different Universities. The declarations of result of the different Universities were different. For that reasons, before the last date of filing the applications (26.6.2018) 4.00 P.M., the private respondent though have appeared in the M.D. examination but not got the final certificate. He made a representation before the Selection Committee. On such representation the Selection Committee allowed the private

respondent to submit the final result of M.D. Course at the time of said interview.

13. The Selection process was unblemished. All the candidates were given equal opportunities and on the basis of final result the private respondent was given promotion.
14. The learned advocate for the respondent Nos. 1, 2 and 3 further submits that the decision cited by the learned advocate for the petitioners is not applicable in this case. All the decisions are in respect of admission in new course or admission in new recruitment process. This is a Promotional Selection Committee so the Rule of Law enunciated by the Hon'ble Supreme Court in the above citations are not applicable.
15. Learned advocate appearing on behalf of the respondent No. 4 has submitted that he participated the recruitment process by virtue of the Notification Dated 11.6.2018. He was in the same batch of the present petitioners and were allowed to pursue M.D. Course for the same academic sessions (2016-2018). Before the final date of submission of the application form i.e. 26th June, 2018, he could not got the final result of M.D. Thus, he sought for necessary opportunity to submit the final mark sheet/result/certificate at the time of interview on the ground that he was an internal candidate of the University. His prayer was considered by the Selection Committee. Accordingly, he submitted the result on the date of interview i.e. on 31.07.2018.

16. Heard the learned advocate perused the materials on records also perused the impugned Notification dated 11.6.2018. In the said Notification, it has been stated that the applications duly filled up in prescribed format and forwarded by the concerned head of the department are to be submitted to the Principal, College of Medicine and JNM Hospital, WBUHS, Kalyani latest by 26th June, 2018 (4.00 PM). It is true that the private respondent No. 4 could not produce his final certificate of M.D. Course on the last date of advertisement i.e. on 26.6.2018. He submitted the application before the Selection Committee on 25.06.2018 which was allowed by the Chairman. Let me consider whether the Chairman has acted illegally or arbitrarily by allowing the private respondent to submit the final certificate of M.D. on the day of interview.

In the said notification there is a disclaimer mentioned as hereunder:

Disclaimer: The WBUHS reserves the right to cancel the entire process of recruitment/panel/appointment (if any) without assigning any reason or giving any explanation whatsoever. The decision of the WBUHS is final and no arbitration in any form will be entertained. The situation of vacancy may change”.

17. From the above disclaimer it appears that the decision of the Selection Committee of WBUHS is final. The decision so adopted by the WBUHS not appears to me arbitrary. It is not a case of the present petitioners that they were denied to the same equity which

was allowed in favour of the private respondent. Moreover, the present petitioners as well as the private respondent are the internal candidates of the University and all of them were allowed to pursue the higher study (M.D.) Course and were within the same batch of academic year. Therefore, I find no justification to interfere with the decision of the respondent No. 2 as it appears to me not passed illegally, and/ or arbitrarily. Hence the instant writ petition is dismissed and disposed of.

18. The instant **WPA 7849 of 2019** is disposed of.
19. All connected applications, if any, stand disposed of.
20. Interim orders, if any, stand vacated.
21. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)