

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 2107 of 2020
With
W.P. (S) No. 1426 of 2020

In W.P. (S) No. 2107 of 2020

Dr. Narendra Nath Singh

... PETITIONER

Vs.

1. State of Jharkhand through the Secretary, Department of Health, Medical Education and Family Welfare Officiating from his office at Project Bhawan, Dhurwa, Ranchi
2. The Director, Health and Medical Education, Government of Jharkhand, Nepal House, Doranda, Ranchi
3. Rajendra Institute of Medical Sciences, through its Director, Officiating from his office at RIMS, Bariatu, Ranchi.

... .. RESPONDENTS

In W.P. (S) No. 1426 of 2020

1. Dental Institute Teachers Association, having its registered office at 3A, Onkar Apartment, Tetar Toli, Bariatu, Ranchi.
2. Dr. Ajoy Kumar Shahi (President of petitioner no. 1).
3. Dr. Prashant Gupta (Secretary of petitioner no. 1).

Vs.

1. The State of Jharkhand through the Secretary, Department of Health, Medical Education and Family Welfare Officiating from his office at Project Bhawan, Dhurwa, Ranchi
2. The Director, Health and Medical Education, Government of Jharkhand, Nepal House, Doranda, Ranchi
3. Rajendra Institute of Medical Sciences, through its Director, RIMS, Bariatu, Ranchi.
4. The Director, Rajendra Institute of Medical Sciences, Bariatu, Ranchi.

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK
(Through : Video Conferencing)

For the Petitioners

: Mr. Prashant Pallav, Advocate
 Mr. Parth Jalan, Advocate.
W.P. (S) No. 2107 of 2020

Mr. Rajendra Krishna, Advocate
W.P. (S) No. 1426 of 2020

For the RIMS

Dr. Ashok Kumar Singh, Advocate

For the State

Mr. Rajiv Ranjan, AG

07/12.04.2021

In view of outbreak of COVID-19 pandemic, case has been taken up through Video Conferencing. Concerned lawyers have no objection with regard to the proceeding which has been held through Video Conferencing and there is no complaint in respect to audio and video clarity and quality.

I.A. NO. 1118 OF 2021 [In W.P.(S) No. 2107 of 2020]

I.A. No. 1118 of 2021 has been filed in W.P.(S) No. 2107 of 2020 for staying the advertisement No. 625, dated 15.02.2021 floated by RIMS, Ranchi for appointment of Principal in Dental College.

Petitioner had preferred original writ petition i.e. W.P.(S) No. 2107 of 2020 whereby challenge has been thrown to the order bearing no. 1974, dated 08.07.2020 wherein respondent no. 3 cancelled the advertisement no. 1067, dated 02.04.2020 in the midst of selection process without assigning any cogent reason.

As per factual matrix, advertisement bearing no. 1067, dated 02.04.2020 was published by the respondents for appointment to the post of Principal, Dental College, RIMS, Ranchi. The eligibility criteria as prescribed in the advertisement was *M.D.S. in any subject with 5 years teaching experience as 'Professor and total teaching experience of 17 (seventeen) years after MDS from the recognized Dental Institute*. Petitioner being eligible applied for appointment to the post of Principal. The application of the petitioner was duly accepted and the date of interview was scheduled for 25.06.2020. However, in the meantime, the said advertisement was challenged by one Dr. Subhash Chandra and the Dental Institute Teachers' Association by filing writ petition i.e. W.P.(S) No. 1580 of 2020 and W.P.(S) No. 1426 of 2020 respectively which was heard and advertisement was stayed vide order dated 22.06.2020. Thereafter, the respondents, vide letter no. 1974, dated 08.07.2020, cancelled the said advertisement which has been challenged in the instant writ petition. However, during pendency of instant writ petition, respondent-RIMS floated a fresh advertisement bearing no. 625 dated 15.02.2021, for selection to the post of Principal, Dental College, RIMS wherein eligibility criteria has been changed. Being aggrieved by change in the eligibility criteria, petitioner has knocked door of this Court by way of instant Interlocutory Application.

Mr. Prashant Pallav, learned counsel appearing for the petitioner throwing challenge to the advertisement, particularly the changed criteria for appointment to the post of Principal, Dental College, RIMS, vociferously argues that as per Sections 5(iii) and 6(xii) of the RIMS Act, 2002, *the eligibility criteria for appointment of Principal and Professor, will be guided by the Regulation of the appropriate Medical Association/ Council i.e. in this case the Dental Council of India*. It has further been argued while going through the relevant provisions of

RIMS Rules, as well as BDS Regulation, 2007, it appears that RIMS Regulation, 2014 was formulated when Dental Institute at RIMS, Ranchi was not in existence. The eligibility criteria prescribed in 2014 is same as that of Director, RIMS. It has also been clarified that RIMS has no position of Principal nor it had a Dental College. The Dental Council Rules prescribe for 14 years' of teaching experience and nothing has been mentioned about "*standing in the profession*". If RIMS Regulation, 2014 is adopted, the result would be reduction of teaching experience from 14 years to 10 years. Learned counsel emphatically argue that the criteria for increased teaching experience was allowed in W.P.(S) No. 5356 of 2015 for academic excellence whereas the post of Principal is administrative in nature. Therefore, bringing the criteria as laid down in BDS Regulation, 2007 at par with the RIMS Regulation, 2014 would bring them in conflict with one other. Learned counsel submits that there is no legislative gap in the BDS Regulation, 2007. The BDS Regulation, 2007 is enacted by a statutory body formed under the Dentist's Act, 1948. The Regulation has been passed by both the Houses of Parliament. The job responsibility of Principal at Medical College and the Dental College, RIMS are different. RIMS considered the said advertisement to be legal. After the interim order, the In-charge Director cancelled the advertisement. The advertisement, 2020 was floated by the regular Director. Learned counsel further submits that the stand taken by RIMS in its counter affidavit is contrary to the records and amounts to duping the court. RIMS cannot be allowed to change its stand to suit its needs in a whimsical manner. Petitioner possesses the requisite qualification as per Regulation and thus for the ends of justice, I.A. No. 1118 of 2021 filed in W.P.(S) No. 2107 of 2020 may be allowed and the advertisement No. 625, dated 15.02.2021 floated by RIMS, Ranchi for appointment of Principal at Dental College, may be stayed.

On the other hand, Dr. Ashok Kumar Singh, learned counsel appearing on behalf of RIMS vehemently opposes contention of learned counsel for the petitioner and submits that no right has accrued to the petitioner to participate in the selection process by way of advertisement no. 1067, dated 02.04.2020. Petitioner neither fulfil the eligibility criteria nor does he possess the requisite qualification. Learned counsel draws attention of this Court towards the Regulation of RIMS and submits that experience of 25 years is already mentioned in the Regulation of RIMS and when RIMS Regulation came into force, the said criteria was very much there and has not been changed neither

enhanced. Petitioner cannot be permitted to challenge the eligibility criteria without challenging terms and conditions of Regulation itself. In the instant case, though eligibility criteria has been changed but the petitioner has chosen not to challenge the Regulation. Learned counsel further argues that it is within the jurisdiction of RIMS to lay down conditions and enhance the eligibility criteria which is higher than as mentioned in the Regulation of Dental Council. Learned counsel further argues that it is always open for the RIMS and powers of the Director to correct wrongs committed earlier and to rectify the same and in the instant case, the defect has been rectified and criteria has been changed in the fresh advertisement, which is under challenge. It has further been argued by learned counsel that when the defect was brought to the notice of RIMS, a decision was taken to cancel the earlier advertisement and by rectifying the eligibility criteria, a fresh advertisement was floated. Meaning thereby, the earlier advertisement no. 1067 was superseded by the advertisement no. 625 and thus, there is no illegality or any infirmity in the fresh advertisement superseding the earlier advertisement. Learned counsel further submits that the arguments advanced by learned counsel for the petitioner is not at all acceptable and reasonings are not tenable in the eyes of law and fit to be rejected. No interference is warranted and I.A. No. 1118 of 2021 is fit to be dismissed in limine.

Be that as it may, having heard counsel for the parties across the bar, this Court is of the considered view that no case is made out for any interference in I.A. No. 1118 of 2021 for the following facts and reasons:

(1) From perusal of eligibility criteria in the advertisement floated by the RIMS, it appears that new advertisement stipulates following conditions as the eligibility criteria;

- (i) *Master of Dental Surgery from recognized Dental Institute/ College;*
- (ii) *Teaching and/ research experience of not less than ten years;*
- (iii) *Twenty-five years standing in the Profession.*

Petitioner is mainly aggrieved by clause (iii) i.e. Twenty-five years' standing in the Profession.

From perusal of Annexure-A/1 (Page-24) to the counter affidavit filed by the respondent no. 3 – RIMS, which is Gazette Notification dated

22.09.2014 of the Health, Medical Education and Family Welfare Department, Government of Jharkhand, the essential qualification/ experience of the Principal/ Dean has been mentioned as “c. *Twenty-five years standing in the Profession with scale of Rs.75,500 – 80,000 + NPA*”. Therefore, comfortably it has been said that the eligibility criteria already found mentioned in the Regulation 2014 of the RIMS Regulation and it cannot be said that the same is foreign to the Regulation and borrowed from somewhere else, which is unknown to the Regulation. The occasion for floating the fresh advertisement was fully justified as it has been candidly submitted and admitted by the respondents – RIMS that in order to correct themselves and rectify the mistake, the present advertisement has been floated inserting the eligibility criteria of experience of Twenty-five years standing in the profession in the eligibility criteria, which is as per the Regulation. No illegality has been committed by the respondents – RIMS in floating the fresh advertisement. From perusal of Annexure-C of the counter affidavit, it appears that experience criteria has also been approved by the State Government and thus, it cannot be said that RIMS on its own has floated the fresh advertisement, which is not tenable in the eyes of law. In support of their argument, respondents have issued corrigendum mentioning other criteria, which has been brought on record vide Annexure-E to the counter affidavit.

- (2) Similar issue fell for consideration before this Court in W.P.(S) No. 5653 of 2015. In the said case it was urged by the petitioner as to whether the State Government or the RIMS can lay down experience/ qualification other than what has been prescribed by the DCI norms. Hon’ble Supreme Court in the case of “*Visveswaraiah Technological University and another Vs. Krishnendu Halder and others* reported in (2011) 4 SCC 606, is relevant and the ratio laid down in para-14 of the Judgment clearly covers the issue and any challenge on those grounds is not tenable in the eyes of law.
- (3) The arguments advanced by Mr. Prashant Pallav that the said legal proposition was for achieving excellence in the Medical Education and for academic purposes and not for administrative purposes, is not accepted to this Court as the same is unfounded, not in consonance with the ratio laid

down by the Hon'ble Apex Court. When the Regulation itself speaks of the eligibility criteria and the experience of twenty-five years, challenge on the aforesaid ground is not tenable and fit to be turned down.

- (4) This Court finds and is of the view that the advertisement published for appointment to the post of Principal, Dental Institute, is in consonance with the RIMS Regulation, 2014. From perusal of the Regulation, it is crystal clear that Clause-II Appendix-3 of the RIMS Regulation-14 prescribes the eligibility criteria for appointment to the post of Principal, which clearly indicates that the candidate has to have twenty-five years standing in the profession. The law is well settled that if the Statute provides particular manner, it needs to be adhered to.
- (5) The Hon'ble Apex Court in the case of *Sukhdeo Singh Vs. Bhagatram Sardar Singh Raghuvanshi* reported in (1975) 1 SCC 421 has held in paragraphs-23 and 24 of the Judgment as under:

“23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees. These regulations in the statutes are described as “status fetters on freedom of contract”. The Oil and Natural Gas Commission Act in Section 12 specifically enacts that the terms and conditions of the employees may be such as may be provided by regulations. There is a legal compulsion on the Commission to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. In other statutes under consideration viz. the Life Insurance Corporation Act and the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms and conditions of employment and conditions of service are provided for by regulations. These regulations are not only binding on the authorities but also on the public.

24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second, the executive power of a State is not authorised to frame rules under Article 162. This Court held that the Public Works Department Code was not a subordinate legislation (See G.J.

Fernandez v. State of Mysore [AIR 1967 SC 1753 : (1967) 3 SCR 636]). The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the State and the government servants but also establish that there must be specific power to frame rules and regulations.”

From perusal of aforesaid facts and observations, this Court is of the considered opinion that no case is made out for any interference. Balance of convenience lies in favour of the respondents. The policy decision of the State can be interfered only when it is wholly arbitrary on the face of it. From perusal of entire facts brought on record and the relevant Rules, this Court does not find any illegality or any arbitrariness on part of the respondents which warrants interference. There is no illegality or any infirmity in the advertisement, which warrants any interference.

Resultantly, I.A. No. 1118 of 2021 filed in W.P.(S) No. 2107 of 2020 stands dismissed.

W.P. (S) No. 2107 of 2020

With

W.P. (S) No. 1426 of 2020

Put up these cases in usual course.

(Dr. S.N. Pathak, J.)