

PETITIONER:
DR JAYANTA KUMAR DASH

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT 05/04/1993

BENCH:

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. An advertisement was issued by the Orissa Public Service Commission inviting applications from intending candidates for appointment to some Junior Teaching posts. These posts were in the Orissa Medical Education Service, to which the recruitment is governed by the Orissa Medical Education Service (Recruitment) Rules, 1979. The relevant rule therein for the present purpose is Rule 4, as under:

"4. Appointment of Junior Teacher.- (1) Appointment to junior teaching posts in the service shall be made by selection from amongst the Assistant Surgeons under the State Government or State Government Undertakings with at least one year's experience as such through the Public Service Commission which shall invite applications and process them:

Provided that the recruitment may also be made from amongst the junior teachers for the junior teaching posts, in any other speciality or higher speciality subject to the condition that seniority in the new speciality or higher speciality, as the case may be, shall be determined from the date of appointment in the new discipline in accordance with the placement given by the Commission and accepted by the Government.

(2) No person shall be eligible to be appointed as a Junior Teacher unless he has acquired a post-graduate degree in the concerned speciality or any other equivalent degree or qualification prescribed by the Council.

(3) In selection of candidates, Commission shall give due regard to the candidate's academic attainments, experience, aptitude and ability to teach.

(4) If candidates with the prescribed qualifications are not available or appointment cannot be made in the manner prescribed in sub-rule (1), appointments may be made by direct recruitment through the Commission, if necessary, in relaxation of the prescribed qualifications."

2. The advertisement was in terms of Rule 4.

3. In the posts so advertised, there were 10 posts in Category II in the discipline of Dentistry, out of which 5 were for the general candidates, the remaining 5 being reserved for the Scheduled Castes and Scheduled Tribes. The dispute in the present case relates only to the placement in order of merit, of the candidates belonging to the general category selected as a result of the above

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advertisement. The appellants, Dr Jayanta Kumar Dash and Dr Indu Bhusan Kar, and Respondents 3, 4 and 5, namely, Dr Ramesh Chandra Das, Dr (Miss) Maunabati Mohapatra and Dr Saroj Kumar Sahu, were selected to these 5 posts in the general category. In the select list prepared by the Orissa Public Service Commission, the name of Dr Ramesh Chandra Das was not placed at Serial No. 1. Aggrieved by his placement below some of the other selected candidates, by the Public Service Commission, Respondent 3, Ramesh Chandra Das challenged the same before the Orissa Administrative Tribunal. By the impugned order dated January 21, 1987, the Tribunal has upheld the claim of Dr Ramesh Chandra Das that he was entitled to be placed at the top of the select list, notwithstanding his lower placement in the select list prepared by the Orissa Public Service Commission. Aggrieved by this decision of the Tribunal, the appellants, who were shown above Dr Ramesh Chandra Das in the select list prepared by the Public Service Commission, have preferred this appeal by special leave.

4. Admittedly, the only candidate at that selection belonging to the category of 'Assistant Surgeons under the State Government or State Government Undertakings' was Respondent 3, Dr Ramesh Chandra Das whose claim has been allowed by the Tribunal. The other four candidates selected in the general category were not In-Service candidates, as was Dr Ramesh Chandra Das; and they came to be selected by direct recruitment in accordance with sub-rule (4) of Rule 4 while the selection of Dr Ramesh Chandra Das, Respondent 3 alone was under sub-rule (1) of Rule 4. The claim of Dr Ramesh Chandra Das was based on the ground that candidates who came in by direct recruitment under sub-rule (4) had to be placed below the candidates selected under sub-rule (1) of Rule 4, since the question of selecting anyone under sub-rule (4) arises, under the rules, only in case sufficient number of candidates are not available for filling the vacancies according to sub-rule (1). This contention has found favour with the Tribunal.

5. The submission of learned counsel for the appellants is that even though the appellants came to be selected by direct recruitment under sub-rule (4) of Rule (4), once that stage was reached on account of the non-availability of suitable candidates for filling the advertised posts in the manner prescribed in sub-rule (1), the placement in the select list finally prepared has to be in accordance with the comparative merit of all the candidates selected under subrules (1) and (4). On this basis, it was submitted that the preparation of the select list placing Dr Ramesh Chandra Das below the appellants, could not be faulted. We are unable to accept this contention.

6. The scheme of appointment of Junior Teachers in accordance with Rule 4 is clear. It prescribes that the appointment to the Junior Teaching posts in the service has to be made in the first instance by selection from amongst the Assistant Surgeons in the State Government service who possess the prescribed qualification. If sufficient number of In-Service candidates are available and found suitable for filling all the vacancies, the stage of sub-rule (4) does not reach for direct recruitment of any outsider into that service. This is evident, inter alia, from the opening words in sub-rule (4) itself which are:

"If candidates with the prescribed qualifications are not available or appointment cannot be made in the manner prescribed in sub-rule (1)."

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7.in substance, if the stage of invoking sub-rule (4) reaches in a given case, for want of sufficient number of suitable In-Service candidates, it is only after the first part of the process of selection is complete by recruitment of those found suitable for appointment to the Junior Teaching posts in the manner prescribed in sub-rule (1). This itself makes it clear, that the second stage of selection at which sub-rule (4) is invoked, is after the first stage of selection in the manner prescribed in sub-rule (1) is over. The question of comparing the direct recruits selected in accordance with sub-rule (4) for the purpose of determining their order of merit vis-a-vis those candidates found suitable and appointed in the manner prescribed under sub-rule (1) does not arise. This is obvious from the fact that the candidates selected in accordance with sub-rules (1) and (4) belong to two different categories.

8.Learned counsel for the appellants then placed reliance on sub-rule (3) to contend that the Commission is required to compare the merits of all candidates selected according to sub-rules (1) and (4) and place them in order of merit on a comparative basis. We are unable to accept this contention. Sub-rule (3), apart from its placement in the various sub-rules of Rule 4 preceding sub-rule (4) therein, is clearly intended to regulate the selection of candidates in the manner prescribed in sub-rule (1). In other words, sub-rules (1) to (3) deal with the appointment to Junior Teaching posts of the In-Service candidates, and then comes sub-rule (4) which enables the filling of the remaining vacancies by direct recruitment, if necessary, even in relaxation of the prescribed rules. Learned counsel also attempted to seek support from the provision for relaxation of the prescribed qualifications provided in sub-rule (4). It is sufficient to say that this provision for relaxation of the prescribed qualifications is not relevant for the present purpose, and comes in only if the direct recruitment becomes necessary on account of the non-availability of sufficient number of suitable candidates with prescribed qualifications for appointment to be made in the manner prescribed in sub-rule (1). There is, thus, no merit in this contention.

9. Consequently, the appeal is dismissed.

10. No costs.

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