

CASE NO.:
Appeal (civil) 4456 of 1986

PETITIONER:
STATE OF ORISSA

RESPONDENT:
SIVASANKER LAL BAJORIA AND ANR.

DATE OF JUDGMENT: 06/09/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:
JUDGMENT

1994 SUPPL. (3) SCR 188

The following Order of the Court was delivered :

This appeal by special leave arises from the Judgment of the Division Bench of the High Court of Orissa at Cuttack in OJC No. 428 of 1983, dated February 28, 1986.

The State Government in G.S, No. 15882-H, dated April 19, 1979 created a post of Asstt. Professor in Cardiology in S.C.B. Medial College Hospital at Cuttack. Dr. Urmila Kumari Swain, who was an Assistant Professor in Pediatrics, was appointed by transfer as Assistant Professor of Cardiology by Order dated November 9, 1979. Dr. S.L. Bajoria challenged the validity of the said appointment by a separate Writ Petition filed in that regard. However, the Government since withdrew the said appointment itself, the Writ Petition came to be dismissed. Subsequently, when Dr. Mruthyunjaya Satpathy was appointed as Assistant Professor, Cardiology on February 3, 1983, that appointment also came to be challenged by Dr. Bajoria in the Writ Petition out of which the present appeal has arisen. Dr. Bajoria impleaded therein Dr. Satpathy as respondent No. 2 and the State as respondent No. 1, The relief sought in that Writ Petition was for quashing the appointment of Dr. Mruthyunjaya Satpathy and for issuing a direction to the State Government to consider him as eligible for appointment in that post from the year 1979. The High Court in the Judgment held that under 1970 Regulations Dr. Bajoria was eligible to be considered for promotion in the post of Asst. Professor in which Dr. U.K. Swain had been appointed and non-consideration of his case for appointment was unjustified. It also held that in the year 1979 Dr. M. Satpathy was not eligible for appointment as Asstt. Professor in Cardiology though he was eligible for such appointment in the year 1983. It also held that it was unnecessary to go into the appointment of Dr. Satpathy as an Asstt. Professor. Accordingly, direction was given as under:

"In the result, we would direct opposite party No. 1 the State to reconsider the question of promotion of the petitioner to the post of Assistant Professor of Cardiology with retrospective effect from 9.11.1979 and to allow all service benefits to him in case he is found fit for promotion to such post, expeditiously."

This order came to be challenged in this appeal by the State.

Though arguments are sought to be addressed to support the order under appeal, no need arises to consider them, for the simple reason that this Court's direction to state whether there is more than one post of Asstt. Professor of Cardiology available for consideration of the claim of the appellant has failed to evoke the needed response, The affidavits filed make it clear that the existing post of Assistant Professor of Cardiology

for which the appellant's claim for appointment is to be considered is the one already occupied by Dr. Satpathy. The fact that the High Court has specifically declined to go into the validity of the appointment of Dr. Satpathy, who is still holding that post, makes unavailable a vacant post for which the claim of Dr. Bajoria as per the directions of the High Court could be considered. However, it is sought to be contended by Shri Soli J. Sorabjee, the learned senior counsel for Dr. Bajoria that in view of the declaration given by the High Court that Dr. Bajoria was eligible for consideration for the post in the year 1979 when Dr. U.K. Swain was appointed and when Dr. Satpathy was not eligible to be considered, his subsequent appointment should not stand in the way of consideration of Dr. Bajoria's case for appointment to a vacancy which existed in the year 1979, We find no force in the contention.

It is rightly contended by the learned counsel for Dr. Satpathy that had his appointment been quashed, it would have been open to him to contend that on the date when he was appointed, he had the necessary qualifications while as on that date Dr. Bajoria was not having such qualification and therefore, his appointment would not be illegal and remained unassailable. When the appointment of Dr. Satpathy was not quashed, he could have no grievance and that, therefore, is no vacancy existing in the post of Assistant Professor, Cardiology in the said college for which appellant's claim for appointment could be considered as directed by the High Court.

Hence, in the absence of a declaration that the appointment of Dr. Satpathy as on February 3, 1983 was illegal and when the High Court has specialty declined to go into that question, there is no vacant post existing for consideration of the claim of Dr. Bajoria as per the directions given by the High Court. This situation makes the order of the High Court unworkable. Accordingly, no need arises to consider the argument made in support of the order under appeal.

The appeal is accordingly allowed. The direction given in the order of the High Court to consider the claim of Respondent No. 1 (Dr. Bajoria) is set aside. No costs.