

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 638 of 2017

WithMC(WP(C)) No. 131 of 2023

WithMC(WP(C)) No. 164 of 2018

WithMC(WP(C)) No. 291 of 2017

WithMC(WP(C)) No. 311 of 2021

Dr. Ningombam Minita Devi, aged about 46 years, w/o. Ch. Jayanta Singh presently working and functioning as Statistician-cum- Assistant Professor, Dept. of Community Medicine, JNIMS, Porompat and resident of Soibam Leikai, Ayangpalli Road, P.O. & P.S. Porompat, Imphal East – 795005, Manipur.

... Petitioner

Versus

1. The Jawaharlal Nehru Institute of Medical Sciences (JNIMS) represented by its Director at JNIMS Porompat, Imphal East, Manipur.
2. Dr. Haobijam Nirendra Kumar Singh, aged about 48 years, s/o. Late H. Angousana Singh, a resident of Thangmeiband Lairenhanjaba Leikai, P.O. Lamphel and P.S. Imphal, District Imphal West, Manipur.

... Respondents

With

WP(C) No. 231 of 2020

Dr. Haobijam Nirendra Kumar Singh, aged about 51 years, s/o. Late H. Angousana Singh, a resident of Thangmeiband Lairenhanjaba Leikai, P.O. Lamphel and P.S. Imphal, District Imphal West, Manipur.

... Petitioner

Versus

1. The Jawaharlal Nehru Institute of Medical Sciences (JNIMS) represented by its Director at JNIMS Porompat, Imphal East, Manipur.
2. Dr. Urmila Thiyam, aged about 62 years, w/o. Dr. Salam Nongthon Singh, a resident of Singjamei Mayengbam Leikai Lairembi Lampak, P.O. Imphal, P.S. Singjamei, District Imphal West, Manipur-795001.

3. Dr. Keisham Sarojini Devi, aged about 63 years, w/o. Dr. L. Deben Singh, a resident of Nagamapal Kangjabi Leikai, District Imphal West, P.O. & P.S. Imphal, Manipur – 795001.

... Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners	:: Mr. N. Umakanta, Adv. for WP(C) No. 638 of 2017, Mr. H.S. Paonam, Sr. Adv., assisted by Ms. Lekhakumari, Adv. in WP(C) No. 231 of 2020.
For the respondents	:: Mr. S. Nepolean, G.A. assisted by Mrs. R.K. Emily, Dy. G.A. for R1 (JNIMS); None for R-2&3.
Date of hearing	:: 24.04.2023 & 25.04.2023
Date of Judgment and Order	:: 22.12.2023

JUDGMENT & ORDER (CAV)

[1] The present writ petitions have been filed by the petitioners under Article 226 of the Constitution of India qua seeking reliefs with respect to filling up of the newly upgraded and created post of Associate Professor in the Department of Community Medicine, JNIMS by way of promotion. Since the issues involved in both the writ petitions relate to the same factual matrix, they are heard together and disposed of by this common judgment.

It may be noted that writ appeals being WA Nos. 22 of 2023 and 23 of 2023 against the interim orders dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 and dated 20.12.2021 in MC[WP(C)] No.315 of 2021 are pending before Division Bench. Vide orders dated 16.03.2023 in these writ appeals, Registry was directed to post WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020 on 21.03.2023 along with the writ appeals. However, vide common order dated 21.03.2023 passed by the Division Bench in these batch of appeals and writ petitions, Registry was further directed to place writ appeals, ie, WA Nos. 22 of 2023 & 23 of 2023 along with misc. applications before another Division Bench and to de-tag WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020 and misc. applications and post before this Court on 29.03.2023. In the circumstances, the writ petitions and the pending applications were listed before this Court for consideration. It may also be pointed out that writ appeals being WA Nos. 5 of 2023 and 6 of 2023 are pending before Division Bench of this Court in respect of matters connected with WP(C) No. 231 of 2020.

WP(C) No. 638 of 2017

[2] The brief facts of the case in WP(C) No. 638 of 2017 is that pursuant to notice/advertisement dt. 25.01.2011 of the Director, Jawaharlal Nehru Institute of Medical Sciences (in short 'JNIMS'), and upon recommendation of the Selection Board, the petitioner namely, Dr. Ningombam Minita Devi was appointed as Statistician-cum-Asst. Professor in the Department of Community Medicine, JNIMS vide order No. JNIMS/TS-1/4/08 (iv) dt. 17.05.2011. By the year 2015, the petitioner had completed 4 years of minimum service in the grade of Asst. Professor, besides fulfilling other criteria as laid down by the

Minimum Qualification for Teachers Regulations, 1998 framed by the Medical Council of India, and as such became qualified and eligible for promotion to the next higher post of Associate Professor.

Vide letters dated 07.01.2016 and 20.10.2016, the petitioner requested the JNIMS Authority for upgradation of her post of Assistant Professor/promotion to Associate Professor. In the meantime, the Governing Council of JNIMS in its meeting held on 15.10.2016 proposed for upgrading certain post of Asst. Professor to the next higher post of Associate Professor. The proposal was approved by the State Cabinet and accordingly, 16 (sixteen) posts of Associate Professor were created by upgrading 13(thirteen) post of Assistant Professor and creating 3 more additional posts. The same was notified vide Office Order dt. 23.02.2017 being No. 1/7/ESTT/JNIMS/08/12766 issued by the Director, JNIMS.

[3] Further, on 03.04.2017, communication bearing no. 1/366/Appointment Faculty/2016(pt) was issued by the Director, JNIMS regarding holding of DPC on 04.04.2017 for selection of Associate Professors in different departments of JNIMS. The DPC proceedings for 15 posts of the newly created posts of Associate Professors was completed on 04.04.2017 itself. However, in respect of the Associate Professor post in Department of Community Medicine, JNIMS, DPC proceeding was deferred and re-fixed on 05.04.2017 due to objection from one of the DPC members regarding flouting of norms. On 05.04.2017 itself, the petitioner served legal notice on the concerned authorities to hold and conduct the DPC as per MCI regulations and DPC norms such as preparation of eligible

candidates in feeder grade as per seniority etc. The authority concerned again tried to deviate from the norms inviting objection from one of the DPC members, thereby leading to deferment and postponement of the DPC without fixing dates. On 07.04.2017, the petitioner filed an application/representation to the concerned authority of JNIMS requesting for re-convening the deferred/postposed DPC for promotion to the post of Associate Prof., Dept. of Community Medicine, JNIMS and to give primacy/preference to the senior-most eligible candidate in the feeder grade of Assistant Professor, Dept. of Community Medicine, JNIMS. As her application dt. 07.04.2017 was not acted upon, the petitioner filed WP(C) No. 246/2017 before this Court for directing the JNIMS authority to re-convene the deferred DPC at the earliest while giving primacy to the petitioner on account of being the senior-most Assistant Professor. The said WP(C) No. 246/2017 was disposed of on 12.04.2017 with directions, relevant portion thereof is being reproduced as hereunder:

" Accordingly, the present writ petition is disposed of with the direction to the respondent authorities to consider filling up the post of Associate Professor in the Department of Community Medicine by considering the claim of all the eligible candidates including the petitioner by acting upon the relevant seniority list in accordance with the relevant rules including the MCI norms in this regard. It is expected that the authority will undertake the aforesaid exercise preferably within a period of one month from today.

Petition stands disposed of accordingly."

[4] Thereafter, vide letter dated 07.07.2017 of the Director, JNIMS, it was informed to the petitioner that the available promotional post of Associate Professor in the Department of Community Medicine, JNIMS is to be from

amongst Associate Professors with medical background only, and that she being from a non-medical background is not eligible for the said promotional post.

[5] Aggrieved by the said decision of JNIMS authority, the petitioner filed the present WP(C) No. 638 of 2017 seeking inter-alia for quashing and setting aside the decision of JNIMS authority declaring the newly created post of Associate Professor in the Department of Community Medicine, JNIMS to be the promotional post of Assistant Professor with medical background only, and further to declare that the said newly created post of Associate Professor, Dept. of Community Medicine, JNIMS to be the promotional post of Statistician-cum-Assistant Professor, JNIMS. The writ petitioner further prays for an alternative relief to the effect that the respondent/JNIMS authority be directed to create promotional post of Associate Professor, Dept. of Community Medicine to be filled up from amongst non-medical background Assistant Professors/faculty, for their career advancement.

[6] The case of the respondent JNIMS and private respondent namely, Dr. H. Nirendra Kumar Singh in WP(C) No. 638 of 2017 is that the vacant post of Associate Professor in the Department of Community Medicine, JNIMS should be filled up from amongst Associate Professors with medical background, and as such the writ petitioner therein, belonging to a non-medical background is not eligible for promotion to the vacant post of Associate Professor in the Department of Community Medicine, JNIMS in terms of the minimum

qualification for teachers in Medical Institutions Regulations, 1998. Accordingly, both respondents pray for dismissing the writ petition as being devoid of merit.

WP(C) No. 231 of 2020

[7] The case of the writ petitioner in WP(C) No. 231 of 2020 (also subsequently impleaded as private respondent in WP(C) No. 638 of 2017 vide order dated 09.10.2017 in MC[WP(C)] No.241 of 2017) is that pursuant to the recommendation of the Selection Board vide order dated 17.05.2011, writ petitioner namely, Dr. Haobijam Nirendra Kumar Singh was appointed as Medical Officer of Health cum Assistant Professor in the Department of Community Medicine, JNIMS. The petitioner claims that in the final seniority list of Assistant Professor, Department of Community Medicine, JNIMS published vide notification dt. 03.08.2015, his name was reflected at Sl. No. 3 and since the persons at Sl. Nos. 1 and 2 are now promoted to the post of Associate Professors, he has now become the senior-most in the grade of Assistant Professor in the Department. Vide order dated 28.01.2022 in MC[WP(C)] No. 18 of 2021: Ref- WP(C) No. 231 of 231 of 2020, the private respondent Nos. 2 & 3 were impleaded as respondents as their rights for promotion would allegedly be affected by the interim order dated 18.05.2020. It may be noted that the respondent Nos. 2 & 3 are not from the same Department of Community Medicine to which the petitioner herein belongs to.

[8] The petitioner had earlier moved this Court by filing WP(C) No. 266 of 2017 for considering his case of promotion to the post of Associate Professor,

Department of Community Medicine, JNIMS, and on 24.04.2017, the same was disposed of, relevant operative portion of which is reproduced as under:

" In view of the above, the present writ petition is disposed of with a similar direction to the respondent authorities to consider filling up the post of Associate Professor in the Department of Community Medicine, JNIMS by considering the claim of all eligible candidates including the petitioner if eligible, by acting upon the relevant seniority list in accordance with the relevant rules including the MCI norms in this regard. It is expected that the authority will undertake the aforesaid exercise preferable within a period of one month from today.

Petition stands disposed of accordingly."

[9] Accordingly, DPC for promotion to the post of Associate Professor in the Department of Community Medicine, JNIMS was held on 15.09.2017. However, the result could not be declared owing to an interim order dt. 11.09.2017 passed by this Court in WP(C) No. 638 of 2017 which reads as under:-

" Heard Mr. N. Umakanta, learned counsel appearing for the petitioner; heard also Mr. A. Bimol, learned senior counsel for the JNIMS.

It has been submitted by Mr. N. Umakanta, learned counsel for the petitioner that the DPC is going to be held for promotion to the post of Associate Professor in the Department of Community Medicine, JNIMS without considering the case of the petitioner, and if the DPC is allowed to be held, the petitioner's interest would be adversely affected, even though this Court had directed consideration of the petitioner also.

This is objected to by Mr. A. Bimol, learned senior counsel for the JNIMS contending that the petitioner is not eligible. This aspect will be considered after filing of the affidavit-in-opposition.

It is however, directed that, in the interim and until further order, if the DPC is held, the result of the same may not be declared without leave of this Court.

List the matter on 09.10.2017."

[10] When the authority of JNIMS began the process of filling up vacant posts of Associate Professors, the present writ petitioner had also filed WP(C) No. 604 of 2019 before this Court to restrain filling up of the said posts of Associate Professors pending disposal of WP(C) No. 638 of 2017. However, the same was disposed on 25.09.2019 taking into record the submission of learned senior counsel of JNIMS that the DPC for the remaining 1(one) vacant post of Associate Professor in the Department of Community Medicine will not be held till the disposal of WP(C) No. 638 of 2017, as under:

[25.09.2019

Heard Mr. HS. Paonam, learned senior counsel for the petitioner.

The present writ petition has been filed with the following prayers:

"In view of the above, it is, therefore, prayed that this Hon'ble Court may graciously be pleased to:

- i) Issue rule nisi and call for the records;*
- ii) Issue a writ of mandamus or any other appropriate writ or direction of the like nature restraining the respondents from giving further promotion to the post of Associate Professor in JNIMS pending disposal of the WP(C) No. 638 of 2017."*

Mr. A. Bimol, learned senior counsel appearing for the JNIMS, on instructions, submits that there are 4 (four) posts of Associate Professor in the Department of Community Science. Out of 4 (four) posts, 2 (two) posts are occupied by Dr. Rk. Bishwalata & Dr. H. Kulabudhi Singh and the remaining 2(two) posts of Associate Professor is vacant till date. He also submits that the DPC for 1(one) post out of 2(two) vacant posts for Associate Professor was held on 15.09.2017 and the result is kept in a sealed cover in terms of the interim order dated 11.09.2017 passed by this Court in WP(C) No. 638 of 2017.

It is also submitted that the DPC for the remaining 1(one) vacant post of Associate Professor in the Department of Community Medicine will not be held till the disposal of WP(C) No. 638 of 2017.

Considering the submissions made by the learned senior counsel appearing for the JNIMS, this Court is of the considered opinion that the apprehension of the writ petitioner stands addressed.

Accordingly, recording the submissions of the learned senior counsel appearing for the JNIMS, writ petition is closed.]

[11] In the meanwhile, on 12.03.2020 the State Government have requested the JNIMS authority to submit draft rules/scheme to give effect to Time Scale Promotion Scheme for teachers (Assistant Professors and Associate Professor) of JNIMS. The present writ petitioner thereafter moved this Court in WP(C) No. 231 of 2020 to restrain the JNIMS authority from giving promotion under the Time Scale Promotion Scheme coupled with an interim prayer to restrain the JNIMS authority from filling up the post of Associate Professor and Professor in JNIMS under the proposed Time Scale Promotion Scheme.

[12] On the other hand, respondent JNIMS in its affidavit-in-opposition filed by the Director, JNIMS took the stand that the proposed time scale promotion rule is in the process of implementation, and thus, the question of restraining further promotion under the said rule does not arise. It is further clarified that the Time Scale Promotion Rule, 2018 are only for the 77 regular appointed (Senior Residents, Demonstrators, Tutors, Lady Medical officer) and not applicable otherwise. Prayer is thus made to reject the relief sought for in the present WP(C) No. 231 of 2020.

[13] During the pendency of the present writ petitions, vide order dated 18.05.2020 passed in WP(C) No. 231 of 2020, this Court passed an interim order restraining the respondent JNIMS authority from filling up the post of Associate Professor and Professor in JNIMS under the proposed Time Scale Promotion Scheme, which is reproduced as under:

[18.05.2020

Heard Mr. H.S. Paonam, learned senior counsel for the petitioner.

On request made by Mr. Nepolean, learned counsel appearing for the JNIMS, list the matter on 26.05.2020.

In the interim, the respondents are directed not to fill up the post of Associate Professor & Professor in the JNIMS under the proposed Timescale Promotion Scheme, till the next returnable date.]

[14] The respondent JNIMS moved a miscellaneous case in WP(C) No. 231 of 2020 being MC(WP(C))No. 7 of 2021, seeking to modify the interim order dt. 18.05.2020 whereby direction was given restraining the respondents from filling up the post of Associate Professor and Professor in JNIMS under the proposed Time Scale Promotion Scheme. Vide order dated 22.04.2021, reproduced hereunder, the same was allowed:

[22.04.2021

Heard Mr. S. Nepolean, learned G.A. for the applicant. Also heard Mr. HS. Paonam, learned senior counsel appearing on behalf of the respondent/writ petitioner.

By this application, the application is praying for vacation/modification/alteration of the interim order dated 18.05.2020 and subsequent extension orders passed in WP(C) No. 231 of 2020.

Mr. S. Nepolean, learned G.A. appearing on behalf of the applicant, submits that though the applicant has filed the present misc. application praying for vacation/modification/alteration of the interim order dated 18.05.2020 passed in WP(C) No. 231 of 2020, the applicants, at this stage, would be satisfied if the interim order dated 11.09.2017 passed in WP(C) No. 638 of 2017 is modified by permitting the applicants to declare the results of the DPC meeting held on 15.09.2017 for promotion to the post of Associate Professor in the Department of Community Medicine which shall, however, be subject to the outcome of the writ petition.

Mr. HS. Paonam, learned senior counsel appearing for the respondent/writ petition, has no objections in allowing the applicants to declare the results of the DPC held on 15.09.2017.

In that view of the matter, the interim order dated 11.09.2017 passed in WP(C) No. 638 of 2017 is modified by allowing the applicants to declare the results of the DPC held on 15.09.2017 for promotion to the post of Associate Professor in the Department of Community Medicine, which shall, however, be subject to the outcome of WP(C) No. 638 of 2017.

It is also directed that after the declaration of the results of the DPC held on 15.09.2017 for promotion to the post of Associate Professor in the Department of Community Medicine, both the recommended and non-recommended person shall be considered under the time scale promotion for teachers of J.N. Institute of Medical Sciences.

Accordingly, the interim order dated 18.05.2020 passed in WP(C) No. 231 of 2020 shall also stand modified to that extend.

Misc. Case stands disposed of.]

[15] Pursuant thereto, writ petitioner in WP(C) 638 of 2017 challenged the order dated 22.04.2021 passed in MC(WP(C)) No. 7 of 2021 of WP(C) No. 231 of 2020, by filing WA No. 31 of 2021. Vide order dated 13.05.2021 passed in WA No. 31 of 2021, the said order dated 22.04.2021 under appeal was set

aside and MC(WP(C)) No. 7 of 2021 was restored on file to be decided on merits afresh, on the short ground that the writ appellant was not given an opportunity of being heard in the said order under appeal.

[16] Thereafter, the respondent JNIMS authority preferred MC(WP(C)) No. 315 of 2021 in WP(C) No. 231 of 2020 seeking to vacate the interim order dated 18.05.2020 passed in WP(C) No. 231 of 2020 whereby the respondent JNIMS was restrained from filling up the post of Associate Professor and Professor in JNIMS under Time Scale Promotion Scheme. Vide order dated 20.12.2021 passed in MC(WP(C)) No. 315 of 2021, the said interim order dated 18.05.2020 was vacated with a direction to accommodate the writ petitioners in WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020 within a period of 3(three) weeks from the date of receipt of copy of the order, the relevant portion being reproduced as hereunder:

[After hearing learned counsel for the parties and on consideration of the materials available on record, this Court is of the considered opinion that the interim order dated 18-05-2020 passed in WP(C) No. 231 of 2020 is a blanket order not to fill up the post of Associate Professor & Professor in the JNIMS under the proposed Timescale Promotion Scheme. On consideration of the Timescale Promotion Scheme for Teachers of JNIMS Rules, 2020 which was notified on 18th December, 2020, this Court is of the considered opinion that upgradation under this scheme is purely personal and the promotion effected will be non-functional. The submission of the learned Addl. AG that any upgradation in any posts under the Timescale Promotion scheme is purely personal and the incumbents would continue to receive the pay scale of the post held prior to their upgradation unless they are accommodated in a substantive vacancy in the upgraded post has also been considered.

Accordingly, interim order dated 18-05-2020 passed in WP(C) No. 231 of 2020 is vacated. The applicants are permitted to make upgradation of the incumbents eligible under the Timescale Promotion Scheme for Teachers of JNIMS Rules, 2020. The applicants are also directed to accommodate both the writ petitioners in WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020 in the post of Associate Professor, Community Medicine as proposed by the applicants within three weeks from the date of receipt of a copy of this order. However, accommodation/promotion of the two writ petitioners shall be subject to the outcome of the results in WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020. The prayer for vacation of the interim order dated 15-09-2017 passed in WP(C) No. 638 of 2017 is rejected.

Misc case stands disposed of.]

[17] Unable to comply with the directions abovementioned, respondent JNIMS authority filed MC(WP(C)) No. 22 of 2022 seeking extension of time to implement the directions contained in the order dated 20.12.2021. The same was allowed vide order dated 01.02.2022 which is reproduced as under:

[01.02.2022

Heard Mr.Lenin Hijam, learned Addl. Advocate General, Manipur appearing on behalf of the applicants. Also heard Mr.H.S.Paonam, learned senior counsel for the respondent/writ petitioner in WP(C) No.231 of 2020 and Mr.N.Umakanta, learned counsel appearing for the petitioner in WP(C) No.638 of 2017 as well as Mr.N.Jotendro, learned senior counsel for the applicants in MC (WP(C)) No.35 of 2022.

By these application, the applicants are praying for extension of time for implementing the order dated 20.12.2021 which was passed in MC (WP(C)) No.315 of 2021, on the ground that the exercise for complying the order is taking some time as the first part of the order dated 20.12.2021 regarding upgradation of eligible incumbents under

the Time Scale Promotion for 2 Teachers of JNIMS Rules, 2020, the JNIMS Rules, 2015 do not have provision for fixation of inter-se seniority and the process for fixing the said inter-se seniority is under process. It is further submitted that the Model Code of Conduct has come into effect from 8.1.2022 and the process is underway to seek exemption from the Election Commission through the Screening Committee constituted vide order dated 9.1.2022.

MC (WP(C)) No.315 of 2021 was disposed of by an order dated 20.12.2021 and the relevant portions are extracted hereinbelow:

"After hearing learned counsel for the parties and on consideration of the materials available on record, this Court is of the considered opinion that the interim order dated 18-05-2020 passed in WP(C) No. 231 of 2020 is a blanket order not to fill up the post of Associate Professor & Professor in the JNIMS under the proposed Timescale Promotion Scheme. On consideration of the Timescale Promotion Scheme for Teachers of JNIMS Rules, 2020 which was notified on 18th December, 2020, this Court is of the considered opinion that upgradation under this scheme is purely personal and the promotion effected will be non-functional. The submission of the learned Addl. AG that any upgradation in any posts under the Timescale Promotion scheme is purely personal and the incumbents would continue to receive the pay scale of the post held prior to their upgradation unless they are accommodated in a substantive vacancy in the upgraded post has also been considered. Accordingly, interim order dated 18-05-2020 passed in WP(C) No. 231 of 2020 is vacated. The applicants are permitted to make upgradation of the incumbents eligible under the Timescale Promotion Scheme for Teachers of JNIMS Rules, 2020. The applicants are also directed to accommodate both the writ petitioners in WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020 in the post of Associate Professor, Community Medicine as proposed by the applicants within three weeks from the date of receipt of a copy of this order. However,

accommodation/promotion of 3 the two writ petitioners shall be subject to the outcome of the results in WP(C) No. 638 of 2017 and WP(C) No. 231 of 2020. The prayer for vacation of the interim order dated 15-09-2017 passed in WP(C) No. 638 of 2017 is rejected. Misc case stands disposed of."

Mr.Lenin Hijam, learned Addl. A.G, Manipur submits that the National Medical Commission Rules, would be coming into effect by 17.2.2022 and, therefore, an order is also required to exempt the incumbents who are eligible for upgradation in the Time Scale Promotion Scheme for Teachers of JNIMS Rules, 2020 and also for accommodation of both the petitioners in WP(C) No.638 of 2017 and WP(C) No.231 of 2020 in the post of Associate Professor, Community Medicine. He further submits that the Inter-se seniority is being finalized and, therefore, once the exemption from the Election Commission is obtained, the applicants would have no difficulty in complying with the order dated 20.12.2021 passed in MC (WP(C)) No.315 of 2021.

At this stage, Mr.H.S.Paonam, learned senior counsel for the respondents/writ petitioner in WP(C) No.231 of 2020 draws attention of this Court to Annexure M/2 (Colly), particularly to the "Self-contained Note for placing before the Screening Committee to be chaired by the Chief Secretary, Government of Manipur", issued by the Director JNIMS on 13.1.2022 wherein at Sl.No.4 it is proposed to hold fresh DPC as per the JNIMS Service Rules – 10(b) for accommodating the two writ petitioners in WP(C) No.638 of 2017 and WP(C) No.231 of 2020. He submits that both the writ petitioners were already screened in the DPC held in the year 2017 as per the Rules of the JNIMS and, therefore, a fresh DPC as proposed would be subjecting both the petitioners to another DPC, which is not required. He also submits that at present, considering the length of service, the petitioner would not be eligible for Time Scale Promotion to the post of Professor, Community Medicine and, therefore, a direction may also be issued to keep one post of Professor, Community Medicine vacant.

Mr.N.Umakanta, learned counsel appearing for the petitioner in WP(C) No.638 of 2017 endorses the submission made by Mr.Paonam, learned senior counsel for the respondent.

Mr.N.Jotendro, learned senior counsel appearing for the applicants in MC (WP(C)) No.35 of 2022 submits that the applicants are entitled to be promoted as Professor under the JNIMS Rules of 2020 as mandated under Rule 4, which provides that Time Scale Promotion shall be implemented every year by drawing up vacancy on the 1st February of every year starting from 1.2.2021 by calculating 22% of the total post of Associate Professors and also Assistant Professors. However, as the same was not done in the year 2021, when the applicants takes up the matter with regard to giving promotion, calculation for the year from 1.2.2021 should be a total of 44% (i.e. 22% for the year 2021 and 22% for the year 2022).

Mr.Lenin, learned Addl. A.G, appearing on behalf of the applicants submits that there would be no impediment on the part of the applicants to consider the case of eligible incumbents for Time Scale Promotion to the post of Professor from Associate Professor by calculating 44% of the total regular posts (i.e. from 1st February 2021). He also submits that as and when the exemption is granted by the Election Commission, the case of the petitioners in WP(C) No.638 of 2017 and WP(C) No.231 of 2020 can be considered separately for accommodation in the post of Associate Professor, Community Medicine.

After hearing the parties, MC (WP(C)) No.22 of 2022 is accordingly allowed by granting extension of time of 4 (four) weeks for implementing the order dated 22.10.2021 passed in MC (WP(C)) No.315 of 2021 within four weeks' time from today. The extension is also granted for accommodating both the petitioners in WP(C) No.638 of 2017 and WP(C) No.231 of 2020 in the post of Associate Professor in Community Medicine without holding a fresh DPC. However, for the substantive post of Associate Professor, Community Medicine which arose in the

year 2019 the same shall be subject to the outcome of the decision in WP(C) No.638 of 2017.

*The applicants are also directed to make upgradation of the eligible incumbents including the applicants in MC (WP(C)) No.35 of 2022 under the Time Scale Promotion Scheme for Teachers of JNIMS Rules, 2022 within the extended period. **It is also made clear that the National Medical Commission Rules, which is to come into effect from 17.2.2022 would have no bearing on the accommodation of the petitioners in WP(C) No.638 of 2017 and WP(C) No.231 of 2020 for the post of Associate Professor, Community Medicine as well as those incumbents who are eligible under the Time Scale Promotion by calculating 44% of the total regular post (i.e. 22% for the year 2021 and 22% for the year 2022). The parties are also directed that one post of Professor in Community Medicine shall not be filled up which shall, however, be subject to the outcome of the WP(C) No.638 of 2017.** Accordingly, these misc. applications are disposed of. Furnish copy of this order to learned counsel for the parties through their respective emails/WhatsApp.]*

[18] Thereafter, respondent JNIMS authority filed Review Petition Nos. 7 and 8 of 2022 seeking review of the order dt. 01.02.2022 passed in MC(WP(C)) No. 22 of 2022 and order dt. 20.12.2021 passed in MC(WP(C)) No. 315 of 2021 in WP(C) No. 231 of 2020 respectively. The said review petitions are dismissed on 19.12.2022 by a common order on the ground that there is no error apparent on the face of the record and no case for interference is made out in the matter. It is also stated that the orders sought to be reviewed have been passed on the proposal of the learned Additional Advocate General representing the review applicant and therefore, there is no apparent error on the face of record

or discovery of new facts for making the present review applications maintainable.

[19] It may be noted that writ appeals being WA Nos. 22 of 2023, 23 of 2023, 5 of 2023 and 6 of 2023 are pending before the Division Bench arising out of the interim orders dated 01.02.2022, 20.12.2021 and common order in review petitions dated 19.12.2022. The WP(C) Nos. 638 of 2017 and 231 of 2020 along with the connected applications are listed before this Court in view of the order dated 21.03.2023 passed by the Division Bench in WA Nos. 22 of 2023 & 23 of 2023 by de-tagging the writ petitions from the writ appeals of the same cases.

[20] This Court has heard Mr. N. Umakanta, learned counsel for the petitioner in WP(C) No. 638 of 2017, Mr. HS Paonam, learned senior counsel for petitioner in WP(C) No. 231 of 2020 & who is also respondent No.2 in WP(C) No. 638 of 2017 assisted by Ms. Lekhakumari, Advocate and Mr. S. Nepolean, learned GA assisted by Mrs. RK Emily, learned Deputy GA on behalf of JNIMS authority in both cases.

[21] Vide order dated 29.03.2023, this Court permitted the petitioner in WP(C) No. 638 of 2017 to file an application to bring on record subsequent events and accordingly an additional affidavit dated 21.04.2023 was filed and taken record. On 24.04.2023 when the cases were taken up for hearing, it was recorded that both Mr. N. Umakanta and Mr. S. Nepolean would seek instructions as to whether the petitioner in WP(C) No. 638 of 2017 could be considered for accommodation in time scale promotion in the scale of Associate Professor. On 25.04.2023, Mr. S. Nepolean, learned GA placed before this Court

a letter dated 25.04.2023 addressed to him from the Director, JNIMS inter alia stating that the case of Dr. N. Minita (petitioner in WP(C) No. 638 of 2017) could be considered along with others, subject to fulfilling the eligibility criteria. The letter was taken on record. The matter was reserved for judgment on 25.04.2023 and parties were permitted to submit short written submissions giving chronology of the events. Accordingly, written submissions of the parties have been taken on record.

[22] From the pleadings of the petitions, it is seen that the main prayers in WP(C) No. 638 of 2017 are for setting aside the decision of JNIMS authority declaring the newly upgraded and created post of Associate Professor, Department of Community Medicine to be the promotional post of Assistant Professor with medical background only; to declare the newly created post as promotional post of Statistical-cum-Professor, JNIMS; or in alternate, to direct JNIMS authority to create promotional post of Associate Professor, Department of Community Medicine to be filled from faculty members/Assistant Professor with non-medical background, ie, Statistician-cum-Assistant Professor for career advancement of non-medical background. Vide order dated 11.09.2017 in WP(C) No. 638 of 2017, this Court passed an interim order directing that DPC result, if held, should not be declared without leave of the Court. DPC for the post of Associate Professor, Community Medicine, JNIMS was held on 15.09.2017 and the proceedings was kept under sealed cover in pursuance to the interim order dated 11.09.2017.

[23] The main prayer in WP(C) No. 231 of 2020 is for direction restraining from giving promotion to the post of Associate Professor and Professor in JNIMS under the proposed Time Scale Rules pending disposal of WP(C) No. 638 of 2017. Vide an interim order dated 18.05.2020, this Court directed JNIMS not to fill up the post of Associate Professor & Professor in the JNIMS under the proposed Time Scale Promotion Scheme till next returnable date and the same was extended from time to time. The interim order dated 18.05.2020 was vacated vide order dated 20.12.2021 in MC[WP(C)] No. 351 of 2021 and directed JNIMS to accommodate both the writ petitioners in WP(C) Nos. 638 of 2017 & 231 of 2020 in the post of Associate Professor, Community Medicine as proposed by JNIMS. It may be noted that private respondent Nos. 2 & 3 (belonging to other departments) were impleaded in WP(C) No. 231 of 2020 on their applications, as their career would be affected the interim order dated 18.05.2020 which prevented Time Scale Promotion for the whole institute. It may be pointed out that WP(C) No. 231 of 2020 was filed after reserving of WP(C) No. 638 of 2017 for judgment.

[24] It is seen from the case record that JNIMS filed an application being MC[WP(C)] No. 315 of 2021 for modification of the interim order dated 18.05.2020 in WP(C) No. 231 of 2020 and to permit it to conduct DPC for about 100 faculty members including the writ petitioners namely, Dr. H. Nirendrakumar Singh and Dr. N. Nimita Devi for promotion to the next higher post as per law, subject to the outcome of WP(C) Nos. 231 of 2020 & 638 of 2017. It is specifically stated in the application that there were 2 (two) vacancies for the post of Associate Professor of Community Medicine in JNIMS

and both the petitioners could be accommodated against the existing vacancies in addition to the promotion to be given to 100 faculty members proposed for promotion.

[25] After hearing the parties at length and on perusal of the undertakings made in the application and during the hearing, vide order dated 20.12.2021 in MC[WP(C)] No. 315 of 2021, this Court vacated the interim order dated 18.05.2020 passed in WP(C) No. 231 of 2020, as the same was a blanket order not to fill up the post of Associate Professor and Professor in JNIMS under the proposed Timescale Promotion Scheme. It was further directed to JNIMS to accommodate the writ petitioners in both cases in the post of Associate Professor, Community Medicine as proposed by JNIMS within a period of three weeks, subject to the outcome of WP(C) Nos. 638 of 2017 & 231 of 2020. However, the prayer for vacation of interim order dated 11.09.2017 in WP(C) No. 638 of 2017 was rejected.

[26] Later on, JNIMS filed an application being MC[WP(C)] No. 22 of 2022 for extension of 2 (two) months' time to comply the directions in order dated 20.12.2021 in MC[WP(C)] No. 315 of 2021. Vide order dated 01.02.2022 in MC[WP(C)] No. 22 of 2022, this Court granted extension of 4 (four) weeks for implementation of the order dated 20.12.2021 in MC[WP(C)] No. 315 of 2021. It was further clarified that the time extension was granted for accommodating both the writ petitioners in WP(C) Nos. 638 of 2017 & 231 of 2020 in the post of Associate Professor in Community Medicine without holding a fresh DPC. However, for the substantive post of Associate Professor in Community

Medicine which arose in the year 2019, the same would be the outcome of the decision in WP(C) No. 638 of 2017. It was further directed that the upgradation of the eligible incumbents including the applicants in MC[WP(C)] No. 35 of 2022 under Time Scale Promotion Scheme for Teachers in JNMIS Rules, 2022 be also made within the extended period. It was also made clear that the National Medical Commission Rules to be effective from 17.02.2022 would not have any bearing on the accommodation of the petitioners in WP(C) Nos. 638 of 2017 & 231 of 2020 for the post of Associate Professor, Community Medicine as well as those incumbents eligible under the Time Scale Promotion by calculating 44% of the total regular posts (ie. 22% for the year 2021 and 22% for the year 2022). It was further directed to that one post of Professor in Community Medicine should not be filled up, subject to the outcome of WP(C) No. 638 of 2017.

[27] The crux of order dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 is that the writ petitioners in WP(C) Nos. 638 of 2017 & 231 of 2020 are to be accommodated without facing fresh DPC as they had already been subjected to the DPC held in the year 2017. The accommodation of the writ petitioners and other eligible incumbents shall not be affected by the new NMC Rules. The protection is given not only to the writ petitioners, but also to all eligible incumbents of JNIMS from other Departments.

[28] JNIMS filed two review petitions being RP No. 7 of 2022 against order dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 and RP No. 8 of 2022 against order dated 20.12.2021 in MC[WP(C)] No. 315 of 2021 inter-alia on the grounds

that- (i) there were only one clear vacancy in Community Medicine as the other vacancy was reserved for the DPC held in 2017, and (ii) the direction for accommodation in Time Scale Promotion could be implemented only after disposal of WP(C) Nos. 638 of 2017 & 231 of 2020 or on modification of the interim orders passed in these petitions. Vide common order dated 19.12.2022, this Court dismissed the review petitions being, RP Nos. 7 of 2022 and 8 of 2022, as the orders dated 01.02.2022 and 20.12.2021 under review were passed on the proposal of learned Addl AG representing JNIMS and also there was no apparent error on the face of record nor discovery of new facts.

[29] When the matter is taken up for hearing, the writ petitioners in both cases, ie, WP(C) Nos. 638 of 2017 & 231 of 2020 do not press on the merit of the case. Since the rights of both of them and other eligible incumbents have been protected by the interim orders dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 and dated 20.12.2021 in MC[WP(C)] No. 315 of 2021, it has been urged by the learned counsel for the petitioners that the writ petitions may be disposed of by directing JNIMS to declare the result of the DPC held on 15.09.2017 [which has been kept in sealed cover in pursuance to interim order dated 11.09.2017 in WP(C) No. 638 of 2017] and accommodate the non-recommended candidate by DPC of 2017 in the subsequent vacancy or under Time Scale Promotion Scheme in pursuance to the afore-said orders dated 20.12.2021 and 01.02.2022.

[30] Due to the various interim orders, the process for promotion to the post of Associate Professor, Community Medicine in JNIMS and Time Scale

Promotion could not be completed, thereby causing stagnation in the promotion and other related matters concerning the service conditions of the incumbents. The review petitions have been filed on the limited grounds that there was only one clear vacancy in the Associate Professor in Community Medicine and the second vacancy (as submitted by JNIMS in MC[WP(C)] No. 315 of 2021) arose only in the years 2019 and hence could not be adjusted in the DPC of 2017 and the directions for accommodation of the both the writ petitioners and other eligible incumbents of JNIMS could be considered only after the disposal of WP(C) Nos. 638 of 2017 & 231 of 2020 or upon modification of the interim orders.

[31] This Court is of the considered opinion that the interest of the writ petitioners and other incumbents whose interests have been affected by the pending petitions as well as the concern of JNIMS, can be safeguarded by introducing a via media. The same can be achieved by directing the JNIMS authority to declare the result of the DPC held on 15.09.2017 for the post of Associate Professor, Community Medicine [kept in sealed cover in pursuance to interim order dated 11.09.2017 in WP(C) No. 638 of 2017]. The non-recommended incumbent/petitioner may be considered against the vacancy arose in the year 2019 or may be considered for accommodation in Time Scale Promotion along with other eligible incumbents in terms of orders dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 and dated 20.12.2021 in MC[WP(C)] No. 315 of 2021.

[32] In the facts and circumstances of the cases and in order to do complete justice, the writ petitions are disposed with a direction to JNIMS that the result of the DPC held on 15.09.2017 for promotion to the post of Associate Professor in JNIMS in respect of Community Medicine [which is kept in sealed cover in pursuance to interim order dated 11.09.2017 in WP(C) No. 638 of 2017] be declared within a period of 1(one) month from the date of receipt of this order, by giving effect from the date of DPC, ie, 15.09.2017 or from the date on which similarly situated incumbents have been given promotion in pursuance to the DPC conducted in the year 2017 in JNMIS. It is clarified that the JNIMS may consider the case of the incumbent/petitioner who is not recommended by the DPC, in the vacant post of Associate Professor of Community Medicine arose in the year 2019 or under the Time Scale Promotion Scheme as directed in orders dated 01.02.2022 in MC[WP(C)] No. 22 of 2022 and dated 20.12.2021 in MC[WP(C)] No. 315 of 2021. It is further clarified that other eligible incumbents of JNIMS are also to be considered in terms of the afore-said orders.

[33] In view of the directions in para 32, WP(C) Nos. 638 of 2017 & 231 of 2020 are disposed of. Interim orders, if any, are merged with the final order. Misc. applications, if any, are disposed of in terms of these directions. No cost.

[34] Send a copy of this order to the Director, JNIMS for information.

JUDGE

KH.
JOSHUA
MARING

Digitally signed by
KH. JOSHUA
MARING
Date: 2024.01.11
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