

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3858 of 2015

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1. Dr. Vijay Shankar Pandey son of Late Jamuna Pandey, resident of Village-Budhifa, P.S.Nawanagar, District-Buxar

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department Of Health, Government of Bihar, Patna
3. The Principal Secretary, Department Of Finance, Government of Bihar, Patna
4. The Principal Secretary, Department Of General Administration, Government of Bihar, Patna
5. The Secretary, Department of Health, Government of Bihar, Patna
6. The Joint Secretary, Department Of Health, Government of Bihar, Patna
7. The Director, Indigenous Medicine, Department Of Health, Government of Bihar, Patna
8. The Development Commissioner-Cum-Chairman Departmental Promotion Committee, Main Secretariat, Government Of Bihar, Patna
9. Dr. Shyam Sundar Gupta son of Late Sarju Prasad, resident of Opposite CDA Building,Rajendra Path(Station Road), P.S. Gandhi Maidan, At And District-Patna
10. Dr.Smt.Deepali Sundari Verma wife of Dr.Shyam Sundar Gupta son of Late Sarju Prasad, resident of Opposite CDA Building,Rajendra Path(Station Road), P.S. Gandhi Maidan, At And District-Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhola Kumar

For the Respondent/s : Mr. Alok Ranjan, AC to GA 13

For Respondents No. 9 & 10: Mr. Ujjwal Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 06-05-2015

This writ application has been filed on a mistaken understanding,
both on facts and law.

2. The Court has reason to opine as above on the ground that Annexure-1 and the chart annexed thereto clearly indicates that the gradation list of various teachers in Government Ayurvedic College has been prepared department-wise. It is not a unified gradation list of the teachers.

3. Petitioner got aggrieved because cases of two respondents, who

are arrayed as respondent Nos. 9 and 10 in the present writ application, are under consideration for promotion on the post of Professor. Petitioner is of the opinion that the respondents are discriminating in not recommending his case for consideration.

4. Counter affidavit on behalf of respondent Nos. 9 and 10 has been filed. So has the State. Their stand is that the case of respondent Nos. 9 and 10 cannot be equated because they belong to different department vis-à-vis the present petitioner. The availability of vacancy and seniority position in that department decides the right of consideration. There is no pleading and material to show that in the department in which petitioner's name figures at serial No. 1, there is a vacancy and promotion on the post of Professor is required to be made.

5. Obviously, two unequal cannot be treated as equal and mandamus cannot be issued treating the petitioner as similarly placed as two other respondents when they belong to a different department and seniority in view of the notification contained in Annexure-1.

6. It is also relevant to notice that this gradation list has been prepared on the basis of a direction issued in CWJC No. 2317 of 2006.

7. The Court is further informed by the counsel for the private respondents that the judgment on which petitioner is putting emphasis, contained in Annexure-6 to the rejoinder application, is still under judicial scrutiny before a Division Bench, which is LPA No. 759 of 2012 and LPA No.757 of 2012 in which notices have already been issued to the contesting parties. Therefore, the grievance of the petitioner cannot be said to have attained finality as well as formed the basis for consideration of the claim of the petitioner at this juncture, at least on the ground of discrimination.

8. Writ application however stands disposed of with an observation

that if there is a vacancy in the department to which petitioner belongs, which is said to be Sanhita and Sidhanta, there will an occasion for the DPC to consider his case. At this juncture, petitioner apprehends that he may lose out on the zone of consideration as a Principal, which cannot form the basis for any relief being granted to the petitioner in the above stated facts.

9. Writ application is disposed of with observation as above.

(Ajay Kumar Tripathi, J)

R K Pathak

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