

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1247 of 2014

In

Civil Writ Jurisdiction Case No. 4355 of 2012

- =====
1. The State of Bihar.
 2. The Principal Secretary, Department of Health of Government of Bihar, Patna.
 3. The Secretary, Medical Education, Department of Health, Government of Bihar, Patna.
 4. The Joint Secretary, Department of Health, Government of Bihar, Patna.
 5. The Deputy Secretary, Department of Health, Government of Bihar, Patna.

.... Appellants

Versus

1. Dr. Ramesh Prasad Singh, son of Late Naresh Prasad Singh, Resident of A-1, Sachivalaya Colony, Kankarbagh, Police Station - Patrakar Nagar, District - Patna.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Jai shankar Barnwal, G. A. 5

Mr. Sanjay Kumar, Ac to GA 5

For the Respondent/s : Mr. Rajesh Prasad Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE I.A. ANSARI

AND

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV ORDER

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

10 19-03-2015

The instant appeal is filed by the respondent State against the order, dated 27.01.2014, whereby writ application has been allowed.

2. The writ petitioner-respondent filed writ application, bearing C.W.J.C. No. 4355 of 2012, seeking quashing of the notification, dated 29.06.2010, whereby the *ad hoc* promotion, under working arrangement, granted to the writ petitioner to the post of Associate Professor



(Surgery) has been regularized with effect from 18.10.2003 instead of 15.05.1997. A prayer has been made accordingly to shift the date of promotion to 14.05.1997. A prayer has also been made for quashing the notification, dated 26.08.2008, whereby the *ad hoc* promotion to the post of Professor has been regularized with effect from 31.07.2007, i.e. the date of superannuation instead of 12.12.2003, and to shift the date accordingly with all consequential benefits. The writ petitioner further prayed for quashing the letter, dated 17.03.2011, issued under the signature of Deputy Secretary, Health, whereby representation to shift the date of promotion to the post of Associate Professor and Professor has been rejected.

3. The State Government has preferred the present appeal basically on two grounds. Firstly, no one can claim regular promotion as a matter of right from a retrospective date unless and until anyone junior to him has been promoted or there has been a hostile discrimination. Secondly, the learned single Judge has passed the impugned order on the consideration that the case is squarely covered by the *ratio* of earlier case relating to Dr. Ajit Singh, Dr. S.N. Sharma and Dr. Geeta Singh, but the identical case of Dr. Ajit Singh has travelled to the Supreme Court, where the interim order of *status quo* has been passed on 01.10.2012.



4. According to the State, the learned Single Judge failed to appreciate that as per Rule 8 of Bihar Medical Education Service Cadre and Constituent Cadre Post Recruitment) Rules, 1997 (hereinafter referred to as '1997 Rules'), promotion would be considered to the post of Associate Professor and Professor only if he has passed the examination conducted by Bihar Public Service Commission. Mere *officiation* on a post cannot give a ground for promotion.

5. Before we consider the submissions of learned counsel for the parties on the issue involved in the appeal, it would be expedient to notice the facts of the case in brief. The writ petitioner, on completion of MBBS Course, was appointed as Civil Assistant Surgeon, in Bihar Health Service Cadre, on 10.12.1973 and was posted in Patna Medical College and Hospital, Patna, where he joined on 15.12.1973. He was posted as Resident Surgeon at Nalanda Medical College and Hospital, Patna, vide notification, dated 28.01.1979, which post he joined on 17.03.1979. He remained on study leave between 26.09.1979 and 07.08.1980 to complete the Post Graduate Course. He, eventually, got Post Graduate Degree, in General Surgery, in the year 1980 and, again, he joined as Resident Surgeon at Nalanda Medical College and Hospital, Patna. Later on, his

study leave was regularized. The petitioner was appointed as Assistant Professor (General Surgery) in the Department of Surgery, in Patna Medical College and Hospital, Patna, vide notification, dated 15.05.1986, where he worked in the same capacity.

6. In light of the order, dated 12.06.1995, passed in C.W.J.C. No.6874 of 1994, the petitioner was posted as Associate Professor, in his own pay scale, under working arrangement. By the said order, the learned single Judge had directed to abolish *ad hoc* arrangement and to appoint qualified persons on regular basis. The petitioner continued on the post of Associate Professor. The Government, vide notification, dated 01.12.2003, of the Department of Health, posted the petitioner and some other doctors as Professors in different discipline in their own pay scale at Jawaharlal Nehru Medical College and Hospital, Bhagalpur, on 12.12.2003, on which post the petitioner continued till his superannuation on 31.7.2007.

7. The meeting of the Departmental Promotion Committee was held on 14.12.2007 long after the retirement of the petitioner. The Departmental Promotion Committee found the writ petitioner fit for promotion to the post of Associate Professor, Department of Surgery, from the date of his officiation, e.g. 14.05.1997. However, the



writ petitioner was substantially promoted to the post of Associate Professor, in the pay scale of Rs.12000-16500/- with effect from 12.08.2008, which mistake was, later on, rectified by notification, dated 29.10.2010, and his date of promotion was shifted to 18.10.2003. The writ petitioner was promoted to the post of Professor, vide notification, dated 26.08.2008 with effect from 31.07.2007. The representation of the petitioner to appropriately shift the date of his promotion to the post of Associate Professor with effect from 14.05.1997 and to the post of Professor with effect from 12.12.2003 was rejected by the Government, vide letter, dated 17.03.2011.

8. The case of writ petitioner before the learned single Judge was that he had all requisite qualifications and experience for substantive promotion to the post of Associate Professor and Professor on the date of his officiation in those posts. The Departmental Promotion Committee also considered his case and found him fit for promotion to the said post from the date of his officiation. The writ petitioner, in support of his submissions, relied on decisions rendered in C.W.J.C.No.12453 of 2010 (Dr. Sachchidanand Sharma vs State of Bihar & Ors), C.W.J.C. No.13132 of 2012 (Dr. (Mrs) Geeta Singh vs State of Bihar & Ors), C.W.J.C. No.5451 of 2006 (Dr. Ajit Singh Vs State of

Bihar &Ors) and L.P.A. No.1001 of 1999 (Dr. Saryug Prasad vs State of Bihar & Ors).

9. On the other hand, the State argued that the writ petitioner cannot claim promotion as a matter of right and there was no allegation that any person junior to the petitioner had been promoted. Further-more, the State argued that reliance, placed on the decision of Dr. Saryug Prasad, is misplaced as no direction had been given to grant promotion substantively from the date of officiation. Similarly, on misplaced argument, the case of Dr. Sachchidanand Sharma was decided.

10. Earlier, this Court, in the case of Dr. Ajit Singh and Dr. Saryug Prasad, noticed as to how the doctors, particularly, in the teaching cadre, having requisite qualifications and experiences, discharged the functions of higher post in the pay scale of lower post for years together and, as such, a direction was issued to regularize their services not only with retrospective effect, but also with consequential benefits.

11. The learned single Judge found that the writ petitioner fulfilled necessary eligibility and experience criteria as laid down by 1997 Rules and observed that he is entitled to the benefit of promotion to the post of Associate Professor with effect from 14.05.1997, i.e., from the date of

officiation and, similarly, to the post of Professor from the date of his officiation, i.e. 18.10.2003, and, as such, his promotions in the respective post, shall be shifted accordingly with all consequential benefits.

12. Being aggrieved, this appeal has been preferred. In this appeal, the State has argued that the learned single Judge failed to appreciate that as per Rule 8 of 1997 Rules, promotion would be considered after having passed the examination, which was to be conducted by the Bihar Public Service Commission. It is relevant to state herein that prior to 1997, there was no separate cadre for Medical Education Service or for its teaching cadre. The promotion to the higher post of Associate Professor and Professor was made on the basis of executive instructions from time to time. In the year 1997, pursuant to the order of this Court, Bihar Medical Service Rules, 1997, was framed and Bihar Medical Education Service was made a separate cadre distinct from Bihar Health Service, which constituted its own cadre. Rule 3 of 1997 Rules provided that the said Rule would be applicable to backlog vacancies as well as future vacancies. However, Rule 3 underwent amendment, vide Notification No. 211(17), dated 21.02.2003. A proviso was added to the rule to the effect that the doctors/teachers, who were under working arrangement/*ad*



hoc basis, as per the departmental notification, their promotions would be considered as per previous procedure of promotion applicable to the implementation of 1997 Rules. Rule 8 was also amended, vide notification, dated 23.03.2004. As per Rule 8 (2)(Kha), the post of Assistant Professor, Associate Professor and Professor were to be filled on the basis of *seniority-cum-merit*. Even after the *status quo* order granted in the case of Dr. Ajit Singh by the Supreme Court, in S.L.P. preferred by the State, the Government has granted promotions to a number of doctors from the date of their *officiation*. In support of his submissions, the writ petitioner-respondent has annexed notifications, dated 11.02.2014 and 27.02.2014, marked as Exhibit A and B to the appeal. Further-more, from the counter affidavit of the writ petitioner-respondent, we find that, again, vide Notification No. 969 (17), dated 21.10.2005, regular promotions to the post of Associate Professor was given with effect from notification/ *officiation*. Again, vide Notification No. 518 (17), dated 29.06.2010, regular promotion to the post of Professor was given from the date of *officiation*.

13. We find that the writ petitioner has all requisite qualifications and experience for promotions to the post of Associate Professor and Professor, on which posts he

was posted on *ad hoc* basis. Further-more, the Departmental Promotion Committee had also recommended for his promotion from the date of his *officiation*. The writ petitioner is, admittedly, not seeking promotion on the posts prior to the date of his *officiation*.

14. In view of the facts noticed and discussions made above, we do not find any infirmity in the order, under appeal, passed by the learned single Judge.

15. In this result, this appeal fails and it is accordingly dismissed.

16. There shall be no order as to costs.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J. :

(I. A. Ansari, J.)

Md.Jamaluddin
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