

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1496 of 2011
IN
Civil Writ Jurisdiction Case No 5481 of 2004

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Vijay Kumar S/O Late Bhawani Prasad Sinha R/O West Boring Canal Road, Near
Sushant Dental Clinic, Patna-800001

.... Appellant/s

Versus

1. The State Of Bihar through Commissioner-Cum-Secretary Department of Health and Medical Education, Govt. Of Bihar, Patna
2. The Deputy Secretary Department of Health and Medical Education Govt. Of Bihar, Patna
3. The Principal, Patna Medical College and Hospital, Patna
4. Dr. Wishvendra Kumar Singh at Present Posted in Department of Orthopedics At Patna Medical College And Hospital, Patna
5. Dr. Nand Kumar at Present Posted in Department of Orthopedics, Darbhanga Medical College And Hospital, Laheriasarai
6. Dr. Ramanandan Suman at Present Posted in Deptt. Of Orthopedics, Nalanda Medical College and Hospital, Patna
7. Dr. Dilip Kumar Singh at Present Posted in Department of Orthopedics In Jawaharlal Nehru College And Hospital, Bhagalpur

.... Respondent/s

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For the Appellant/s	:	M/s Prabhat Ranjan & Parijat Saurav, Advocates
For Respondents 1, 2 & 3	:	Mr Devendra Kr Sinha, AAG II with Mr Biresh Kumar Sinha, AC to AAG II
For Respondents 4 & 7	:	M/s Ajay & Pratik Kr Sinha, Advocates
For Respondent No 6	:	Mr Dinu Kumar, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 16-09-2015

A vexed question of seniority is involved, all because of failure of the State government to take the right decision at the right time and leaving matters to ferment and get complicated.

2 The appellant is the unsuccessful writ petitioner. The private contesting respondents and the appellant, who are teaching Doctors, are in a fight for seniority. The dispute arose out of a

Resolution of the State Government in the Department of Health (Health Education) being Notification No 189 (17) dated 22.03.2004. It is, in fact, clause (kha) of the said notification which is the bone of contention. The said clause provides that amongst the Registrars, those, who were having experience as Resident Medical Officer, (for brevity, *RMO*), would rank senior. In other words, if a person has become a Registrar without having earlier served as an RMO and there is a Registrar who has been RMO, the latter would be senior. In order to appreciate rival contentions, it is necessary to go into the history.

3 In this State, initially there was only one Health Service Cadre. All doctors, whether they had Post Graduate qualification or not, would join the Health Service Cadre. Doctors in the Health Service were from time to time, deputed and/or recruited on various teaching posts in the Government Medical Colleges & Hospitals. Thus, the Health Services had primarily two sectors, one the Health services in general and second the teaching posts. There was no separate teaching cadre.

4 In the teaching posts, from time to time, there were changes but basically the hierarchy was Tutor –cum-Demonstrator, RMO, Registrar, Assistant Professor, Associate Professor and then Professor. It may be noted that though there



was this hierarchy, it was not necessary that one post, lower in hierarchy, was the feeder post for the next higher post. For example, a person could be directly recruited as Registrar without having gone through the stage of tutor or RMO but when we go up higher, that is Assistant Professor onwards, then experience at the last lower level is necessary. This would be of some consequence when we consider the facts. Therefore, one thing is clear and apparent. There was only one cadre that is Health Service Cadre from where doctors were either deputed or selected or appointed in different teaching posts as per exigency. This apparently was not conducive to growth of medical teaching. The doctors who came from Health Service, held a tenure post in teaching or for a short time, hence had no commitment to research and training. The Indian Medical Council was not happy with the situation. Accordingly, in 1997, ultimately, the State Government decided to create another cadre being the Medical Education Cadre (for brevity, *Teaching Cadre*). This was done by notification dated 24th of May, 1997. We will refer to specific provision thereof as and when necessary. This cadre initially was to be formed by two groups of Doctors. One who, on that day, were already on teaching post, they became member of this cadre upon their electing to remain there. The other source was entry through proper



recruitment process through the Bihar Public Service Commission. It would, thus, be seen that it was not open to the doctors of the Health Service Cadre to migrate into the newly formed Teaching Cadre on their own and upon their option. The doctors of Health Service Cadre could only come into the teaching cadre, if on the day, when the Rules were notified they were holding a teaching post. What is of importance is that such doctors became members of the Teaching Cadre not by virtue of being members of the Health Service Cadre but by virtue of being on a teaching post in the Health Service Cadre. This would be of some importance. These Rules further provided that the RMO and the Registrar would now constitute a singular post of Lecturer.

5 Before proceeding further, it is necessary here to point out that RMO and Registrar were two distinct teaching posts, as noted in the hierarchy above. Registrar was a higher post having higher responsibility and higher emoluments than that of an RMO. This again we have to keep in mind. Another thing which has to be kept in mind is that so far as, as has been noted earlier, RMO was not the feeder cadre for the purposes of Registrar. Recruitment on the two posts were independent and direct.

6 Another thing we have to keep in mind is that as per Rules, for the post of Assistant Professor, apart from qualification



and number of research paper, what was required was a particular amount of teaching experience as a Lecturer. One of the submissions would be, which in our view is correct, is that in view of the Rules which stipulated that both RMO and Registrar would be now Lecturers, RMO, with requisite teaching experience, could directly be considered for the post of Assistant Professor so also the Registrar. All parties agree to these positions and there are no disputes in this regard.

7 Now to the facts of the case. The writ petitioner/appellant Dr Vijay Kumar joined Health Service on 12.08.1983 whereas the contesting respondent No 4 Dr Vishvendra Kumar Sinha joined Health Service on 08.07.1981 so also respondent No 7 Dr Dilip Kumar Singh. The appellant, at no point of time, joined as RMO whereas respondents No 4 and 7 both had joined as RMO on 30.06.1990. While they were working as RMO, an advertisement was issued by the State Government to fill up the tenure post of Registrar. This post was for a period of three years. The appellant and the contesting respondents No 4 and 7, all three applied. This advertisement was issued on 29th of July, 1992, that is before the Teaching Cadre was formed in 1997. The notified criterion for selection was merit. There were points for academic excellence, that is, weightage was given to academic

experience, research papers, rural experience and length of teaching experience. What is made clear here is that teaching experience meant, that a person if he was previously holding or had previously held any teaching post, he was given an extra weightage. Considering these different weightages, a merit list was prepared. This is what is referred to as the 1992 panel. When this merit list was prepared, on the aforesaid considerations, the appellant was placed above respondents No 4 and 7. There is no dispute on this. No one challenged his position in this 1992 panel. In the panel so prepared, that is the 1992 panel, the appellant was No 2, respondent No 4 Vishvendra Kumar Sinha was at No 7, Nand Kumar (respondent No 5) was at serial No 13. At the cost of repetition, it may be noted that so far as the appellant is concerned, he was not given any point or weightage for teaching because, as noted above, he was never before in teaching post whereas respondent No 4 Vishvendra Kumar Sinha was given one extra point for teaching experience. Ultimately, the appellant joined as Registrar (Orthopedic) on 10.01.1996. Respondent No 4 Vishvendra Kumar Sinha joined on the same day and respondent No 7 Dilip Kumar Singh joined on 17.05.1997. Considering the panel, it placed the appellant much above respondents No 4 and 7 in the seniority as a Registrar. These appointments were finalized



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in 1994, though issuance of appointment letters and joining were delayed because of various litigations that ensued. This was a tenure post for three years. Then came the 1997 Teaching Cadre Rules. All three of them, appellant, respondents No 4 and 7 being in the Teaching Cadre and having opted not to return to Health Services, got automatically absorbed to Teaching Cadre because all three were Registrar which was a teaching post. All three continued to work accepting the seniority on the post of Registrar as per their appointment as such. One thing has to be kept in mind that the post of Registrar, as originally advertised, was a tenure post of three years, whereafter, persons had to go back to Health Service but before this eventuality could take place, the Teaching Cadre was formed and they became absorbed to Teaching Cadre.

8 Let it be noted that at this juncture, a mischief was played by the State. They issued a notification stating that those doctors, who were holding the tenure post in teaching faculty, upon expiry of the tenure, would revert to the Health Service. This was issued after creation of the Teaching Cadre. This was challenged and struck down by this Court obviously for the reason that it was inconsistent with the entire scheme of creation of a Teaching Cadre and absorbing teachers in the Teaching Cadre. This position thus continued till 2004. In 2004, the State



Government suddenly woke up and felt the necessity to decide the seniority of the teachers now in the Teaching Cadre though the cadre had been formed as far back as in 1997. This is how the State Government Notification No 189 (17) dated 22.03.2004 was issued. It laid down five criteria for seniority. The first was that the doctors, who were working as Registrar from before, would be deemed to be senior to doctors working as RMOs. No exception can be taken to this because even if this was not said, this would have been the consequence because the Registrar's post is a higher post than of an RMO with higher remuneration and greater responsibility. Apparently, this had to be clarified because in the 1997 Rules, it was provided that both Registrar and the RMO would now be Lecturers. This settles one contention that there is no equivalence between Registrar and RMO. The Registrar is distinct and senior in designation and post.

9 We then come to the contentious second stipulation (kha). It states that amongst the Registrars, one who has had the experience of RMO, he would rank senior. This upsets the apple cart. As noticed earlier, the appellant, when selected alongwith respondents No 4 and 7 for appointment as Registrar, was, admittedly, placed at a senior position in the merit list than both respondents No 4 and 7. In fact, respondent No 7 joined the post



of Registrar nearly one and a half years after the appellant and respondent No 4, but, by virtue of this Rule of seniority, both respondents No 4 and 7, who were junior as Registrar in the 1992 panel, took a jump over the appellant. Respondents No 4 and 7 had all along accepted the seniority of appellant as a Registrar, but now merely because these respondents had been fortunate to be RMO earlier, on this ground they now claim seniority. This is the whole dispute. We are not concerned with the other three Rules but we may notice that the fourth Rule also contemplates that if doctors are appointed from one panel, their seniority would be determined upon their merit placement in that panel. If we consider this Rule, then doctors who were appointed as Registrars, the appellant being more meritorious, was placed above respondents No 4 and 7, but by virtue of the second Rule, he has been pushed below the two. We may also notice here that for 10 long years that is from 1994 to 2004, even after 1997 Rule till 2004 Rules came, respondents No 4 and 7 accepted the position of seniority of appellant over them. We have to now consider, what, if any, is the true import of the second Rule of seniority and whether it can be accepted as legally correct.

10 On behalf of respondents, it is submitted that as per the 1997 Teaching Cadre Rules, for the purposes of promotion to

the post of Assistant Professor, what was required was seniority amongst Lecturers, their teaching experience and research paper. Therefore, it had become necessary for the State Government to consider and set the seniority of doctors in the Teaching Cadre at the level of Lecturers. They further submit that both RMOs and Registrars were Lecturers. They both being Lecturers, a mechanism had to be evolved to determine seniority. State rightly decided that length of teaching experience would be the criteria to determine the seniority amongst Lecturers. To the contrary, on behalf of appellant, it is submitted that the appellant and the contesting respondents became members of the Teaching Cadre by virtue of holding the teaching post of Registrar when the Teaching Cadre Rules were framed and having not elected to return. Therefore, it was by virtue of the post of Registrar, the three of them were holding, that they became member of the Teaching Cadre. Once this is accepted then the seniority as a Registrar becomes the determining factor for determining the inter se seniority which is also consistent with the fourth Rule which is a basic Rule that, where appointment is made from a singular panel then the merit position would determine the seniority. According to learned counsel for the appellant, the respondents having accepted the seniority of the appellant for almost 10 good years in



the Teaching Cadre, since its inception, could not be arbitrarily favoured by adding length of teaching service of teaching experience to upset the settled seniority. He further submits that for making the appointment of Registrars, the teaching experience as RMO or the length thereof were duly taken into account. Taking into account all those considerations, the seniority, thus, fixed was unsettled and the seniority was fixed once again adding the teaching experience as RMO and giving them seniority. This would lead to a ridiculous situation based on fortuitous circumstances inasmuch as, being RMO was not a requirement for the post of Registrar. We are of the opinion that appellant is correct.

11 To illustrate, what the appellant's counsel submits is "A" a doctor is appointed as Registrar directly in 1990. "B" joins in 1992 as RMO and is junior. After one year in 1993, B becomes a Registrar. If this second Rule of seniority is made applicable then, notwithstanding A was Registrar from 1990 and B became the Registrar in 1993, merely because in 1992, B was also an RMO, B would jump the queue over A and become his senior. To us, this is preposterous. This is against every canon of service jurisprudence. This is exactly what is happening in the present case. The learned counsel for the respondents may be correct in

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saying that there was necessity for the State Government to determine the seniority as amongst the Lecturers but that does not mean that the seniority of the Registrar could be disturbed because someone had been in the past RMO. That is a post, admittedly, junior to that of a Registrar. In our view, this is where the learned Single Judge fell into error.

12 We must notice another argument of the learned counsel for the respondents. He submits that originally in the Health Service, both respondents 4 and 7 were senior to the appellant. By virtue of the second Rule of seniority, as noticed above, virtually that position is being restored. We are sorry, it is not as simple as that. The reason is that all three chose to contest for the post of Registrar and in the contest, appellant was found most meritorious and placed much above the others in the merit panel. This was never challenged by anyone. It is by virtue of being appointed as Registrar and being a Registrar on the day when Rules were framed that they got absorbed into the Teaching Cadre. They were not taken in the Teaching Cadre merely because they were in the Health Service Cadre. This intervening fact of appointment as a Registrar upset continuity and redetermined the seniority. This change of seniority, was an incidence, that took place by virtue of their merit selection to the post of Registrar

which could not be reversed.

13 Thus, we find that the second Rule of seniority (kha), as per the Government Notification No 189 (17) dated 22.03.2004, as aforesaid is arbitrary and cannot be sustained. It has no or little rational and is against the basic fundamentals of seniority. A seniority once determined cannot be upset by Rules subsequently made.

14 In the aforesaid facts, we are left with no option but to allow the appeal and, to that extent, set aside the judgment of the learned Single Judge. We do accordingly.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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