

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18881 of 2010

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Dr.Vijay Prakash Singh S/O Late Ramdutt Singh R/O Raj Lakshmi
Nursing Home, Old By-Pass Road, P.S.- Kankarbagh, Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Deptt. Of Medical Education & Indigenous Medicines,
Govt. Of Bihar, Patna
3. The Additional Secretary, Deptt. Of Medical Education & Indigenous
Medicines, Govt. Of Bihar, Patna
4. The Deputy Secretary, Deptt. Of Health, Medical Education & Family
Welfare, Govt. Of Bihar, Patna
5. The Principal Patna Medical College, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushkar Narain Shahi
Mr. Anil Singh

For the State Ms. Kalpana, A.C. to S.C.19

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

4. 20-01-2015 Heard Mr. Anil Singh for the petitioner and Ms.
Kalpana A.C. to S.C. 19 for the State.

The petitioner has challenged part of the
notification dated 16.04.2010 (Annexure-5) issued by the
government in the Department of Health, Medical Education and
Indigenous Medicines, Govt. of Bihar, Patna, whereby he has been
granted regular promotion to the post of Professor of
Gastroenterology, Patna Medical College & Hospital (for short
'the PMCH') from the date of notification. In other words, the
petitioner is aggrieved by not granting him promotion to the said

post with effect from 01.12.2003 when he was considered and posted on the post under the working arrangement in his own scale of pay.

The short facts of the case are that the petitioner on being selected was appointed on the post of Assistant Professor, Gastroenterology in the Department of Medicines, PMCH, vide notification dated 08.02.1990 and assumed the charge of the said office on the same day. Having been found eligible for further promotion the petitioner was considered and promoted to the post of Associate Professor, Gastroenterology, Department of Medicines, PMCH again by way of working arrangement in his own pay scale vide notification dated 19.12.1997. As noticed above, he was further considered and posted on the post of Professor of Gastroenterology in the Department of Medicines, PMCH vide notification dated 01.12.2003 (Annexure-1) which was again on officiating basis and in his own pay scale. He assumed the said office in the forenoon of 01.12.2003. By an order dated 20.07.2004 (Annexure-3) the post he was holding on officiating basis was designated as the Professor-cum-Head of Department, Gastroenterology. Since then the petitioner is discharging his duties of the post of Professor-cum-Head of Department, Gastroenterology. The respondents vide notification

dated 16.04.2010 considered him for grant of regular promotion on the post of Professor, Gastroenterology, PMCH with effect from the date of the order. In this background, the present writ application has been filed raising the aforesaid grievance.

Counsel for the petitioner has submitted, inter alia, that the petitioner had the requisite qualification and eligibility for promotion on the post on which he was posted under the working arrangement. It was sheer inaction on the part of the respondent(s) in not carrying out the process of selection. For the inaction on the part of respondent(s) the petitioner cannot be made to suffer which will amount to granting premium over inaction. The petitioner is therefore entitled to be treated as promoted on regular basis with effect from 01.12.2003. Referring to the diverse orders/notification passed by the respondent(s) and contained in Annexure-6 series it has been argued that several persons who are identically placed have been granted regular promotion from the date(s) they were made to officiate on the post(s) under working arrangement. The post of Professor in the gastroenterology (G.E.) was identified/earmarked from amongst the sanctioned post(s) of Professor in the Department of Medicines as per the yardstick of the Medical Council of India vide notification dated 22.07.2003 (Annexure-3). In such circumstances, the respondent(s) cannot be

permitted to hand out a differential treatment to the petitioner which would amount to an arbitrary and colourable exercise of power.

A counter affidavit has been filed on behalf of the respondent(s). A plea has been taken that posting of the petitioner on the post of Professor was under the working arrangement in his own pay scale. According to the Bihar Medical Service Cadre Rules, 1997 as amended in 2003, the petitioner is not suo motu entitled for grant of promotion for which special mode has been provided i.e. selection by issuing advertisement on All India Basis. Relevant part of the Rule has been enclosed along with the counter affidavit. It has further been stated that the super specialty Department of Gastroenterology (G.E.) was created in the PMCH with effect from 29.10.2008 and as such the claim of the petitioner to have been regularly promoted with effect from 01.12.2003 is misconceived.

I have considered the rival submissions of the parties. There is no denial that the petitioner had the requisite qualification and eligibility when he was posted as Professor of the department in his own pay scale under the working arrangement on 01.12.2003. It is also not in dispute that until identification of one of the sanctioned posts of Professor in Medicines as Professor

in G.E. Surgery vide Annexure-7 the post(s) of Professor were available against which the petitioner could have been granted regular promotion. In the case of Saryug Prasad vs. State of Bihar passed in LPA No.101 of 1999 this Court noticed the large scale posting(s) of teachers in medical colleges under the working arrangement which procedure was seriously challenged and held that such posting on ah hoc basis or under the working arrangement was not in consonance with law and this practice must end and the respondent should ensure grant of promotions which are due on regular basis. In the case of **Dr. Vinod Kumar Singh vs. The State of Bihar (2009 (3) PLJR 618)** as also in the case of **Dr. Ajit Singh vs. State of Bihar (2011 (3) PLJR 528)**, this Court held since the petitioner had the qualification and eligibility for promotion on the post on which he was posted under the working arrangement and the incumbent(s) continued to discharge the same until promoted on regular basis those holders of post were entitled to be treated as promoted on regular basis from the date(s) they were posted under the working arrangement. In another case of **Dr. Ramesh Prasad Singh vs. State of Bihar (2014 (3) PLJR 726)** a similar grievance was raised for shifting the date of promotion from an anterior date when the incumbent was posted under the working arrangement



to function as the Associate Professor. This Court after noticing the facts observed that the Health Department had chequered history in depriving persons of promotion at the proper time. It was nothing but inaction on the part of the respondent. Noticing diverse judgments of this Court it was held as under in paragraph nos. 16 and 17:-

“16. In the present case, the petitioner was asked to officiate the post of Associate Professor and on that date there is no dispute that the petitioner was possessing the requisite qualification and experience as Associate Professor. DPC found him fit for being promoted to the post of Associate Professor. The impugned Notification does not disclose the reason and circumstances for granting benefit of promotion from 18th October, 2003, not from the date of officiation when in identical cases the Govt. granted promotion from the date of official. Similarly petitioner was posted as Professor officiating basis with effect from 1st December 2003 and later the petitioner was promoted on substantive basis vide Notification dated 26th August 2008 with effect from 31st July 2007 not from the date of officiation when on that date he was fulfilling all the requisite qualification to the post of Professor.

17. This Court feels that the petitioner is entitled to the benefit of Associate Professor with effect from 14th May 1997 i.e. from the date of officiation and it is directed to shift the date of promotion of the petitioner from 18th October 2003 to 14th May 1997 and petitioner will be entitled to consequential benefit. It is also a fact that the petitioner was promoted to the post of Professor having found requisite qualification, including experience to the post of Professor. It will be in the ends of justice the date of promotion to the post of Professor be shifted from 31st July 2007 to the date of officiation subject to the condition availability

of post of Professor with all consequential benefit.”

Reverting to the present case it is seen that although a plea has been taken that under the amended Rule promotion on the post of Professor can be granted after inviting application on all India Basis, however, it does not appear therefrom that the petitioner was granted such promotion adopting the procedure provided therein. The said contention of the respondent(s) therefore does not merit consideration. There is no denial that when the petitioner was considered and posted on the post of Professor (G.E.) in PMCH one of the several posts of Professor available in the College was already identified as the post of Professor (G.E.) in the light the guidelines/yardstick fixed by the Medical Council of India. In other words, non existence of the post held by the petitioner has not seriously been disputed. The petitioner has specifically pleaded that several persons who were similarly placed were considered and promoted with effect from the date(s) they held the post(s) under working arrangement by way of regularization or otherwise. Relevant pleading in this regard has been made in paragraph 12 of the writ petition supported by relevant orders/ notification(s) (Annexure 6 series) which have not been adverted to and replied. This Court therefore holds that



in granting regular promotion from the date of the order (Annexure-5) and not from the date i.e. 01.12.2003 when he was considered and posted as Professor in G.E. PMCH on stopgap/working arrangement basis is the result of the arbitrary exercise of power verging on being wholly discriminatory. The impugned notification does disclose the reasons and the circumstances for granting the benefit of promotion from the date of the order and not from the date of officiation when in identical cases the State Government granted promotion(s) from the date(s) of officiation. The respondent(s) in such circumstances could not have refused to grant the similar treatment to the petitioner.

The discussions made hereinabove persuade this Court to hold that the petitioner is entitled to grant of promotion on regular basis with effect from 01.12.2003 as directed under the impugned notification (Annexure-5). Relevant part of the notification dated 16.04.2010 (Annexure-5) granting him promotion with effect from the order is quashed and it is held that the petitioner shall be entitled to promotion on regular basis on the post of Professor (G.E) PMCH with effect from 01.12.2003 when he was directed to officiate on the post under the working arrangement/stop gap basis in his own pay scale. All monetary benefits shall accordingly flow to the petitioner.

The writ application is allowed with the aforesaid observation and direction(s).

There shall be no order as to cost(s).

(Kishore Kumar Mandal, J)

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