

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16834 of 2014

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1. Dr. Ram Dayal Singh S/o Late Sri Brichh Singh, Resident of Vilalge- Prampur, P.O. Mahuawa, P.S. Madanpur, District- Aurangabad, at present posted as Assistant Professor in the Unit of Neurology in Patna Medical College Hospital, Patna

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar, Patna
2. The Secretary, Health Department, Government of Bihar, Patna
3. The Principal, Patna Medical College Hospital, Patna
4. The Superintendent, Patna Medical College Hospital, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Pd. Singh, Sr. Advocate
Mr Mukesh Kumar Singh
For the Respondent/s : Mr. Kinkar Kumar, SC 27
Mr Manoj Kumar Yadav, AC to SC 27

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 08-04-2015

Petitioner raises two grievances in the present writ application. The first one relates to a restrictive clause in the advertisement contained in Annexure- 6. Relevant clause whose quashing the petitioner wants is clause 7. In addition to that, the petitioner also wants a direction upon the respondents in the alternative to grant him promotion to the post of an Associate Professor.

Though the two prayers are rather diverse but the reason for making both the prayers is to get promotion, if not creating a pressure on the respondents to accede to either of the request of the

petitioner.

Annexure- 6 is the advertisement issued by the Department of Health to make appointments on the basis of a walk-in interview to fill up posts of various kinds available in super-specialty departments. The object and reason for the said advertisement obviously indicates that this was being done on a temporary basis with kind of urgency to ensure smooth functioning of some of the departments which are either under staffed or not staffed at all. The advertisement, therefore, bars regular and permanent doctors already working in the State government as teachers from participation.

This clause, according to learned senior counsel for the petitioner, is discriminatory and prohibitive, if not debars the right of the petitioner for consideration for appointment on a higher post.

The object and purpose of clause 7 is to prevent loss of further limited pool of teachers available in Medical Colleges. The object is not to bar anybody from taking up employment as was the stand of learned senior counsel for the petitioner. It is a reasonable restriction. If the petitioner wants he could have very well resigned to take up another assignment of his like. There is a rational behind preventing permanent teachers /doctors from being appointed on contract. There is element of public purpose. To that extent, clause 7

is not required to be interfered with.

So far as grant of promotion to the petitioner to the next higher post of Associate Professor is concerned, it is the stand of the respondents in the counter affidavit that in the gradation list petitioner's position has been indicated at serial 50 and he belongs to the general category. His plea that certain juniors at serials 60, 61 and 62 were promoted, therefore, a right has been created, is also a misplaced kind of assertion because those persons have got their promotion on the basis of reservation since they are scheduled caste candidates. The parity therefore, which the petitioner is looking for as a general category candidate is not available viz- a- viz the scheduled caste candidates.

As a last ditch effort petitioner also tried to show that one Dr. Girijesh Kumar has been granted promotion, who is junior to the petitioner.

Respondents have categorically stated on oath that it was a working arrangement and he is working on the same pay scale though designated as an Associate Professor under certain circumstances arising out of inspection and objection by the MCI. He has not been granted substantive promotion as an Associate Professor.

Before parting, learned senior counsel tried to rely on a

decision rendered in the case of *Faculty Association of AIIMS v. Union of India & others, reported in Supreme To-day, 2013(5) Supreme 360*. Emphasis is on paragraphs 18 and 19.

A reading of the judgment, especially the discussion at paragraph 18 is a complete answer to the proposition raised by the petitioner himself. The Hon'ble Apex Court had institutes of excellence in mind. If such an interpretation is extended to all the hospitals across the country then the object and purpose of constitutional mandate of providing reservation will be lost. What the Hon'ble Supreme Court had in mind is with regard to such super-specialty institutions of repute and not with regard to run of the mill hospitals and institutions in which the petitioner is working. Even this proposition, therefore, fails.

The writ application is dismissed.

(Ajay Kumar Tripathi, J)

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