

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.563 of 2015

IN

Civil Writ Jurisdiction Case No. 13770 of 2008

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Dr. Deovrat Narayan Singh, Son of late Udit Narayan Singh, resident of Mohalla-Bhojpur Colony Ashok Nagar, Road No.8, Kankarbagh, Patna-20.

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
4. The Director, Directorate of Health (Indigenous System of Medicine), Government of Bihar, Patna.
5. The Union of India through the Ministry of Health and Family Welfare, Department of Ayush, New Delhi-110001.
6. The Central Council of Indian Medicine through its Secretary, 65-66, Institutional Area, Janakpuri, New Delhi-110058.

.... Respondent/s

With

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Letters Patent Appeal No. 877 of 2015

IN

Civil Writ Jurisdiction Case No. 5929 of 2005

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Dr. Deovrat Narayan Singh, Son of late Udit Narayan Singh, resident of Mohalla-Bhojpur Colony Ashok Nagar, Road No.8, Kankarbagh, Patna-20.

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.

3. The Commissioner-cum-Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna.
4. The Secretary, Department of (Medical Education Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New Secretariat, Patna.
5. The Joint Secretary, Department of (Medical Education, Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New Secretariat, Patna.
6. The Deputy Secretary, Department of (Medical Education, Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New Secretariat, Patna.
7. The Director, Indigenous System of Medicine, Department of (M.E.F.W. & ISM) Health, Government of Bihar, New Secretariat, Patna.
8. Dr. Dineshwar Prasad, son of Late Jagannarayan Prasad, Vill + PO- Nokha, District-Rohtas, presently posted as Lecturer, Department of Kaya Chikitsa, Govt. Ayurvedic College, Kadamkuan, Patna.

.... Respondents-Respondent/s

Appearance :

(In LPA No. 563 of 2015)

For the Appellant/s : Mr. Rajendra Narayan, Senior Advocate
Mr. Jai Prabhat Kishore, Advocate

For the Respondent-State : Mr. S.Raza Ahmad, A.A.G.-9
Mr. Anisul Haque, A.C. to A.A.G.-9

For the Union of India : Mr. Sujeet Kumar Sinha, C.G.C.

(In LPA No. 877 of 2015)

For the Appellant/s : Mr. Rajendra Narayan, Senior Advocate
Mr. Jai Prabhat Kishore

For the Respondent/s : Mr. Kaushal Kumar Jha, AAG-14

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 01-05-2015

These two Letters Patent Appeals are filed by the same individual. They arise out of CWJC No.5929 of 2005 and CWJC No.13770 of 2008.

The facts, in brief, are as under:

The appellant was employed as Ayurvedic Medical Officer by the Government of Bihar on 26.02.1976 and was posted at State Dispensary at Pakur. He was transferred to the Government Ayurvedic College and Hospital at Patna, through order dated 10.10.1980. At that place, he was promoted as Demonstrator vide order dated 01.09.1982, and thereafter as Lecturer with effect from 19.07.1988. The appellant was promoted as Reader on 13.09.2004. He filed CWJC No.5929 of 2005 claiming the relief that he is entitled to be promoted to the post of Reader with effect from 06.05.1992, the date on which the vacancy had arisen and then as Professor with effect from 1st October, 1999, the date on which that vacancy arose. Similar writ petitions were filed by two more persons by name Dr. Uma Shankar Chaturvedi and Dr. Saroj Kumar Mishra.

During pendency of those writ petitions, the Government reverted the appellant from the post of Reader to the post of Lecturer through order dated 19.08.2008. Challenging the

same, he filed CWJC No.13770 of 2008. All the writ petitions were clubbed.

The respondents opposed the writ petitions. According to them, the Rules for appointment to the posts of Lecturer, Reader and Professor were initially framed in the year 1986 and then amended in the year 1989 and thereafter in 2012. It was stated that by the time, the promotion to the post of Reader was effected, the Rules insisted that a candidate must possess Post Graduate qualification for being appointed as Reader and since the appellant did not hold that qualification by the time he was promoted in the year 2004, he was liable to be reverted. The claim for retrospective promotion was opposed on the same ground.

The learned Single Judge dismissed the writ petitions through the common order dated 14.01.2015. Hence, these appeals.

Heard Sri Rajendra Narayan, learned senior counsel for the appellant and Sri S. Raza Ahmad, and Sri Kaushal Kishore Jha, learned counsel for the respondent-State, Sri Sujeet Kumar Sinha, learned counsel for the Union of India.

The entire controversy in the writ petitions turns around the question as to whether it is necessary that a candidate must hold Post Graduate qualification for promotion to the post of Reader. The appellant, who was initially appointed as Ayurvedic

Medical Officer in the year 1976 was promoted to the post of Lecturer on 19.07.1988. It is not in dispute that he does not hold the Post Graduate qualification. It is true that the Rules as framed initially in the year 1986 did not stipulate the Post Graduate Qualification for the post of Reader. However, the Rules framed in the year 1989 prescribed that qualification. The relevant Rules read as under:

“14. Qualifications and experience for teaching staff:
(Applicable for recruitments made after 1st July, 1989)

(i) Essential:

- (a) A degree in Ayurved from a University established by law or a Statutory Board/Faculty, Examining Body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970.
- (b) A post-graduate qualification in the subject/specialty concerned included in the schedule to Indian Medicine Central Council Act, 1970.
- (c) Adequate knowledge of Sanskrit.

(ii) Experience:

- (a) For the post of Professor- Total teaching experience of ten years in the Department is necessary out of which there should be five years teaching experience as Reader/Asstt. Professor or ten years experience as a Lecturer in the concerned subject wherever the posts of Reader /Asstt. Professor do not exist.
- (b) For the post of Reader- Total teaching experience of five years in the subject is necessary out of which there

should be three years teaching experience as Lecturer in the subject concerned.

(c) For the post of Lecturer- No teaching experience is required.

(iii) Desirable

Original published papers books on the subject.”

These qualifications are common for all the three posts, i.e. Lecturer, Reader and Professor. The only difference being teaching experience of 10 years stipulated for the post of Professor and 3 years for the post of Reader and no such experience for the post of Lecturer.

The plea of the appellant that Rules that were in vogue as on the date of his appointment to the post of Lecturer must be applied at subsequent stages also, did not weigh with the learned Single Judge, nor do we countenance the same. It is fairly well settled that wherever promotion from one post to another, is effected, the requirements that are in force as on the date of promotion become applicable and a candidate, who was working already in the feeder cadre, cannot insist that the Rules that were in vogue at the time of his appointment in the feeder category must be applied. Once it emerges that by the year 2004, the requirement for promotion to the post of Reader was that a candidate must be a Post Graduate, and the appellant did not hold that qualification, no

exception can be taken to the order of reversion. His claim in CWJC No.5929 of 2005 virtually becomes untenable on account of the requirement under the Rules. We are not inclined to interfere with the order passed by the learned Single Judge.

Learned counsel for the appellants submits that his client was brought to the teaching side from non-teaching side and since it is proving to be disadvantageous to him, he may be given option to move to non-teaching side, in the Department.

In case, the appellant files an application in that behalf, the respondents shall be under obligation to consider the same within a period of two weeks from the date of presentation.

We direct that since the appellant worked as Reader till the writ petition was dismissed, no amount shall be recovered from him towards difference of salary.

Both the appeals stand disposed of accordingly.

Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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