

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.166 of 2015

Dr. Manik Saha,
son of late Makhanlal Saha, resident
of Masjid Road, Santipara, Agartala,
P.S. West Agartala, District – West
Tripura, PIN – 799001

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
to be represented by the Secretary,
Department of Health and Family
Welfare, Government of Tripura, New
Secretariat Complex, P.S. New
Capital Complex, P.O. Kunjaban,
Agartala, West Tripura, PIN- 799010

- 2. Society for Tripura Medical College and Dr.
BRAM Teaching Hospital,**
to be represented by the Chairman,
TMC & Dr. BRAM Teaching Hospital,
Hapania, Sub-Division- Bishalgarh,
West Tripura District, PIN 799130

- 3. The Chief Executive Officer,**
Society for Tripura Medical College
and Dr. BRAM Teaching Hospital,
Hapania, Sub-Division- Bishalgarh,
West Tripura District, PIN 799130

- 4. The Principal,**
TMC & Dr. BRAM Teaching Hospital,
Society for Tripura Medical College
and Dr. BRAM Teaching Hospital,
Hapania, Agartala, West Tripura, PIN
-799130

..... **Respondents**

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. K. Nath, Advocate				
For the respondent No.1	:	Mr. S. Chakraborty, Addl. G.A.				
For the respondent No.2,3 & 4	:	Mr. P. Dutta, Advocate				
Date of delivery of Judgment & Order	:	23.09.2015				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>√</td></tr></tbody></table>	Yes	No		√
Yes	No					
	√					

JUDGMENT & ORDER (ORAL)

By means of this writ petition, the petitioner has prayed for a writ directing the respondents to deem him promoted to the post of Associate Professor w.e.f. 01.05.2011 instead of 01.11.2012 in the Tripura Medical College & BRAM Teaching Hospital and accordingly correct the date of promotion in the relevant records.

[2] The facts are mostly undisputed. The respondent No.2 is a Medical College and Hospital run by a society called the Society for Tripura Medical College & Dr. BRAM Teaching Hospital and the said society is substantially financed by the Government of Tripura. While the petitioner was serving in the Grade-IV of Tripura Dental Service, he was posted to the said medical college and teaching hospital to work as the Assistant Professor. The said posting was made as the petitioner had applied for such posting. The petitioner was appointed as the Assistant Professor in the Dental Department by the notification dated 05.06.2005. Since then the petitioner has been working in the said medical college and teaching hospital. By the notification dated 24.05.2007, Annexure-P/5 to the writ petition, the Government of Tripura had issued an order to the effect that the petitioner's service has been placed at the disposal of the said medical college and teaching hospital and the petitioner shall be treated as transferred to the foreign service. On 08.04.2008, the petitioner was appointed as the Deputy Medical Superintendent by the respondent No.2 as

then it was. By filing a representation on 06.05.2011, the petitioner had pressed that for his having the essential qualification as laid down by the Medical Council of India, the M.C.I in short, his tenure should be deemed in the post of Assistant Professor. He had also asserted that no exception should be taken for his holding the assignment of Deputy Medical Superintendent and that be added to the qualifying service in the post of Assistant Professor for purpose of promotion to the post of Associate Professor. It appears that the petitioner had filed another representation on 20.08.2011, Annexure P/9 to the writ petition, in response to the memorandum dated 12.08.2011 for promotion to the post of Associate Professor. The petitioner in response to the memorandum dated 31.03.2012 applied for his promotion to the post of Associate Professor. Thereafter, by the memorandum dated 01.11.2012, the petitioner was elevated to the post of Associate Professor in the Dental Department, subject to the following terms and conditions:

(i) The elevation should be purely on temporary and provisional basis for a period of 1(one) year.

(ii) The contractual remuneration to the elevated post of Associate Professor will be Rs.80,000/- (Rupees Eighty thousand) only per month with standard deductions, if any.

(iii) If the performance/service of any concerned Faculty/Doctor is found not up to satisfactory (sic), he will be reverted to the original post of Assistant Professor without any further correspondence nor will he be allowed to continue to the elevated post after completion of the stated provisional period.

[3] It evinces from the memorandum dated 31.10.2014, Annexure-P/18 to the writ petition that while the services of the

persons who were elevated to the post of Associate Professors were extended for one year w.e.f. 01.11.2014 in terms of the memorandum dated 01.11.2012, the petitioner's services were not extended. By another memorandum dated 01.03.2014, Annexure-P/19 to the writ petition, the services of another Associate Professor, namely Dr. S.M. Das were extended w.e.f. 01.11.2013 in terms of the memorandum dated 01.11.2012 but the services of the petitioner were not extended that time also.

[4] Having impacted by the action of the respondents, the Teachers Association made a representation to the Chief Executive Officer of the said society expressing their concern for not granting continuation of the services of the petitioner and they urged for his continuation by the said representation dated 05.11.2014, Annexure-P/20 to the writ petition. Even the petitioner on 08.11.2014 had asked the Chief Executive Officer of the said society to disclose the reason for which his services were not extended. The Teachers Association again on 19.11.2014 by another representation, Annexure-P/22 to the writ petition, asked the Chairman of the said society for including the name of the petitioner in the memorandum dated 31.10.2014. Thereafter, the petitioner sought disclosure of the relevant records under Section 6 of the RTI Act, 2005. One representation of the Teachers Association dated 15.01.2015, Annexure-P/24 to the writ petition, addressed to the Chief Executive Officer had questioned the very

basis of the elevation contending that such elevation or extension was against the MCI norms.

[5] Mr. K. Nath, learned counsel appearing for the petitioner has submitted that there is no reasonable basis of denying the petitioner extension along with the similarly situated Associate Professors in the said medical college and hospital. He has further contended that in absence of any reason, such decision of the respondents is bound to be arbitrary and anathema to the provisions of Article 14 of the Constitution of India.

[6] In reply, Mr. P. Dutta, learned counsel appearing for the respondents No.2 to 4 has submitted that whether contractual service of an Associate Professor in a particular department would be extended or not, it entirely depends on the appraisal. Mr. Dutta, learned counsel has further contended that during his deputation, the petitioner retired voluntarily on 30.06.2008 from his service borne in the Tripura Dental Service and thereafter, he has been working purely on the contractual basis. Having referred to the affidavit-in-opposition filed by the respondents, Mr. Dutta, learned counsel has submitted that on 12.01.2011 the petitioner could not be elevated as the petitioner failed to submit the required record in terms of the MCI norms that he had completed the MDS in the manner as provided by the MCI norms. It has been further asserted that the petitioner had accepted his contractual engagement as the Associate Professor on the terms

and conditions as stipulated in the memorandum dated 01.11.2012. The said contractual engagement was for a period of one year. The petitioner therefore, did not have any right to continuance. He was given extension subsequently and not in continuance, for further one year. But later on, his performance was not satisfactory and as a result, his continuation was denied. It has been asserted in the affidavit-in-opposition that on the eve of expiry of the second term, the then Chairman of the society (the Secretary, Health and Family Welfare Department, Govt. of Tripura) examined the performance records of the petitioner and observed that the performance of the petitioner in the preceding year was not satisfactory. Even in some occasions, the petitioner had questioned the supervisory power of the Principal in respect of the academic activities. Thus, his tenure was not extended.

[7] In the rejoinder, Mr. K. Nath, learned counsel appearing for the petitioner has contended that the petitioner was suitably qualified to get the engagement in the post of Associate Professor. He has even gone to the extent to say that the statement that the petitioner failed to submit clarification is untrue. For this purpose he has referred to a certificate dated 20.06.2010 to demonstrate that the petitioner completed 3(three) years tenure as the post graduate student, but nowhere it has been asserted, even in the rejoinder, whether the said certificate was placed to the competent authority for consideration in due time. However, Mr. Nath, learned counsel

appearing for the petitioner has admitted that by the memorandum dated 30.10.2013, Annexure-P/29 to the writ petition, the services of the petitioner to the elevated post of Associate Professor were extended for another one year w.e.f. 01.11.2013 as per the terms and conditions of the memorandum dated 01.11.2012. On the basis of the said memorandum dated 30.10.2013, Mr. Nath, learned counsel has contended that such extension has itself demonstrated that the petitioner was eligible to be engaged as the Associate Professor as per the MCI norms. In the Para-9 of the rejoinder, the petitioner has asserted that the petitioner had never committed any misconduct and never challenged the supervisory power of the Principal in respect of different academic activities. The petitioner had never acted in a manner which was unbecoming.

[8] What is apparent from the records that the engagement of the petitioner made by the memorandum dated 30.10.2013 was purely for one year and the petitioner does not have any right of continuance, unless the contract is renewed or the respondents allowed continuation of the contractual engagement. It is not a matter like assessing the performance for determination of probation. Therefore, there cannot be any scrutiny as to the assessment of performance or lifting of veil. When there is no right to continuance, this Court cannot pass any direction on the respondents to allow the petitioner continue in a particular post. It is entirely beyond the jurisdiction of the court,

inasmuch as the terms and conditions are very specific and it has been categorically laid down that if the performance/service of any faculty/doctor is found not satisfactory, he would be reverted to the post of Assistant Professor without any further correspondence, nor would he be allowed to continue to the elevated post on completion of the said period. It appears that the petitioner's services in the second term were not found satisfactory. Clause-III of the terms and conditions of the memorandum dated 01.11.2012 provides power to the employer to assess the performance and take decision according to that appraisal. According to this Court, there is no infraction in the process and even the petitioner is not entitled to disclosure of reason why his services were found not satisfactory as the engagement as made by memorandum dated 30.10.2013 was for one year. Having no right to continue in the post, the petitioner cannot claim the continuance or the judicial review of the basis of the decision whereby his services were not extended or his engagement was not renewed by a fresh contract. Thus, there is no merit in this writ petition. It is mis-conceived and accordingly, the same is dismissed. However, there shall be no order as to costs.

JUDGE

Sujay