

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2688 of 2011

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1. Sampurna Nand Tiwary S/O Late Chandra Shekhar Tiwary, R/O Chiriya Bazar, Sonapur, P.S. - Sonapur, District - Saran, Bihar At Present Posted As Lecturer Government Ayodhya Shiv Kumari Ayurvedic College, Begusarai

.... Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Null Department Of Health (Medical Education Family Welfare And Indigenous Medicine), Government Of Bihar, Patna
2. The Principal Secretary, Department Of Health (Medical Education Family Welfare And Indigenous Medicine), Government Of Bihar, Patna
3. The Secretary, Department Of Health (Medical Education Family Welfare And Indigenous Medicine), Government Of Bihar, New Secretariat, Patna
4. Director (Indigenous Medicines), Department Of Health, Government Of Bihar, New Secretariat, Patna
5. Dr. Mahendra Prasad Singh At Present Posted As Reader, Department Of Dravya Guna, Government Ayurvedic College, Kadamkuan, Patna - 800003
6. Dr. Vishwanath Sharma, Retired Reader, Department Of Dravya Guna, Government Ayurvedic College, Kadamkuan, Patna - 800003

.... Respondents

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Appearance :

For the Petitioner : Mr. Vinay Krishna Tripathy Advocate
For the State : Ms. Nivedita Nirvikar, G. A. 7
For Respondent No. 5 : Mr. Binod Kumar, Advocate
For Intervenor respondent : Mr. Ajit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

26 08-09-2016 Heard learned Counsel for the parties concerned.

The petitioner, in effect, claims promotion to the post of Reader (पढ़ावक) of Government Ayurvedic College,

under the State of Bihar, on the ground that he has requisite qualification in terms of experience of teaching and Post Graduate degree, in Ayurvedic Medicine, in the Department of Pharmacology.

The petitioner was appointed as Lecturer in the year 1985, which is not in dispute. He, initially, did not hold qualification of Post Graduate degree. Subsequent to his appointment as Lecturer, Indian Medicine Central Council (Minimum Standards of Education in India Medicine) Regulations, 1986, came to be framed. It is not in dispute that in view of subsequent amendment made in the Indian Medicine Central Council (Minimum Standards of Education in India Medicine) Regulations, 1986, by Indian Medicine Central Council (Minimum Standards of Education in India Medicine) (Amendment) Regulations, 1989, the minimum qualification for the posts of Lecturer, Reader and Professor came to be prescribed as Post Graduate degree.

Without going into the factual details, suffice it to say that the State-respondents have allowed the petitioner's promotion to the post of Reader with effect from 21.09.2015, on the ground that he completed 5 (five) years of teaching experience after having acquired Post Graduate degree in Pharmacology on 21.09.2010. It is the petitioner's case that as on the date when he acquired Post



Graduate degree, he became eligible for promotion to the post of Reader, since he fulfilled the requisite eligibility condition in terms of experience of teaching as Lecturer right from 1985. It is accordingly his case that the respondents have wrongly considered that the petitioner acquired eligibility of experience five years after acquiring Post Graduate qualification.

The petitioner has put to challenge the notification, dated 14.07.2016, whereby he has been given promotion to the post of Reader with effect from 21.09.2015 through I. A. No. 5990 of 2016, by seeking an amendment to the writ application.

I. A. No. 5990 of 2016 is allowed.

The petitioner is permitted to challenge the legality of the notification, dated 14.07.2016.

Several pleadings have been brought on record on behalf of the parties to the present proceeding. In the supplementary affidavit filed on behalf of the respondents on 31.10.2016, it has been stated with respect to the petitioner in paragraph 14 that he became eligible for promotion on the post of Reader after completion of *Kalawadhi* period, i.e., teaching experience of 5 (five) after having acquired Post Graduate degree.

My attention has been drawn to the Indian

Medicine Central Council (Minimum Standards of Education in India Medicine) (Amendment) Regulations, 1989, framed in exercise of powers conferred under Section 36 (i) and (j) of the Indian Medicine Central Council Act, 1970, which, *inter alia*, lays down the qualification and experience for teaching staffs, Regulation 14 of the 1989 Regulations is relevant and is being extracted herein below:

"14. Qualification & 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/specially 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 subject is necessary out of which there should be five years teaching experience as Reader/Associate Professor

or ten years experience as a Lecturer in the concerned subject wherever the posts of Reader/Associate 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.

(d) For the Post of Principal: The qualification and experience prescribed for the Post of Professor should be considered essential for the Post of Principal.

(iii) xx xx xx"

A bare reading of the regulation, as quoted above, it is easily evincible that for appointment to the post of Reader, total teaching experience of 5 (five) years in the subject is necessary. As regards educational qualification, a Post Graduate degree in the concerned subject/speciality concerned included in the schedule to Indian Medical Central Council Act, 1970, has been prescribed.

Upon reading of the said provision, it cannot be said that as on the date when the petitioner obtained Post Graduate degree, i.e., 21.09.2010, he was not fulfilling the

conditions in terms of experience as prescribed in the Regulation. By no stretch of imagination, the said provision can be read to mean that 5 (five) years of teaching experience will be counted from the date when a Lecturer acquires Post Graduate degree.

No dispute has been raised and nor such dispute can be raised that the petitioner's initial appointment, as Lecturer, in the year 1985, was based on the qualification prescribed for the post as on the date of his appointment. Further, no dispute has been raised regarding the fact that the petitioner had been continuing as Lecturer right from the date of his appointment in the year 1985.

In view of my interpretation of Regulation 14 of 1989 Regulations, as above, I hold that the petitioner held the requisite qualification for appointment/promotion to the post of Reader when he acquired Post Graduate degree on 21.10.2010 since on that date he was already having experience of teaching for more than five years.

Learned Government Advocate appearing on behalf of the State of Bihar has drawn my attention to paragraph 16 off the supplementary counter affidavit filed on 31.08.2016, wherein a list, containing names of the Lecturers in the Department of Pharmacology in teaching cadre of Government Ayurvedic Colleges, has been given.



On the basis of petitioner's date of appointment, he ranks at serial no. 1 in the seniority list. She submits that there are only 4 (four) posts of Reader, sanctioned in the concerned Department, which were filled up in the year 2006 and 2007. She contends that one post of Reader became vacant only on 22.03.2011, when one Dr. Vijay Shankar Dubey, at serial no. 4, was promoted to the post of Professor. She accordingly contends that the case of the petitioner was considered for promotion on the post, which became vacant because of promotion granted to Dr. Vijay Shankar Dubey. She further contends that the said promotion to the petitioner was granted with effect from 21.09.2015, since he acquired the requisite experience after acquiring Post Graduate degree on 21.09.2010.

On the basis of what I have held, it cannot be construed that there is a finding by this Court to the effect that the petitioner is entitled to be promoted with effect from the date when he acquired the requisite qualification on 21.09.2010. What I have held, in the present judgment, is that the petitioner held minimum eligibility criteria in terms of experience and educational qualification as on 21.09.2010 and for the purpose of grant of promotion to the post of Reader, five years' experience ought not to have been counted after he acquired the said qualification

of Post Graduate degree, as has been done by the respondents by the notification under challenge, dated 14.07.2016.

Learned Government Advocate has also pointed out that there are several persons in the cadre, who held requisite qualification for promotion to the post of Reader, as is evident from the list as mentioned in paragraph 16 of the said counter affidavit. She has, accordingly, submitted that others may also have a right to be considered for promotion.

At this stage, it would be sufficient to comment that depending on the service rules and in conformity with Articles 14 and 16 of the Constitution of India, respondents can consider cases for promotion of eligible candidates on the basis of their *inter se* seniority and vacancy position.

In the present case, there is no dispute that the vacancy arose on 22.03.2011. The petitioner, in view of interpretation of Regulation 14 of 1989 Regulations, referred to above, acquired the qualification for promotion to the said post on 21.09.2010. In such circumstance, the Departmental Promotion Committee was required to consider the case of the petitioner for promotion accordingly. By refusing to consider the case for the promotion to the post of Reader, on the basis of the

eligibility which he has acquired on 21.09.2010, the respondents have acted in breach of Regulation 14 of 1989 Regulations.

The impugned notification, dated 14.07.2016, issued by Health Department, Government of Bihar, to the extent it relates to grant of promotion to the petitioner to the post of Reader with effect from 21.09.2015, is quashed, to the limited extent that the respondents have wrongly considered his date of eligibility with effect from 21.09.2015.

The respondents, particularly, the Principal Secretary, Health Department, Government of Bihar, is accordingly directed to ensure that the petitioner's case is considered afresh for the purpose of his promotion to the post of Reader, considering his date of eligibility for the said post as on 21.09.2010.

The entire exercise, right from consideration of petitioner's case, in the light of the present order, till taking of a final decision, must be completed within a period of three months from the date of receipt/production of a copy of this order.

An application for intervention has been filed on behalf of Dr. Ramadhar Singh and Dr. Ganesh Prasad Gupta, vide I. A. No. 6614 of 2016, as according to them,

they have a better right to be considered for promotion on the basis that they fulfilled the eligibility condition from a date much before the date when the petitioner fulfilled such eligibility condition.

I have seen the seniority list, as referred to in the counter affidavit filed on behalf of the respondents-State of Bihar. Admittedly, they are below in the seniority list than the present petitioner. However, they will be at liberty to raise their claim before appropriate authority for grant of promotion at appropriate stage.

I. A. No. 6614 of 2016 stands disposed of.

This writ application stands allowed with the aforesaid observations and directions.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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