

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.852 of 2012
IN
Civil Writ Jurisdiction Case No. 9653 of 2011

- =====
1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
 2. The Principal Secretary, Health Department, Govt. of Bihar, Patna
 3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
 4. The Special Secretary, Finance Department, Govt. of Bihar, Patna

.... Appellant/s

Versus

Dr. Radha Krishan Chaudhary, S/O Sri Rameshwar Choudhary, at present residing at Sandalpur Road, P.S.- Sultanganj Patna, District - Patna at present posted as Civil Surgeon, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 523 of 2013

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- =====
1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Health Department, Government of Bihar, Patna
 3. The Principal Secretary, Finance Department, Government of Bihar, Patna
 4. The Special Secretary, Finance Department, Government of Bihar, Patna

.... Appellant/s

Versus

Dr. Niranjan Mishra, Son of Late Upendra Mishra, Resident of Tilkamanjhi Chowk, District- Bhagalpur

.... Respondent/s

With

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Letters Patent Appeal No. 673 of 2012
IN
Civil Writ Jurisdiction Case No. 10180 of 2011

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Dr. Mrs. Pratima Modi, W/O Dr. Satya Deo Modi, R/O Nawabbag Colony, P.S.- Tilka Manjhi, District- Bhagalpur, The Then Civil Surgeon Posted At Bhagalpur

.... Appellant/s

Versus

1. The State Of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Health Department, Govt. of Bihar, Patna
3. The Principal Secretary Finance Department, Govt. of Bihar, Patna
4. The Special Secretary, Finance Department, Govt. of Bihar, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 335 of 2012
IN
Civil Writ Jurisdiction Case No. 10736 of 2011

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1. Dr. Arun Kumar, S/O Late Shri Ram Chandra Prasad, R/O Road No.2, Shri Krishna Nagar, P.S.- Budha Colony, District- Patna
2. Dr. Munendra Prasad, S/O Late Shri Rameshwar Prasad, R/O Village- Amarpur, P.O.- Dharaut, P.S.- Makhdumpur, District- Jehanabad

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Department of Health, Government of Bihar, Patna
3. The Deputy Secretary Department of Health, Government of Bihar, Patna
4. The Principal Secretary Department of Finance, Government of Bihar, Patna
5. The Special Secretary Department of Finance, Government of Bihar, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 428 of 2012
IN
Civil Writ Jurisdiction Case No. 15318 of 2011

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Dr.Mustafa Khan, Son Of Late Md. Hamidullah Khan, Resident of Flat No. 301, Alnoor Mansion, Opposite Mahavir Cancer Sansthan, At & P.S.- Phulwari, District- Patna

.... Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna
4. The Special Secretary, Department of Finance, Government of Bihar, Patna
5. The Deputy Secretary, Department of Health, Government of Bihar, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 488 of 2012
IN
Civil Writ Jurisdiction Case No. 9998 of 2011

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1. Dr. Kaushal Kishore Labh S/O Late Shri Rameshwar Labh R/O Flat No. 301/B, Shivam Enclave, Anand Puri, West Boring Canal Road, Patna-1, At Present Posted As Civil Surgeon, Bhojpur at Ara (Now Retired)
2. Dr. Rajeshkumar Gami S/O Late Shri Rajendra Gami R/O C/O Hotel Ravi,

Post- D.M.C., Laheriyasarai, District- Darbhanga, At Present Posted As
Medical Officer, Primary Health Centre, Sindhia, District- Samastipur (Now
Retired)

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Principal Secretary Department of Health, Government of Bihar, Patna
3. The Principal Secretary Department of Finance, Government of Bihar, Patna
4. The Special Secretary Department of Finance, Government of Bihar, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 366 of 2012

IN

Civil Writ Jurisdiction Case No. 11007 of 2011

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Dr. Kalyan Kumar, S/O Late Rama Charan, R/O Village + P.O.- Ratwara
Windwara, Police Station- Aurai, District- Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Principal Secretary Department of Health, Government of Bihar, Patna
3. The Deputy Secretary Department of Health, Government of Bihar, Patna
4. The Principal Secretary Department of Finance, Government of Bihar, Patna
5. The Special Secretary, Department of Finance, Government of Bihar, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 678 of 2012

IN

Civil Writ Jurisdiction Case No. 13227 of 2011

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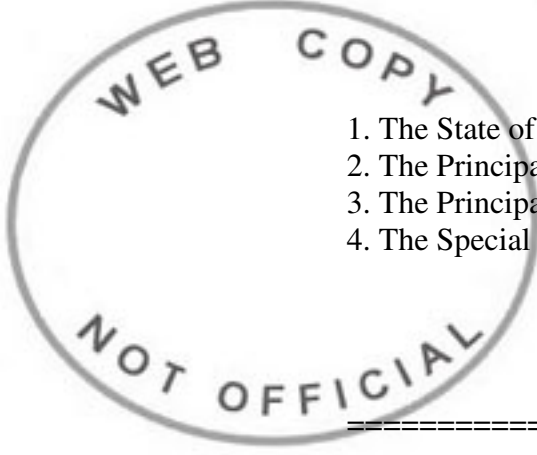
1. Dr. Mukteshwar Lal Das, S/O Late Yugal Kishore Das, R/O Village- Kumrouli,
Police Station- Karsi Simari, District- Darbhanga, Bihar
2. Dr. (Smt.) Kumkum Prasad, W/O Sri Uday Shankar Upadhyay, at present R/O
Nageshwar Colony, Police Station- Budha Colony, Patna, District- Patna

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Health Department, Government of Bihar, Patna
3. The Principal Secretary Finance Department, Government of Bihar, Patna
4. The Special Secretary Finance Department, Government of Bihar, Patna
5. The Deputy Secretary Finance Department, Government of Bihar, Patna

.... Respondent/s



Appearance :

(In LPA No.852 of 2012)

For the Appellant/s : Mr. Anil Kumar Sinha, GA-9
 Mr. Amaresh Kumar Sinha, AC to GA-9
 For the Respondent/s : Mr. Shravan Kumar, Sr. Advocate
 Mr. Ashok Kumar Dubey, Advocate
 Mrs. Mamta Vijaya, Advocate
 Mr. Umashankar Singh, Advocate

(In LPA No.523 of 2013)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In LPA No.673 of 2012)

For the Appellant/s : Mr. Alok Kumar Rahi, Advocate

For the State : Mr. Kaushal Kumar Jha, AAG-14

(In LPA No.335 of 2012)

For the Appellant/s : Mr. Anjani Kumar Sinha No. 1, Advocate

For the Respondent/s : Mr.

(In LPA No.428 of 2012)

For the Appellant/s : Mr. Anjani Kumar Sinha No. 1, Advocate

For the Respondent/s : Mr.

(In LPA No.488 of 2012)

For the Appellant/s : Mr. Anjani Kumar Sinha No. 1, Advocate

For the State : Mr. Mani Madhukar, AC to GA- 4

(In LPA No.366 of 2012)

For the Appellant/s : Mr. Anjani Kumar Sinha No. 1, Advocate

For the Respondent/s : Mr. Siddhartha Prasad, Advocate

(In LPA No.678 of 2012)

For the Appellant/s : Mr. Ashok Kumar Dubey, Advocate

Mrs. Mamta Vijaya, Advocate

Mr. Umashankar Singh, Advocate

For the Respondent/s : Mr. Raj Nandan Prasad, SC-9

Mr. Rakesh Prabhat, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**and****HONOURABLE JUSTICE SMT. NILU AGRAWAL****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)****Date: 28-06-2016**

All these intra-court appeals arise out of judgment
 and order dated 14.02.2012, passed by learned Single Judge in
 C.W.J.C. No. 9653 of 2011 (Dr. Radha Krishan Choudhary Vs. The
 State of Bihar and others) and analogous writ petitions. The main

contesting appellant is the State of Bihar. As all the parties have appeared and the pleadings are complete, the matter has been finally heard.

2. The matter in issue is with regard to the age of superannuation as was enhanced from 62 to 65 years in relation to the postgraduate doctors working in Indira Gandhi Institute of Cardiology, Patna (for short the Institute). The State Government issued the aforesaid notification on 28.01.2011 amending the Bihar Service Code and in particular Rule 73 thereof. Separate set of writ petitions were filed. The first set was by postgraduate doctors who were also in Bihar Health Service but not posted in the Institute. They averred hostile discrimination and claimed parity. Then the second set were doctors of Bihar Health Service who were then postgraduate diploma holders (DNB). They also averred hostile discrimination and claimed parity. The third group was again from the Bihar Health Service. This time by the doctors who had just basic M.B.B.S. qualification. The common plea that was taken by these three groups was that they were all of Bihar Health Service whose cadre rules provide for the age of superannuation to be 62 years. If for some doctors in the cadre, the age of superannuation is increased to 65, as was being done by the State, then either that would be bad in itself or it would have to be applied for the entire cadre. There being no

justification for the same, there could not be a sub-classification in the cadre.

3. For the sake of facts, we may note that while the writ petitions were pending the State Government took a policy decision and amended the cadre rules and increased the age of superannuation of all the doctors irrespective of their qualification in the Bihar Health Service to 65 and issued notification in this regard on 22.12.2011. Thus, the dispute is in relation to the doctors of three categories referred to above who superannuated in between 28.01.2011 and 22.12.2011. During pendency of the writ petitions interlocutory applications were filed praying for protection which were disposed of by order that their superannuation in the meantime, would be subject to the result of the case. It may further be noted that whatever may have been the case, even if it be assumed that 65 would be the age of superannuation, then we being in the year 2016, all those contestants would have already superannuated. Thus, the question now would be, if any relief is to be given, it could only be monetary relief to the writ petitioners who would succeed.

4. The learned Single Judge heard the matter in detail and considered the same. While he accepted the plea of those writ petitioners who were postgraduate doctors in the Bihar Health Service, he did not discuss the plea of doctors holding postgraduate



diploma or doctors who were merely M.B.B.S. The State being aggrieved by the judgment, bringing parity amongst postgraduate doctors of Bihar Health Service, filed this first Letters Patent Appeal. Then the two sets i.e. postgraduate diploma holder doctors and M.B.B.S. doctors have filed intra-court appeals, all of which have been listed together.

5. The submissions of the State is that postgraduate doctors of Institute are a separate distinct class by itself being in an autonomous, super specialty teaching hospital and, therefore, there is no discrimination muchless hostile discrimination. This is the basic argument of the State. The State opposes the other sets of intra-court appeals on the same ground.

6. On behalf of doctors the plea is that they all belong to a single cadre i.e. the Bihar Health Service and the Institute is neither an autonomous institution nor a teaching institution and not really a super specialty hospital. It is like any other Government hospital, though ostensibly claiming to be specializing in cardiology. On behalf of the doctors, it is pointed out that hollowness of the claim of even a specialized cardiology Institute would be writ large from the fact that out of the 62 doctors posted in this so called super specialty Institute only four doctors have any postgraduate degree touching upon cardiology. Substantial number of doctors are not even

postgraduate. It is submitted on behalf of the doctors that it is only to favour a few such a decision was taken. Otherwise there is no other justification.

7. In order to appreciate, though the Single Judge has dealt in detail, we may notice salient features. In 1980, it appears that the State Government with an intention of setting up an autonomous super specialty hospital decided to set up this Indira Gandhi Institute of Cardiology which was virtually to be an adjunct of the Patna Medical College and Hospital. The posts were, accordingly, sanctioned as teaching posts. Rules were framed for recruitment of teaching doctors. By this time in Bihar, there were two cadres of doctors in the State Service. One the Bihar Medical Education Service and the other Bihar Health Service. They have their separate cadre rules. It appears that though the intention of the Government may have been to create virtually a third cadre, things did not materialize and ultimately on or about 16.04.1984, the Government took a conscious decision and passed a resolution. The important features of the said resolution of 1984 is (i) Institute would be separated from P.M.C.H.; (ii) It would not be a teaching hospital; and (iii) Teaching doctors, who were working in the Institute, were free to return to the teaching cadre of Bihar Medical Education Service maintaining their seniority. Other doctors from Health Service could also revert to the



Health Service cadre posted outside the Institute maintaining their seniority, but one exception was made for doctors to be posted in the Institute. They would have to go through the selection process and would have certain eligibility criteria. It was specifically provided that in case any post remained vacant, they can only be filled up by doctors from Bihar Health Service.

8. The doctors' plea rightly, is that 1984 onwards Institute became a part and parcel of the establishment of the Bihar Health Service and it was like any other Government Hospital/ Sadar Hospital, only that it specialized in cardiac care. It was neither an autonomous Institute nor a teaching Institute, though, that may have been the initial object in 1980 but that object vanished in 1984.

9. Thus claiming parity of superannuation age from 62 to 65 years with the doctors posted at the Institute, several writ applications were then filed before this Court being CWJC Nos. 2226 of 2011, 3333 of 2011, 3436 of 2011 and 7105 of 2011 which were disposed of on 11.03.2011, 18.03.2011 with a direction to the Principal Secretary, Health, Government of Bihar to dispose of the representations which were already filed. The Principal Secretary, Health rejected the claim of these doctors by order dated 24.06.2011 on the ground that the Indira Gandhi Institute of Cardiology is a super specialty cardiac institute created as an independent autonomous



institution of excellence separated from the Patna Medical College and Hospital to impart medical education and had only postgraduate degree holder doctors completely ignoring the fact that, that was the object for which it was created in 1980 but which had completely vanished in 1984 by the Resolution of 1984. That the Institute was a teaching Institute or not an information was sought under Right to Information Act (RTI) and the Department of Health, Government of Bihar replied by letter no. 877 (17) dated 26.08.2011 that the said Institute is not an autonomous teaching Institution. Thus the grounds on which the representations were rejected were non est grounds.

10. State has not been able to counter this. The only thing that has been submitted is that the intention of the State was to create a super specialty teaching hospital which would be autonomous but State does not deny that this intention did not fructify and the ground reality was something entirely different.

11. That for the sake of records we may note that when the State Government sought the approval of MCI to start postgraduate and super specialty courses in relation to cardiology in the Institute, the same was not allowed and rejected. Not only that, permission for internship training in the Institute was also refused by MCI as it was not a teaching college nor it had the necessary infrastructure.



12. From what we have stated above, it would be thus apparent that there were no rules for direct recruitment of doctors to the Institute. There were no separate promotion rules. There were no separate service conditions. It is not disputed that it was never declared a separate cadre. There is no differentiation between postgraduate doctors and other doctors in the cadre. Initially the doctors were brought in from the teaching cadre or the Bihar Health Service but upon the Institute being declared a non-teaching hospital in 1984 all teachers left and all the other doctors who came or who were appointed here were from the Bihar Health Service exclusively. Apart from, now introduced difference in age of superannuation, as between other doctors and postgraduate doctors of Bihar Health Service, there is no difference between the two groups in the cadre. That being so, in our view, there could not be sub-classification in the cadre as between postgraduate doctors of Institute and other doctors including postgraduate doctors of the same cadre i.e. Bihar Health Service. There is no intelligible criterion distinguishing the groups. The cadre remaining the same this differentiation has rightly been termed as hostile discrimination and, therefore, we cannot disagree with the views of the learned Single Judge in this aspect, but so far as the judgment of the learned Single Judge in relation to those postgraduate diploma holders and other M.B.B.S. doctors are



concerned, we cannot agree with the views of learned Single Judge. They are all doctors within a singular cadre. They are all recruited in the cadre without discrimination. They are posted at different Government hospitals with different responsibilities. The cadre rules clearly provide for singular age of superannuation. Thus there cannot be different age of superannuation of different employees within a cadre itself. The cadre being Bihar Health Service, all doctors within the cadre have to be treated equally. There being nothing different and/or special about postgraduate doctors of the Institute from other doctors in the Bihar Health Service to which they all belong. This differentiation or classification in the same cadre would amount irrational sub-classification and amount to hostile discrimination, would not pass the test of reasonableness and would be violative of Article 14 of the Constitution as held by the Apex Court in the case of **Air India Vrs. Nergesh Meerza and others since reported in (1981) 4 SCC 335** wherein paragraph 39(6) lays down the circumstances which have to be examined while carving out a separate category from “a” class of service, herein quoted below:

“In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

a. the nature, the mode and the manner of

recruitment of a particular category from the very start,

- b. the classifications of the particular category,*
- c. the terms and conditions of service of the members of the category,*
- d. the nature and character of the posts and promotional avenues.*
- e. The special attributes that the particular category possess which are not to be found in other classes, and the like.”*

13. In yet another judgment the Apex Court in the case of **D.S. Nakara and others vs. Union of India** since reported in (1983) 1 SCC 305 have held in paragraph 11 as under:

“The decisions clear lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that the differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia Vs. Justice S.R. Tendolkar). The



classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

14. In this connection, we may also refer to the judgment of the Apex Court in the case of **Union of India and others Vs. K.T. Shastri** since reported in (1990) 1 SCC 509, wherein the Apex Court has held that if in a cadre constituting a single service having three units and three avenues of placements and where the services of the employees are interchangeable and inter-transferable, any benefit given to one or one unit would be given to the others having same cadre rules and same service condition, otherwise it would amount to discrimination and, hence, violative of Article 16 of the Constitution. The question there was similar with regard to age of superannuation, the Apex Court held that all persons in the cadre had to be similarly treated. Increase in age of superannuation in one branch would also enure to benefit of others.

15. Thus, in view of the judgments of the Apex

Court enumerated above all doctors of the Bihar Health Service belonging to a single cadre cannot in the facts, have different service conditions including different age of superannuation within a cadre itself.

16. Thus to that extent we set aside the judgment of the learned Single Judge. We would, therefore, dismiss the appeals of the State and allow the appeals of the postgraduate diploma holder doctors and the M.B.B.S. doctors of the Bihar Health Service. The result would be that with effect from 28.01.2011 up to 22.12.2011 any doctor of Bihar Health Service who has been made to superannuate upon attaining the age of 62 years would be held to have been wrongly superannuated. They would be entitled to the same benefit that was conferred upon the postgraduate doctors of the Institute. As noted in the very beginning, these writ petitions/ appeals were kept pending and even if extended service is ordered, the beneficiaries thereof would have since retired. In view of the interim orders that were passed in the writ proceedings as well as in these appellate proceedings as also in the facts and circumstances of these cases, the only relief to which the beneficiary doctors would now be entitled to would be additional remuneration over and above, their retiral dues which they would get being the difference of pay for the period of three years of extended service i.e. the difference of pay as between

pensionary benefits and the pay which they would have been entitled to get, they being in service for three more years. They were ready and willing to work, they had been asserting their rights to carry on working but wrongly they have been deprived of opportunity to work. State would thus be liable to pay.

17. As all beneficiary doctors would now be nearing 70 years of age it is expected that the State would finalise their payments within a period of three months and pay within the same period. Needless to say they would be few in numbers.

18. All appeals are, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
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