

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1310 of 2008

Case reserved on 6.2.2017

Order pronounced on 17.2.2017

1. Dr. (Smt.) Aradhana Kande, aged about 42 years, W/o Dr. Ajay Kande, D/o Shri Chandra Bhushan Sharma, Lecturer, Govt. Ayurvedic College, Raipur, CG

---- Petitioner

Versus

1. State of Chhattisgarh Through Principal Secretary, Public Health, Family Welfare and Medical Education, Govt. of Chhattisgarh, DKS Bhawan, GE Road, Raipur, CG
2. Govt. Autonomous Ayurvedic College, GE Road, Raipur (CG) Through Principal-cum-Chief Executive Officer.
3. Dr. Rakshapal Gupta, Demonstrator-cum-Re-designated Lecturer
4. Dr. Rupendra Chandrakar, Demonstrator-cum-Re-designated, Lecturer
5. Dr. Sushil Kumar Dwivedi, Demonstrator-cum-Re-designated Lecturer
6. Dr. Sanjay Shukla Demonstrator-cum-Re-designated Lecturer

Respondent 3 to 6 C/o Principal, Government Autonomous Ayurvedic College, Raipur, CG

---- Respondents

For Petitioner	:	Shri V.G. Tamaskar, Advocate
For Respondent Nos. 1 & 2:		Shri Vivek Sharma, GA
For respondent Nos. 3 to 5:		None appeared
For respondent No.6	:	Shri Adhiraj Surana, Advocate
For Intervenor	:	Shri Jitendra Pali, Advocate

Hon'ble Shri Justice Pritinker Diwaker

CAV Order

17/02/2017

Present petition has been filed by the petitioner seeking a direction

from this Court to place her above respondents No. 3 to 6 in the seniority list by issuing a writ of mandamus. Petitioner has also prayed that her previous service rendered at Pt. Khushilal Sharma Autonomous Ayurved College, Bhopal be also counted with effect from 19.3.1999. She has further questioned the re-designation of respondents No. 3 to 6 as lecturer who were earlier working as demonstrator.

2. According to the petitioner, pursuant to advertisement dated 26.5.1998 (Annexure P-2) she applied for the post of lecturer in Government Autonomous Ayurved College, Bhopal for "Rog Vigyan" subject and was selected for the same. Appointment order dated 19.3.1999 (Annexure P-4) was issued to her and accordingly she gave her joining there by another even dated order (Annexure P-5). Case of the petitioner is that she was transferred/absorbed/adjusted in the Government Autonomous Ayurved College, Raipur vide order dated 9.12.1999 (Annexure P-7) and joined there on 11.12.1999 vide Annexure P-8. Petitioner's further case is that one Dr. Pramod Kumar Baghel who was appointed at Government Autonomous Ayurved College, Rewa was also transferred to Government Autonomous Ayurved College, Raipur vide order dated 24.4.1999 and has been given due seniority from the date of his initial posting at Government Autonomous Ayurved College, Rewa whereas the petitioner has been denied her seniority for the period she worked at Government Autonomous Ayurved College, Bhopal. According to the petitioner, since respondents 4 to 6 were appointed as demonstrator vide order dated 8.12.1998 (Annexure P-12), seniority cannot be granted to them above the petitioner by re-designating the said post as lecturer. Case of the petitioner is that private respondents 3 to 6 should have been placed below her in the seniority list of lecturers irrespective of their department as per order dated 1.3.2007 (Annexure P-13). To justify her stand, the petitioner refers to order dated 14.6.2006

(Annexure P-16) directing respondent No.2 to re-designate the demonstrators as lecturers and then keep them in the bottom of the seniority list of lecturers.

3. Counsel for the petitioner submits that granting seniority to the private respondents above the petitioner is contrary to law because once the services rendered by her at Bhopal are counted, she would be entitled to be placed above them. Referring to rejoinder dated 21.4.2016 he submits that in a writ petition (WPS No. 1334/2001) filed by Dr. Rajaram Verma seeking appointment on the post of lecturer in "Ras Chikitsa Evam Swastha Vritt" subject, return was filed by the State Government and in paragraph No. (viii) thereof it has been stated that the posting of Smt. Rashmi Diwan and Smt. Aradhana Sharma (petitioner herein) was made on the basis of absorption and transfer which was further ratified by the respondent Ayurvedic College which is an autonomous institution and thus now the State Government cannot take a different view to the one taken by it while filing return in the case of Dr. Rajaram Verma. Referring to certain other documents filed along with the application dated 2.2.2017 (IA No. 12) it has been argued that the petition filed by Dr. Rajaram Verma has already been dismissed by this Court and from the said dismissal order it is apparent that transfer of employees from one autonomous college to another autonomous college was permissible and thus the services of the petitioner rendered at Bhopal are required to be counted for determining her seniority. According to the counsel for the petitioner, vide document of Annexure P-27 one Dr. Pradip Baik initially at Bhopal was subsequently appointed as lecturer at Autonomous Medical College Indore and likewise by document of Annexure P-30 number of candidates were transferred and posted in different colleges with all consequential benefits, and thus it is apparent that posting the employee from one place to the other is in accordance with law therefore the

service rendered by the petitioner initially would be counted for reckoning the seniority. During his argument, counsel for the petitioner also referred to the document of Annexure P-31 showing modification in the order of appointment of Dr. Banshilal Khandelwal posting him at Raipur from Bhopal. Further, referring to the document of Annexure P-22 dated 6.10.2003 he submits that the probation period of the petitioner has been treated from the first date of joining her duties at Raipur i.e. 9.12.1999 and therefore she is entitled for seniority at least from the said date.

4. On the other hand counsel for the respondents/State replying to the submissions of the counsel for the petitioner submits that advertisement (Annexure P-2) was issued for the post of lecturer in various colleges and for different subjects, and that for Ayurved College Bhopal two posts of lecturer for "Rog Vigyan" subject were advertised – one reserved for woman and the other was for "OBC". He submits that the petitioner was selected against the post meant for woman (unreserved) at Bhopal whereas at Raipur no such post of lecturer of "Rog Vigyan" subject was there for woman (unreserved). According to the State counsel, the post of lecturer of "Rog Vigyan" and "Dosdhatumal Vigyan" subjects at Raipur was reserved for woman (SC) category. He further submits that pursuant to the request made by the petitioner a letter was forwarded by the Principal, Ayurvedic College Raipur mentioning that posts of lecturer in "Dosdhatumal Vigyan" and "Ras Chikitsa Evam Swastha Vritt" subjects were lying vacant and if the petitioner was accommodated against any such post, the institution would have no objection. In pursuance of the request of the petitioner and the "No Objection Certificate" granted, on 9.12.1999 vide Annexure P-7 an order was passed appointing the petitioner as lecturer at Raipur. By this order the Principal, Ayurvedic College was also asked to relieve the petitioner on 10.12.1999 after making payment of her entire salary and that after joining at Raipur, she

would not be entitled for any benefit for the previous service rendered by her anywhere else. State counsel further submits that pursuant to the letter dated 9.12.1999 the petitioner joined her duties at Raipur on 11.12.1999 without raising any objection and therefore, once she agreed to the condition mentioned in the letter dated 9.12.1999, she cannot take a somersault by making a request to take into account her previous services at Bhopal. State counsel submits that as the letter dated 9.12.1999 has not been assailed by the petitioner at the appropriate time, she is now *estopped* from challenging the same now. According to him, at Raipur the petitioner was given joining on the post of lecturer "Dosdhatumal Vigyan" subject but as there was no such post vacant for the petitioner who belongs to woman (unreserved) category; and the post available there was for woman (SC) category, the mistake was pointed out by Annexure R-3/1 dated 3.4.2001 and the petitioner was issued show-cause notice dated 4.4.2001 (Annexure R-3/2). According to the State counsel, notice Annexure R-3/2 was challenged by the petitioner before this Court in Writ Petition No. 725/2001 where the stay was also granted in her favour. However, during the pendency of the said writ petition, new set-up of lecturers in Government Ayurvedic College, Raipur vide Annexure P-18 (filed along with the rejoinder) came into existence and as in the new set-up three posts of lecturer were sanctioned in the department of Rognidan Evam Vikriti Vigyan, the petitioner showed her desire to be adjusted/absorbed against any of such posts. State counsel submits that the petitioner wrote a letter (Annexure R-3/4) dated 26.5.2003 along with affidavit to the CEO and Principal of the College categorically mentioning therein that if she is adjusted against any such post of new set-up, her purpose would be served and in that event she would withdraw her writ petition. He submits that pursuant to the request of the petitioner, on 6.10.2003 order (Annexure R-3/5) was passed by the CEO and Principal

saying that the petitioner should be adjusted against the post of lecturer in Rognidan Evam Vikriti Vigyan department from the date of joining and that the said order would be effective only after withdrawal of the writ petition. Referring to the document of Annexure R-3/6, counsel for the State submits that an application was filed by the petitioner for withdrawing the writ petition and ultimately on 2.1.2004 the petition came to be withdrawn and then she gave her joining on 20.1.2004 as lecturer in "Rognidan Evam Vikriti Vigyan" department. State counsel argued that order dated 6.10.2003 (Annexure R-3/5) has also not been assailed by the petitioner till date and therefore she cannot turn back and claim seniority for the period she worked at Bhopal in "Doshatamal Vigyan" department. State counsel further submits that after re-designation of demonstrator on 14.6.2006 order (Annexure P-16) was passed mentioning that after re-designation, the demonstrators working in the Ayurvedic College Raipur shall be treated as lecturer but they shall be placed in the seniority list below the candidates working as lecturer with effect from 13.3.2003. State counsel argued that pursuant to this order, on 1.3.2007 another order (Annexure P-13) was passed by the CEO and Principal of Government Ayurvedic College, Raipur placing the private respondents in different departments in the order of their seniority. He argued that on 20.12.2007 (Annexure P-15) was issued by the Government Ayurvedic College Raipur fixing the seniority of intervenor – Dr. Namrata Satpute, respondent No.6 herein – Dr. Sanjay Shukla and the petitioner herein – Dr. Aradhana Kande and in column 8, 9 and 10 thereof under different heads the dates have been written which make it apparent that first date of petitioner joining her services has been treated as 11.12.1999 and her date of appointment in "Rognidan Evam Vikriti Vigyan" department has been mentioned as 20.1.2004 i.e. the date on which she withdrew the writ petition and gave her joining. It is argued by the State counsel that

intervenor and private respondent No.6 joined the department on 31.3.1999 and 13.3.2003 respectively and therefore their seniority has rightly been fixed.

5. In respect of Dr. Pramod Kumar Baghel whose reference has been given by the petitioner in the petition and the rejoinder vide document of Annexure P-24 State counsel argues that he was appointed at Government Ayurvedic College, Rewa in "Ras Chikitsa Evam Swastha Vritt" subject and therefore, he was transferred to Raipur in the same subject whereas the petitioner had joined at Bhopal as Lecturer in "Rog Vigyan" Vibhag which was not available at Raipur when she requested for her appointment there and in these circumstances she cannot claim parity with Dr. Pramod Kumar Baghel. In respect of document of Annexure P-30 filed as an additional document, it has been argued that these appointments were made by the Medical Education Department of the State of M.P. and not by an autonomous body and therefore the transfer of the candidates mentioned in the document of Annexure P-30 on promotion is permissible under the law.

6. In respect of Dr. Pradip Baik whose reference has been given in document of Annexure P-27, it is argued by the State counsel that the appointment letter has been issued to him showing his address at Bhopal and thus his appointment at Indore cannot be said to be at fault. He submits that appointment of Dr. Pradip Baik was made at Medical College, Indore which has nothing to do with the appointments made by Ayurvedic Colleges. In respect of WP No. 1334/2001 filed by Dr. Rajaram Verma the State counsel submits that the said petition was filed claiming his appointment on the post of lecturer in "Ras Chikitsa Evam Swastha Vritt" subject and no relief has been granted to him as against the petitioner herein who was arrayed as respondent No.6 therein.

7. Counsel for respondent No.6 submits that he adopts the arguments advanced by the State counsel. He submits that after being appointed at Raipur by order dated 9.12.1999 (Annexure P-7) and joining there on 11.12.1999 without challenging the same at the appropriate time, the petitioner is now *estopped* from claiming the seniority for the period she served at Bhopal. He submits that the petitioner was appointed at Bhopal against the post of lecturer in "Rog Vigyan" subject whereas at Raipur she initially joined as lecturer in "Dosdhatumal Vigyan" subject. While referring to the advertisement he argued that the basic qualification for the lecturer in "Dosdhatumal Vigyan" and "Rog Vigyan" subjects is different and therefore the petitioner cannot claim her seniority on the post of lecturer "Rog Vigyan" subject. He submits that the original order re-designating the demonstrator as lecturer is dated 14.6.2006 (Annexure P-16) but in the absence of any challenge to the said order, consequential order dated 1.3.2007 (Annexure P-13) cannot be challenged.

8. Counsel for the intervenor also adopts the argument of the State counsel and submits that pursuant to the advertisement (Annexure P-2) the intervenor was appointed as lecturer in "Rog Vigyan" subject at Raipur which was kept reserved for woman (SC) candidate. According to him, the petitioner was selected against the single post and this fact was within her knowledge. He submits that as the petitioner has claimed the seniority with effect from 19.3.1999 i.e. prior to the intervenor, she should have impleaded her as respondent and as she has not done that, the petition is liable to be dismissed on account of non-joinder of necessary party. Counsel for the intervenor further submits that the petitioner was well aware that on 11.12.1999 when she came to join at Raipur she was placed below the intervenor but yet she has not challenged the said order and the present petition has been filed on 12.4.2008 without properly explaining the delay,

and therefore the petition is also liable to be dismissed on the ground of delay and laches.

9. From the advertisements (Annexure P-1 and P-2) it is apparent that at the relevant time all the colleges where the appointments of lecturer were to be made for various subjects, being the autonomous bodies were having separate identity and got the status of Government Colleges subsequently. Undisputedly, the petitioner had applied for the post of lecturer at Government Ayurvedic College, Bhopal in Rog Vigyan subject which was reserved for woman (unreserved). After working at Bhopal hardly for 7-8 months she made an application for transfer to Ayurvedic College, Raipur where only one post of lecturer in "Dosdhatumal Vigyan" subject was available which was kept reserved for woman (SC) and knowing it fully well, she had made the request for transfer to Raipur and No Objection Certificate for the same was granted by State Government of Madhya Pradesh categorically mentioning in its letter dated 9.12.1999 that the petitioner can be appointed at Ayurvedic College, Raipur. By the said letter the Principal of Ayurvedic College was also asked to relieve the petitioner on 10.12.1999 afternoon after making payment of her entire salary. Said letter also mentions that after joining at Raipur, she would not be entitled for any benefit for the service rendered by her in the previous institution and that after joining at Raipur she would draw the salary from Raipur College itself and that none of the colleges shall pay her the traveling expenses. Thus from the letter dated 9.12.1999 (Annexure P-7) it is apparent that her services were handed over to the Ayurvedic College, Raipur treating the same to be a fresh appointment and it was made clear to her that the previous service rendered at Bhopal would not be counted. Petitioner has thus accepted the order dated 9.12.1999 with open eyes and joined at Raipur Ayurvedic College as lecturer on 11.12.1999. Even after joining at Raipur the petitioner did not

challenge the order dated 9.12.1999 till she was subjected to show-cause notice dated 4.4.2001 Annexure R-3/2 regarding termination of her services for the reason that at Raipur Ayurvedic college the post of lecturer in “Dosdhatumal Vigyan” subject was vacant for woman (SC). Show cause notice dated 4.4.2001 (Annexure R-3/2) was assailed by the petitioner before this Court by way of WP No. 725/2001 and here also she did not challenge the order dated 9.12.1999 (Annexure P-7). Petitioner continued in service on the strength of stay order passed by this Court and when the new set-up of lecturers in Raipur Ayurvedic College came in to existence, she showed her desire to be adjusted/absorbed against any such post. The petitioner also wrote a letter dated 26.5.2003 (Annexure R-3/4) along with the affidavit of CEO and Principal of the college mentioning therein that if she is adjusted against any such post of new set-up, her purpose would be served and in that event she would withdraw her writ petition. Pursuant to the request made by the petitioner, on 6.10.2003 vide Annexure R-3/5, an order was passed by CEO and Principal saying that the petitioner should be adjusted against the post of lecturer in “Rognidan Evam Vikriti Vigyan” subject from the date of joining and the said order would be effective only after withdrawal of the writ petition by the petitioner. Ultimately the petitioner filed an application for withdrawal of the writ petition on 13.10.2003 vide Annexure R-3/6 and on 2.1.2004 she was permitted for the same. On 20.1.2004 she gave her joining as lecturer in “Rognidan Evam Vikriti Vigyan” department. Here again it is important to note that even the order dated 6.10.2003 (Annexure R-3/5) passed by the CEO and Principal has not been assailed by the petitioner in this writ petition and she happily accepted her absorption/adjustment in the new subject unconditionally pursuant to withdrawal of the writ petition.

10. Thus taking into consideration the documents filed along with the writ

petition, return and the rejoinder, this Court is of the view that having accepted her appointment with open eyes at Raipur Ayurvedic college, she cannot challenge the same after a considerable long period. It is relevant to note that even after the new set-up came into existence, the petitioner did not object to it and has readily accepted her absorption against the new subject and therefore the respondents are fully justified in counting the seniority of the petitioner from 20.1.2004.

11. Next question that arises for consideration is the re-designation of respondents No. 3 to 6 as lecturer from that of demonstrator. Though in this petition the petitioner has challenged the re-designation of respondents No. 3 to 6 as lecturer from that of demonstrator but no legally tenable ground has been raised to substantiate her stand. She has further failed to point out as to what illegality has been committed by the State in such re-designation particularly when the qualification for both these posts is one and the same. Thus if the State Government has taken a decision to abolish the post of demonstrator by re-designating the same as lecturer in accordance with the directive of the Central Council of Indian Medicine, no fault can be attributed to it. Even otherwise, since the petitioner has not challenged the original decision of the State Government re-designating the demonstrator as lecturer under the provisions of Indian Medicine Central Council Act, the relief prayed for by her in respect of respondents No. 3 to 6 cannot be granted at this belated stage.

12. Yet another relief sought for by the petitioner regarding quashment of promotion of respondent No.3 cannot be granted to her because it has not been specifically pleaded by her as to on what ground such relief has been sought for.

13. Thus in view of what has been discussed above, this Court is of the

considered opinion that the petitioner is not entitled to any of the reliefs sought for by her in this petition. Therefore, the petition being devoid of any substance is liable to be dismissed and it is hereby dismissed.

Sd/-

(Pritinker Diwaker)

Judge

Jyotishi