

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1740 of 2012

IN

Civil Writ Jurisdiction Case No 2323 of 2012

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Dr Shyamal Kishore Singh S/O Of Shahdeo Prasad Singh Resident Of Mohalla
New Balbhadrapur, (Ramanand Path) At P.O. & P.S. Laheria Sarai, District
Darbhanga

.... Appellant/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Health,
Medical Education And Family Welfare, Govt. Of Bihar, Patna
2. The Principal Secretary, Department Of Health, Medical Education and Family
Welfare, Govt. Of Bihar, Patna
3. The Secretary, Department Of Health and Medical Education, Govt. Of Bihar,
Patna
4. The Joint Secretary, Department Of Health and Medical Education, Govt. Of
Bihar, Patna
5. The Medical Council of India through Its Chairman, Aiwan-E-Galib Marg,
Kotla Road, New Delhi- 2

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Chittaranjan Sinha, Sr Advocate with
Mr Amarendra Narayan, Advocate

For the S t a t e : Mr Kumar Alok, SC 8

For the M C I : Mr Kumar Brijnandan, Advocate

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CORAM: HON'BLE MR JUSTICE HEMANT GUPTA

&

HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE HEMANT GUPTA)

Date: 02-03-2016

The present Letters Patent Appeal is directed against
an order dated 06th of July 2012, whereby the claim of the writ
petitioner/appellant for promotion to the post of Associate Professor
and Professor in the Department of Pathology, was declined.

2 The appellant applied in response to an advertisement (Annexure 2 to the Letters Patent Appeal) against the post of Assistant Clinical Pathologist. The appellant was appointed Assistant Clinical Pathologist. When the appellant was working on the said post, Bihar Medical Education Service Cadre and Constituent Cadre Post Recruitment Rules, 1997 (for brevity, *the 1997 Rules*) were promulgated on 21st of May, 1997. Rule 5 contemplated different posts which were part of the said service. The post of Assistant Clinical Pathologist was not the post created under the aforesaid Rules.

3 Learned Senior Counsel for the appellant relies upon Clause (c) of Rule 5 to contend that an option was sought from the Members of the Health Service to opt for Bihar Medical Education Service governed by 1997 Rules. It is contemplated therein that in case the option is not given, the official will continue to be in Non-Medical Education Cadre that is the original cadre. Admittedly, the appellant had not given any option under the 1997 Rules. However, he is said to have given his option in the year, 2004 consequent to an advertisement published in the newspapers on 02nd of August, 2004 appended as Annexure 14 with IA No 1947 of 2016.

4 A perusal of the advertisement shows that the option was sought from the Members of Medical Education Cadre to

opt for Non-Medical Education Cadre. Therefore, since appellant has not opted for Medical Education Cadre, there was no opportunity given to the officials like the appellant to opt for Non-Medical Education Cadre. In view of the said fact, the appellant will continue to be governed by Non-Medical Education Cadre as it existed prior to 1997 that is Bihar Health Service Cadre.

5 Therefore, he cannot be considered for promotion against the post meant in the Medical Education Cadre as he never opted for Medical Education Cadre nor can be treated to be Member of the said service.

6 In view thereof, we do not find any error in the order passed by the learned Single Judge which may warrant interference in the present Letters Patent Appeal. This Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

M.E.H./-

(Navaniti Prasad Singh, J)

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