

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5150 of 2019

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Ranjit Kumar Singh, Son of Late Baijnath Singh, Resident of village Rasalpura, P.S. Doriganj, District- Saran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar, Patna.
4. The Under Secretary, Department of Health, Government of Bihar, Patna.
5. The Principal, Patna Medical College and Hospital, District- Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate
For the Respondents : Ms. Ratna Kumari AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 16-04-2019

Heard the learned counsel for the parties.

2. The petitioner, who is a member of the Bihar Health Service since 1988, has been promoted along with other doctors to the post of Associate Professor vide Notification No. 170 (17) dated 09.03.2019 of the Health Department and as a solitary instance, has been transferred from Patna Medical College Hospital, where he had hitherto been rendering his services, to Vardhman Institute of Medical Sciences, Pawapuri.



3. With respect to the petitioner, the impugned notification contained in Annexure-4 to the writ petition further specifies that the date of promotion of the petitioner to post of Associate Professor shall be reckoned from the date of his joining the place of posting at Vardhman Institute of Medical Sciences, Pawapuri, which is not the condition with respect to other doctors who have been promoted. Their dates of promotion have become effective from the date when they had become entitled for promotion.

4. Thus, the present writ petition has been filed challenging the aforesaid promotion from a date which is contingent upon the petitioner joining the new place of posting, which is not the condition with respect to other doctors and which date is much later than the date from which the promotion should have been reckoned, as also his transfer to another hospital from Patna, despite the prevalence and existence of the principle of merit-cum-



choice in matters of posting and transfer of the doctors in Bihar Health Service.

5. Learned counsel appearing for the petitioner has drawn the attention of this Court to the Full Bench decision of this Court in *Sushma Pandey Vrs. State of Bihar and others* reported in 2006 (1) P.L.J.R. 737 wherein the issues decided were whether there still existed merit-cum-choice principle for posting of Teachers in Medical Colleges and whether such policy of the State continued even after the coming into force of Bihar Health Education Service Cadre and Recruitment Rules, 1997. The Full Bench, by a majority judgment was of the view that there always existed a policy of merit-cum-choice in matters of posting of Teachers in Medical Colleges and the policy of merit-cum-choice never stood superseded, notwithstanding the framing of the rules referred to above.

6. The judgment of the Full Bench therefore is that such right of a doctor to be transferred in accordance with merit-cum-choice principle, other variables remaining



constant, could be enforced as a matter of right by seeking mandamus to the concerned authority.

7. The aforesaid view of the Full Bench has been followed consistently and in case of *Vijay Kumar Vrs. the State of Bihar* reported in *2015 (2) P.L.J.R. 625*, a learned single Judge of this Court, while dealing with the issue of transfer on the policy of merit-cum-choice, took note of the fact that the Rules of 1997, referred to above, do not admit of any policy of merit-cum-choice in matters of posting and transfer; nonetheless the same has been followed consistently and therefore the State Government, in its wisdom, ought to frame rules to make such transfer and posting, which is always a contentious issue between the doctors *inter se*, to make it absolutely diaphanous/transparent. The rationale behind the aforesaid suggestion is that it would curtail any litigation on the transfer being motivated or with an intent to favour somebody and would serve as a bulwark against corruption



and whimsical decisions of the Government, especially in the department of health.

8. This Court notices that the impugned order of promotion and transfer in the Orthopedic department, there are thirteen (13) doctors, one being the petitioner, who is placed at Serial No. 2. But for the petitioner and one another, all other doctors who have been promoted to the post of Associate Professors have been allowed to remain at the place where they had been hitherto working and incidentally, majority of them are from Patna Medical College and Hospital. But for the exception of the petitioner at Serial No. 2 and one doctor viz. Mahesh Prasad at Serial No. 9, who after promotion, stands transferred from Nalanda Medical College and Hospital, Patna to Patna Medical College and Hospital, Patna, as noted above, all other doctors have been allowed to stay where they had earlier been rendering their services which is in consonance with the principle of minimum of



displacement so as to keep the medical services inviolate and allow proper functioning of the hospital administration.

9. It has thus been concluded by the learned counsel for the petitioner that in the background of the order of promotion from a date which is different from the others, in as much as the reckonable date in case of petitioner has been made contingent on his joining the place of posting, whereas the relevant date with respect to other doctors have been fixed from the date of their entitlement, all of which are in situ promotion, the transfer of the petitioner to a far off hospital only smacks of a vindictive approach of the respondent department, if not for accommodating another doctor.

10. The petitioner submits that he has no quarrel with a person who has been brought to Patna Medical College and Hospital from another hospital; nonetheless the reference of his case has been taken only as an illustration that the petitioner only has been singled out for being transferred from Patna to another hospital. In both



the incidences, viz. promoting the petitioner from a later/contingent date and transferring him to another hospital, the decision of the department becomes suspect in terms of transparency and parity.

11. In response to the aforesaid submissions, Ms. Ratna Kumari, learned AC to PAAG-2 has submitted that the order impugned cannot be faulted with as the decision regarding the transfer of the petitioner has only been taken on administrative grounds and reference to Sushma Pandey's case (supra) is irrelevant as merit-cum-choice principle is only applicable in the first instance i.e. at the time of appointment and not at the time of promotion, posting and transfer.

12. The aforesaid submissions on behalf of the State has been noted down only to be rejected.

13. The two grounds urged on behalf of the department/State is not tenable for the reason that despite the framing of the Rules of 1997, till date, the principle of merit-cum-choice in matters of transfer and posting have



not been superseded; rather such principle has been adhered to regularly and even lately, this Court had the occasion to find as noted in the earlier paragraphs, that even if the principle of merit-cum-choice does not find mention in the Rules of 1997, it has never been departed from.

14. This Court refrains from upsetting the entire order of promotion/posting and transfer for the reason that the other doctors, falling in the list, are not parties to the present proceeding. This Court has further been informed that pursuant to the order of promotion and transfer, the petitioner has joined his place of posting.

15. Under the aforesaid circumstances, this Court deems it appropriate to direct the petitioner to make a representation before the Principal Secretary, Department of Health, Government of Bihar (respondent no. 3), detailing his grievances and annexing a copy of this order, within a period of three weeks from today.



16. Should such representation/application be filed, the concerned respondent shall look into the matter and shall appraise the issues in the light of what has been discussed in the preceding paragraphs of this order and thereafter shall pass a reasoned order, in accordance with law. If the order of transfer of the petitioner is not sustainable, necessary order rectifying the earlier notification of transfer be passed/caused to be passed within a period of six weeks thereafter.

17. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	

