

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 6206 of 2012

Dr Narendra Pratap Singh, aged about 53 years, S/O Late Virendra Pratap Singh, R/O Mohalla- B/17, Peoples Co-Operative Colony, Kankarbagh, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Government Of Bihar, New Secretariat, Patna
3. The Deputy Director, Health Department, Government Of Bihar, New Secretariat, Patna
4. The Deputy Director, Health Department (Medical And Education), Government Of Bihar, Patna
5. The Additional Director, Health Medical And Education Government Of Bihar, Patna
6. The Regional Deputy Director, Health (Medical And Education), Patna Pramandal, Government Of Bihar, Patna
7. The Principal, Patna Medical College And Hospital, Patna
8. Dr Pramod Kumar Singh, Professor, Department Of Psychiatry, P.M.C.H., Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Y V Giri, Sr Advocate with M/s Sumit Kr Jha, Pranav Kr, Advocates
For the S t a t e	:	Mr Harendra Pd Singh, GA VIII Mr Amit Prakash, GA XIII
For Respondent No 8	:	Mr Tej Bahadur Singh, Sr Advocate with Mr Prabhat Kr Singh, Advocate

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 02-09-2019

Heard Mr Y V Giri, learned Senior Counsel for the petitioner, Mr Tej Bahadur Singh, learned Senior Counsel for the private respondent and learned counsel for the State.



2 The claim in the writ petition is that this Court should issue a direction for promotion/posting of the petitioner as Professor in the Psychiatry Department at the Patna Medical College & Hospital (for brevity PMCH) considering his service as Associate Processor in the Department of Psychiatry at the same Institution since 1989.

3 Learned Senior Counsel for the petitioner submits that the private respondent, who is junior to the petitioner, was made Professor in the year, 2006 itself, whereas petitioner has been discriminated against and made Professor in the year, 2014. He also submits that the private respondent, at the time of his initial appointment, was working in the Department of Anatomy. By adding the service rendered in the Department of Anatomy, private respondent has wrongly been shown as senior to the petitioner. It is also submitted that from the pay slip of the petitioner dated 09.04.1991 (Annexure 17), it is obvious that ever since 1989, the petitioner has been paid Teaching Allowance, and, as such, he is entitled to be considered in the Education Service Cadre with effect from 1989 itself. The moment authorities include the period from 1989 as Education Service, the petitioner would have to be considered as Senior to the private respondent and would, thus, be entitled to posting as Head of the Department,



Psychiatry in place of private respondent. In support of this submission, petitioner's learned Senior Counsel places reliance on Annexure F/1 to the counter affidavit filed on behalf of respondents 2 to 6 wherein the final senior list for the Psychiatry Department of State Government Medical Colleges has been published. The private respondent, as per the said seniority list, is shown to be an Assistant Professor since 13.02.1990. The petitioner, in the same seniority list which has been published recently on 13.09.2018, has been shown to be Associate Professor since 10.10.1991.

4 Referring to the petitioner's posting in the Psychiatry Department of PMCH on the post of Psychiatrist on 09.06.1989, he submits that he is entitled to reckoning of his seniority with effect from the said date. As such, seniority of the private respondent, based on his posting as Associate Professor since 1990, is undue. The determination of inter se seniority as per seniority list dated 13.09.2018 (Annexure F/1) is incorrect. From perusal of Annexure 9/A, it is obvious that the petitioner's posting as Psychiatric has been treated as posting on a teaching post falling within the Education Service. Annexure 9/A is the notification dated 30.08.1990 whereby "गैर शैक्षणिक" mentioned in the petitioner's order of posting dated 09.06.1989 has been deleted.



The effect of such deletion is that petitioner's posting as Psychiatrist by Notification dated 09.06.1989 will be treated to be a posting on a teaching post and the petitioner would be entitled to count his seniority with effect from 09.06.1989. By virtue of such counting of seniority, there can be no dispute that the petitioner would have to be considered as senior to the private respondent whose seniority on the post of Assistant Professor is with effect from 13.02.1990. Learned Senior Counsel for the petitioner has also placed reliance on the Minimum Qualification for Teachers in Medical Institutions Regulations, 1988 issued by the Medical Council of India. Relying on the same, it is asserted that for purposes of becoming a Professor, the requirement was of functioning as Associate Professor in Psychiatry for three years in recognized Medical College. Since the petitioner had been working as an Associate Professor since 02.08.1996, he would be entitled to posting as Professor.

5 An alternative submission has also been advanced on behalf of the petitioner that since the second post of Professor in the Department of Psychiatric in the PMCH is lying vacant, the petitioner, irrespective of his inter se seniority with the private respondent, is entitled to be considered and posted on the post of Professor in the Department of Psychiatry in the PMCH.



6 Reliance has also been placed on judgment in the case of Shiba Shankar Mohapatra & Others -Versus- State of Orissa & Others, (2010) 12 Supreme Court Cases 471 and judgment in the case of Dr (Mrs) Shushma Pandey -Versus- State of Bihar, 2006 (1) PLJR 737.

7 Mr Tej Bahadur Singh, learned Senior Counsel for the private respondent submits that as per pleadings made in the writ petition, the petitioner was appointed and he joined as Assistant Professor in PMCH on 10.10.1991. In the notification of his posting dated 09.06.1989, it is clearly mentioned that posting as Psychiatrist was against non-teaching post. By virtue of such posting, the petitioner became Associate Professor after completing five years on 02.08.1996 which is evident from the Notification contained in Annexure 3 series of the writ petition. Even at the time of posting as Associate Professor, the private respondent was senior to the writ petitioner. The private respondent was at Serial No 2 in the Notification whereas the petitioner was shown at Serial No 4. This Notification showing the inter se seniority of the petitioner and the private respondent at the time of posting as Associate Professor was after due consideration of the Notification dated 30.08.1990 (Annexure 9/A). Annexure 9/A did not contemplate that the petitioner's



posting as Psychiatrist on 09.06.1989 would be treated to have been against a teaching post. At best, the Notification could allow the petitioner to reckon his appointment on a teaching post with effect from the date of the Notification, i.e., 30.08.1990. Even if that was to be allowed then the petitioner, whose appointment as Assistant Professor on a teaching post by Annexure F/1 was shown to be with effect from 30.08.1990, could not be considered to be made the basis of the petitioner claiming any seniority over the private respondent who, as per the seniority list and in view of the facts noted herein above, was, admittedly, working on a teaching post since 13.02.1990. It is submitted that the private respondent is duly qualified having a Post Graduate Degree (MD) in Psychiatry. On account of necessity at the time of petitioner's initial appointment, he was posted in the Department of Anatomy. Such posting was necessitated by the respondent-authorities and cannot be made the basis of depriving the petitioner of his posting on a Teaching Cadre in the Department of Psychiatry having regard to his qualifications in Psychiatry.

8 Learned counsel for the State submits that a joint Seniority List of Psychiatry Department was published on 25.03.2008. The petitioner was placed at Serial No 4 and respondent No 8 at Serial No 2. Petitioner's appointment as



Assistant Processor on a teaching post has been shown as 10.10.1991 in the seniority list of 2008. On the other hand, private respondent has been shown as being in the Teaching Cadre since 13.02.1990. It is not disputed that the petitioner joined on the post of Psychiatrist as on 10.10.1991. Prior to the said Seniority List, Provisional Gradation List was published on 04.01.2008 to which the petitioner did not submit any objection. The Seniority List was, thereafter, finalized on 25.03.2008. The petitioner, at that time, chose not to make any objection and, as such, the seniority list was finalized. Petitioner also did not submit any objection in response to departmental letter dated 09.07.2018 whereby Provisional Gradation List of Medical Teachers in the Psychiatry Department was published. Since the petitioner has chosen not to object to the provisional Seniority List in 2008 as well as in 2018, he cannot be permitted to invoke the writ jurisdiction, now to unsettle the issue of inter se seniority of persons serving in the service/Department which has attained finality.

9 Having heard the parties, this Court would observe that petitioner was appointed as Psychiatrist against a non-teaching post on 09.06.1989. It is also admitted as per pleadings in the writ petition of the petitioner himself that he was appointed and he joined as Assistant Professor in the Department of Psychiatry on



10.10.1991. The assertion of the State that the petitioner chose not to challenge the provisional seniority list in 2008 is also not disputed. The fact that the petitioner has a Post Graduate Degree (MD) in Psychiatry is also not in dispute. The petitioner, however, claims that his seniority should be determined from the date of his initial appointment as Psychiatrist on 09.06.1989. The claim of the petitioner can be allowed only if he has been working on a teaching post in the Education Service Cadre working on a teaching post since 06.09.1989. Bare perusal of the Notification dated 09.06.1989 shows that appointment as Psychiatrist was against a non-teaching post (गैर शैक्षणिक पद). If the petitioner, by virtue of the nature of his service, can show that he was on a Teaching Post since 06.09.1989 then only an occasion arises to issue direction for determining his length of service in the Department since 1989.

10 Even if he could show that he was working on the teaching post, the other issue would arise whether petitioner, after such a long lapse of time, can be permitted to agitate issues of seniority vis-a-vis the private respondent, the effect of which would be to unsettle the final seniority list of 2008, when the petitioner had chosen not to file any objection against the provisional seniority list. The issue that the private respondent has



earlier been posted in the Department of Anatomy is of no significance since the private respondent was duly qualified for holding the teaching post in Psychiatry Department. Further, posting in Anatomy was on account of necessity of the Authorities.

11 Petitioner's claim hinges on Annexure 9/A dated 30.08.1990, i.e., the Notification whereby the post of Psychiatrist, on which the petitioner was posted on 09.06.1989, has been made a teaching post. Bare perusal of Annexure 9/A would show that it did not have any retrospective operation. Post of Psychiatrist was declared as teaching post with effect from the date of issuance of Annexure 9/A. Petitioner cannot be permitted to claim on the basis of Annexure 9/A that services rendered on the post of Psychiatrist, during a period when it was a non-teaching post, can be included while determining his seniority for the purposes of posting as Associate Professor or Professor.

12 The issue of delay and laches on account of the seniority list of 2008 being finalized without any objection by the petitioner, also disentitles the petitioner to invoke the writ jurisdiction. If the same were to be allowed then since issues of inter se seniority between all the members of the teaching cadre in the Department of Psychiatry which has attained finality by publication of two seniority lists in the year, 2008 and 2018 would



be unsettled. The various third party's rights, which have occurred in the process, would, thus, be effected. Such a situation cannot be countenanced. The admitted position is that petitioner joined as Assistant Professor on 10.10.1991. The fact that private respondent joined as Assistant Professor on 13.02.1990 is also not disputed. By no stretch of imagination, the petitioner can be permitted to claim seniority over the private respondent.

13 The alternative submission on behalf of the petitioner for being posted as Professor on the second post in the Department of Psychiatry at PMCH is an issue for which the petitioner may approach the authorities. Whether the authorities, as per law, would extend the post for the petitioner or not is an issue on which this Court would refrain from making any observation as the same is to be considered and decided according to petitioner's eligibility and requirement of the Authorities in accordance with law.

14 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2019
Transmission Date	NA

