

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9933 of 2019

Dr. Chandra Mohan Narain son of Late Dr. Hardeo Narain Singh Resident of Road No. 7 Rajendra Nagar, P.S. Kadamkuan, District Patna, Presently posted as Associate Professor Department of Surgery, Govt. Medical College, Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
2. The Principal Secretary, Department of Health, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
3. The Addl. Secretary, Department of Health, Medical Education, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
4. The Joint Secretary, Department of Health, Medical Education, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
5. That Deputy Secretary, Department of Health, Medical Education, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
6. The Under Secretary, Department of Health, Medical Education, Govt of Bihar, 1st Floor, Vikash Bhawan, Bailey Road, Patna- 15
7. Dr. Vinod Kumar Gupta Fathers name not known to the petitioner Resident of Flat No. 304, Sri Jagdish Residency, Santi Niketan Colony, Police- Agam Kuan, Boot Nath Road, Kankarbagh, Patna- 800026 presently posted as Associate Professor, Department of Surgery, Nalanda Medical College, Patna.
8. Dr. Binay Kumar Fathers name not known to the petitioner presently posted as Associate Professor, Department of Surgery, Patna.
9. Dr. Indu Bhusan Prasad Fathers name not known to the petitioner Resident of Flat No. RC/C 125, Sector- 4, Bahadurpur Housing Colony, Near Bhootnath, T.V. Tower, P.S. Agam Kuan, Kankarbagh, Patna- 800026, Presently posted as Associate Professor, Department of Surgery, Patna Medical College, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Advocate Mr. Prabhat Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anuj Kumar, AC to SC12

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 01-08-2019 Heard the parties.

The petitioner, under notification dated 09.03.2019,



has been posed as Associate Professor in the Government Medical College and Hospital, Bettiah in the Department of Surgery, prior thereto he was functioning as an Assistant Professor. It is the petitioner's grievance that he had given an application for posting at Nalanda Medical College, as his first preference and second preference was Patna Medical College, claiming merit-cum-choice posting under the extent provisions in the Health Service for grant of posting on merit-cum-choice.

Learned senior counsel submits that ignoring the petitioner's claim, respondent nos. 7, 8 and 9 have been granted posting at Patna and the petitioner has been left at Bettiah, though petitioner was senior to respondent nos. 7, 8 and 9.

The State Authorities have filed counter affidavit. Counsel for the State submits that the extant provision regarding merit-cum-choice posting as considered by the Full Bench in the case of Dr. Mrs. Sushma Pandey vs. The State of Bihar and Anr., reported in (2006) 1 PLJR 737, does not give the petitioner any claim of merit-cum-choice posting on account of promotion. The same would apply only at initial appointment.

The Senior counsel for the petitioner has drawn attention of the Court towards the Judgment of Dr. Mrs. Sushma Pandey vs. The State of Bihar & Anr. makes it clear that the



principle of merit-cum-choice postings shall not apply at the time of initial appointment but even subsequent transfer and postings.

The Senior counsel for the petitioner has placed reliance on the Judgment of this Court in the case of ***Devi Dutta Gupta Vs. The State of Bihar & Ors., reported in (2008) 3 PLJR 535***. Considering the law laid down by Full Bench in the case of Dr. Mrs. Sushma Pandey vs. The State of Bihar & Anr., reported in (2006)1 PLJR 737, this Court in the case of Devi Dutt (Supra) has observed as follows:

6. Learned counsel for the private respondent No. 4 in CWJC Nos. 14012/03 and 14197 of 2003 sought to persuade this Court that the principles of merit-cum-choice to be followed as laid down by the Full Bench were applicable only at the stage of initial posting after appointment and did not cover transfers and postings made after such initial appointment. This Court does not concur with the same.

7. A Judgment is an authority for what it decides and not what may be interpreted on it by extracting lines from passages, torn out of context. That the principle of merit-cum-choice shall apply not only at the time of initial appointment but even subsequent transfer and posting stands authoritatively decided by the Full Bench. There is no occasion for this Court



to dwell upon the same.

The ground urged by the State in the instant proceeding by filing counter affidavit to deny consideration of the petitioner's claim for merit-cum-choice posting on account of claim being raised at the time of promotion/posting, cannot be accepted, viewed in background of decision of this Court in the case of Devi Dutta (Supra) taken note of hereinabove.

Having considered the law as restated in para 7 of the judgment in the case of Devi Dutta (supra) this Court would remand the matter to the respondent no.2 to take decision on petitioner's claim for merit cum choice posting afresh after considering the claim set forth by respondent nos. 7, 8 and 9 or any other member who is likely to be affected. While considering the petitioner's claim, decision should be taken having regard to the decision in the case of Dr. Mrs. Sushma Pandey & Dr. Devi Dutta (supra) as also the provisions contained in Clause 4(c) (i) of the Bihar Litigation Policy, 2011, in respect of "covered matters".

This Court would direct that the respondent no.2 should take a decision as per the law expeditiously and without any undue delay.



Accordingly, this writ petition is disposed of.

(Madhuresh Prasad, J)

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Rahul.

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