

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1315 of 2011

Dr. Anand Kumar Mishra, S/O Late Dr. B.P. Mishra, Resident of Sumitra Bhawan, Behind Brahmpura Post Office, P.S. Brahampura, Town and District Muzaffarpur, at present posted and working as Professor, Department of Microbiology, Sri Krishna Medical College and Hospital, Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Vikas Bhawan, Jawahar Lal Neharu Marg, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Vikas Bhawan, Jawahar Lal Neharu Marg, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Vikas Bhawan, Jawahar Lal Neharu Marg, Patna.
4. The Deputy Secretary, Department of Health, Government of Bihar, Vikas Bhawan, Jawahar Lal Neharu Marg, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Advocate
For the Respondent/s : Mr. Manoj Kumar Sinha, A.C. to G.A.-9

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 08-01-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In the present case, the petitioner is challenging the Notification no.17/A 1-17/98-968(17) dated 22.10.2005, whereby and whereunder he has been granted the benefit of promotion to the post of Associate Professor and Professor with effect from 18.10.2003 whereas the claim of the petitioner is that he should be granted the benefit of substantive promotion with effect from 15.05.1997 i.e. the date on which he was granted adhoc promotion in the working arrangement. Further challenged the Government Notification dated 23.05.2008, whereby and whereunder he has been granted the substantive



promotion from the date of issuance of Notification whereas the petitioner is claiming that he has been made Professor under working arrangement vide Notification no. 446(17) dated 17.05.2005, claiming that other similarly situated persons, who were earlier appointed on adhoc -cum- working arrangement basis having been granted the benefit of substantive promotion from the date on which they were granted adhoc promotion in the working arrangement, so he is also entitled to the same benefit.

3. The petitioner has entered into the service of Government of Bihar in the Health Department and after acquiring the master degree in Pathology and Microbiology the petitioner was appointed vide Notification No.135(2)H dated 01.07.1981 read with Notification No.184(2) H dated 13.07.1981, submitted his joining on 17.07.1981 in the Bihar Health Services and posted in the Pathology Department of the Darbhanga Medical College and Hospital, he remained there till 01.09.1982, from where he was transferred and posted in the Headquarters at Patna from 03.09.1982 to 18.04.1983 and by Notification no.353(2) dated 16.04.1983 read with Notification No.363(2) H dated 18.04.1983, he was posted in Sri Krishna Medical College and Hospital, Muzaffarpur as Medical Officer



(Store). The petitioner was promoted on the post of Tutor of Microbiology in Sri Krishna Medical College and Hospital, Muzaffarpur vide Notification No.1372(1) dated 20.11.1983 and remained on the said post from 22.11.1983 to 09.03.1989. Again on the basis of seniority-cum-merit vide Notification No.133(17) dated 09.03.1989, the petitioner was promoted in the rank of Assistant Professor in the discipline of Microbiology at Sri Krishna Medical College and Hospital, Muzaffarpur.

4. A team of Medical Council of India visited/inspected the Medical College and found that doctors posted are contrary to the staffing pattern and the norms prescribed by the Medical College of India and recommended for de-recognition of the college. This Court vide order dated 12.06.1995 passed in C.W.J.C. No.6815 of 1994 directed to promote the Assistant Professors working in the Medical Colleges in the rank and grade of Associate Professors on the basis of seniority and merit in accordance with law. In consequence thereof, the petitioner was promoted on the post of Associate Professor of Microbiology Department and posted in Sri Krishna Medical College and Hospital, Muzaffarpur, under working arrangement vide Notification No.149 (17) dated 14.05.1997.



5. The Government of Bihar has framed the Rule in the name and style of Bihar Medical Service Cadre Rules, 1997. As per the Rules, the selection has to be made on the basis of all India advertisement and a candidate was required to have a minimum eligibility qualification for the said post coupled with the experience on the post of Assistant Professor. However, the Government has never published advertisement, but was promoted on working arrangement as aforesaid. The Government of Bihar in exercise of power under Section 309 has amended the aforesaid Rule on 23.03.2004 to the extent that the post is to be filled up on the basis of seniority-cum-merit according to the eligibility prescribed by the Medical Council of India, thereby the provision of the advertisement was deleted.

6. The petitioner was again promoted to the post of Professor under the working arrangement vide Notification No.446(17) dated 17.05.2005 and the petitioner continued on the said post but the Notification no.766 (17) dated 24.06.2003 (Annexure-A) shows that in pursuance of order passed in L.P.A. No.1001 of 1999 and M.J.C. No.3148 of 2000 the benefit of promotion granted to all doctors to the post of Associate Professor was withdrawn, but later on, the Government has again issued the Notification no. 968 dated 22.10.2005, by



which the petitioner was granted the benefit of substantive promotion with effect from 18.10.2003. While working as Associate Professor, the posts of professor had fallen vacant, the petitioner along with other doctors vide Notification No. 446 (17) dated 17.05.2005 was promoted to the post of Professor in working arrangement and vide Notification No. 664 dated 23.05.2008 was granted the benefit of promotion to the post of Professor substantively from the date of issuance of the Notification.

7. In the present case, the only question has been raised that the petitioner should be granted the benefit of promotion to the post of Associate Professor as well as to the post of Professor from the respective dates of ad-hoc -cum-working arrangement promotion.

8. Learned counsel for the petitioner submits that certain persons, namely Om Prakash and Dr. Ravindra Lal, who were also earlier promoted from the date of ad-hoc -cum-working arrangement have been granted the substantive promotion on and from the same date as well as he has placed reliance on the order passed in C.W.J.C. No.13132 of 2012 (Dr. (Mrs.) Geeta Singh vs. The State of Bihar and Ors.), by which this Court has directed to promote the petitioner from the date of



ad-hoc -cum- working arrangement if she possesses the requisite qualification vis-a-vis the availability of the post and that order has been affirmed by the Division Bench in Letters Patent Appeal No.1451 of 2013 (The State of Bihar and Ors. vs. Dr. (Mrs.) Geeta Singh), there the Court has taken into consideration that other doctors, in a similar situation, have been granted the promotion from the date of their ad-hoc -cum- working arrangement promotion, then there cannot be a selective decision to refuse to grant the benefit of promotion from another date to Dr. (Mrs.) Geeta Singh and accordingly, dismissed the Letters Patent Appeal filed by the State.

9. By making the aforesaid submissions, learned counsel for the petitioner submits that the petitioner should also be granted the same benefit as has been given to other similarly situated persons.

10. Whereas, learned counsel for the State submits that one Ajit Singh was granted the same benefit and later on, the benefit was withdrawn, but the Court has allowed the appeal, matter went to the Hon'ble Supreme Court in Civil Appeal No.6570 of 2015 (The State of Bihar & Ors. vs. Ajit Singh &



Ors.) and there Ajit Singh made statement that he would withdraw the writ petition as he was granted the benefit of promotion from the date notified by the State Government. On the strength of action, the learned counsel for the State submits that there is no wrong in granting the benefit to the present petitioner from the date of Notification i.e. 18.10.2003 as it is compatible to the date of promotion granted to Sri Ajit Singh and others.

11. In the present case, only the question has come up for consideration that whether the petitioner should be granted the benefit from the date of ad-hoc promotion or from the date which has been provided by the Government in the Notification, as mentioned hereinabove. It is also a fact that As per 1997 Rules, the posts were to be advertised but later on, the Rule itself has been amended, thereby procedure for selection -cum- promotion has been modified and it has been made seniority-cum-merit basis, on that basis their cases were considered and granted promotion, but the other similarly situated doctors, having been granted the benefit from the respective dates of ad-hoc -cum- working arrangement then it does not stand to the reason why selectively the date has been picked up by the State and granted the promotion to the petitioner from the date of



respective notifications.

12. In such view of the matter, the matter is remanded back to the competent authority, if the posts are available for promotion and if the petitioner is possessing requisite qualification on the date he has been granted adhoc- cum- working arrangement promotion, in such circumstance, he will be also granted the same benefit of promotion on the post of Associate Professor as well as Professor from the date of adhoc -cum- working arrangement as has been given to other similarly situated persons. While deciding the seniority of the petitioner, his position will be determined considering the case of doctors who are junior to him. All the exercise should be completed within a period of 5 (five) months from the date of receipt/production of a copy of this order.

13. With the aforesaid observations and directions, this writ petition is allowed. The impugned Notifications dated 22.10.2005 and 23.05.2008 are quashed.

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(Shivaji Pandey, J)

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.01.2019
Transmission Date	

