

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 01.04.2019****Judgment delivered on 16.05.2019****Writ Appeal No. 387 of 2016**

Dr. (Smt.) Aradhana Kande wife of Dr. Ajay Kande and D/o Shri Chandrabhushan Sharma, aged about 50 Years, Govt. Ayurvedic College, Raipur District Raipur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tah. And District Raipur (C.G.).
2. Director office of Directorate Ayurved Yog Evam Prakritik Chikitsa Yunani, Siddha Evam Homeopathy (Ayush) District Raipur (C.G.)
3. Principal Ayurvedic College Raipur, Tah. And District Raipur (C.G.)
4. Dr. Namrata Satpute W/o Dr. Dilip Khobragade working as Lecturer (Rog Nidan Evam Vikrit Vigyan) at Govt. Ayurvedic College Raipur, R/o B1/56 Lokmanya Society Rohinipuram, Dagniya, Post RSU Raipur (C.G.)
5. Dr. Rakshapal Gupta, Demonstrator CM Redesignated Lecturer.
6. Dr. Rupendra Chandrakar, Demonstrator CM Redesignated Lecturer.
7. Dr. Sushil Kumar Dwivedi, Demonstrator CM Redesignated Lecturer.
8. Dr. Sanjay Shukla, Demonstrator CM Redesignated Lecturer Respondent No. 5 to 8 C/o Principal Govt. Autonomous Ayurvedic College, Raipur (C.G.)

---- Respondents**Writ Appeal No. 114 of 2017**

Dr. (Smt.) Aradhana Kande wife of Dr. Ajay Kande, D/o Shri Chandra Bhushan Sharma, aged about 50 Years, Lecturer, Government Ayurvedic College, Raipur, C.G. Civil & Revenue District Raipur.

---- Appellant**Versus**

1. State of Chhattisgarh Through- Principal Secretary, Public Health, Family Welfare and Medical Education, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, (C.G.).
2. Government Autonomous Ayurvedic College, GE Road, Raipur, Through Principal-Cum-Chief Executive Officer.

3. Dr. Rakshapal Gupta, Demonstrator-Cum-Re-designated Lecturer.
4. Dr. Rupendra Chandrakar, Demonstrator-Cum-Re-designated Lecturer.
5. Dr. Sushil Kumar Dwivedi, Demonstrator-Cum-Re-designated-Lecturer.
6. Dr. Sanjay Shukla, Demonstrator-Cum-Re-designated Lecturer
No.3 to 6 C/o Principal, Government Autonomous Ayurvedic College, Raipur.

---- Respondents

Writ Appeal No.387 of 2016

For Appellant : Shri B. P. Sharma and
Shri Vivek Chopda, Advocates
For Respondents No. 1 to 3/ : Shri Gagan Tiwari, Dy. Govt. Advocate
State
For Respondent No.4 : Shri Jitendra Pali, Advocate
For Respondents No.5 & 8 : Shri Adhiraj Surana, Advocate

Writ Appeal No.114 of 2017

For Appellant : Shri B. P. Sharma and
Shri Vivek Chopda, Advocates
For Respondents No. 1 & 2/ : Shri Gagan Tiwari, Dy. Govt. Advocate
State
For Respondents No.3 & 6 : Shri Adhiraj Surana, Advocate
For Intervener : Shri Jitendra Pali, Advocate

Hon'ble Shri Prashant Kumar Mishra, Judge
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT

Per Parth Prateem Sahu, Judge

16.05.2019

1. The issues involved are interconnected to each other, therefore, both the appeals were heard analogously and disposed off by this common judgment.

2. Challenge in Writ Appeal No.387 of 2016 is to order dated 07.07.2016 passed by learned Single Judge in Writ Petition (S) No.1331 of 2016 whereby the writ Court had directed the

respondents to convene DPC in accordance with C.G. Public Services (Promotion) Rules, 2003 (hereinafter referred to as 'Rules of 2003') and consider the cases of eligible employees including the case of petitioner therein/respondent No.4.

3. Challenge in Writ Appeal No.114 of 2017 is to order dated 17.02.2017 passed by learned Single Judge in Writ Petition (S) No.1310 of 2008 whereby the writ petition filed by appellant/petitioner seeking various reliefs including seniority with effect from 19.03.1999 was dismissed.

4. Brief facts necessary to be referred for disposal of these appeals, are that, appellant/petitioner was initially appointed on the post of Lecturer of "Rog Vigyan" vide order dated 19.03.1999 at Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal, Madhya Pradesh (Exhibit P/4). Said appointment of appellant was made in pursuance to advertisement published in daily newspaper dated 26.05.1998 for appointment of different posts in different Ayurvedic Colleges, which are Autonomous Institutions. Advertisement was made under the joint name of Principal-cum-Chief Executive Officer of different Autonomous Colleges.

5. In the aforementioned advertisement, three posts of Lecturers were advertised for subject of Rog Vigyan. Two posts were advertised for Ayurvedic College, Bhopal, out of which, one post was for Unreserved category (woman) and one post was for OBC category. One post of Rog Vigyan subject was

advertised for Ayurvedic College, Raipur and that was reserved for Scheduled Caste candidate (woman).

6. Appellant was appointed on the post for Unreserved category candidate (woman) at Ayurvedic College, Bhopal. After joining her services at Bhopal, it appears that she made an application for the said post at Ayurvedic College, Raipur. The office of Directorate Bhopal has sought information with respect to availability of vacant post of Rog Vigyan at Ayurvedic College, Raipur and the same was intimated by Principal of Ayurvedic College, Raipur vide its letter dated 26.04.1999 mentioning that only one post of Lecturer of Dosdhatumal, Ras Chikitsa Health Circle is vacant and College has no objection if applicant therein i.e. appellant is adjusted on the aforementioned post.

7. The State Government vide letter dated 09.12.1999 directed to appoint appellant at Ayurvedic College, Raipur on the same post from the date of her joining. As no post of Lecturer 'Rog Vigyan' was vacant, therefore, appellant gave joining by mentioning that she has joined the post of Lecturer on 11.12.1999 and was working against post of Lecturer 'Dosdhatumal'. Subsequently, notice was issued for termination of services of appellant as she has been erroneously adjusted on the post reserved for Scheduled Caste category candidate. The notice was challenged before High Court in writ petition in which petitioner succeeded to obtain interim order of stay. During pendency of writ petition, new post setup came into

force and some new posts were also created in 2003. During operation of stay order, respondent gave offer stating that she can be adjusted against newly sanctioned post and if she is adjusted on newly sanctioned post, she had to withdraw her writ petition filed before the High Court challenging notice of termination.

8. Appellant was adjusted on the post of Rog Nidan and Vikriti Vigyan vide order dated 06.10.2003. In the said order, it had been specifically mentioned that order will come into effect from the date of withdrawal of her earlier writ petition from the High Court. The earlier writ petition filed by petitioner was withdrawn vide order dated 02.01.2004, therefore, she has been treated to have been appointed as per order dated 06.10.2003 and joined her services on 20.01.2004. Seniority list was published on 20.12.2007 showing seniority of Lecturers as on 01.04.2007, in which, seniority of appellant has been shown at Sl. No.3 in list of Lecturers of Rog Nidan and Vikriti Vigyan. In seniority list, date of joining in the cadre has been shown on 20.01.2004 whereas other two Lecturers joined on 31.03.1999 and 31.03.2003 respectively.

9. Aggrieved by fixation of seniority, appellant preferred writ petition before the High Court seeking following relief(s):-

“i. That the Hon'ble Court be pleased to direct the respondent No.1 and 2 to place petitioner in seniority list over and above respondents No. 3 to 6 by issuing a writ of mandamus.

ii. That the respondent No.1 and 2 may also be directed to count of previous service of petitioner rendered by her in Pt. K. L. Sharma Govt. Autonomous Ayurvedic College and Institute Bhopal (M.P.) and count her seniority in lecturer w.e.f. 19.03.1999 by issuing yet another writ of mandamus.

iii. That the Hon'ble Court be pleased to quash the redesignation of respondents No.3 to 6 as lecturers vide Annexure P-13 & P-14 issuing a writ of mandamus or certiorari and also Annexure P-15.

iii A. That, the Hon'ble Court pleased to quash all the promotion orders issued in favour of respondent No.3 and pleased to stay the process of promotions in favour of respondents No.4, 5 and 6 pending disposal of above petition by issuing appropriate writ, order or direction deemed fit.

iv. That the Hon'ble Court may mould the relief as and when deemed fit.

v. That the Hon'ble Court be pleased to issue any other writ of writs, order or orders, direction or directions deemed fit in the interest of justice."

10. Respondent/State submitted reply to writ petition mentioning therein that initially appellant was appointed at Autonomous Ayurvedic College, Bhopal. By virtue of letter 09.12.1999 issued by Directorate at Bhopal, it was specifically mentioned that earlier services rendered by appellant at

Autonomous Ayurvedic College, Bhopal would not be counted and further directed that appellant be appointed on equivalent post at Ayurvedic College, Raipur. She joined on the post of Dosdhatumal Vigyan, which was lying vacant. The said post of Lecturer of Dosdhatumal was reserved for Scheduled Caste category (woman).

11. Private respondents have submitted their reply and stated that they were appointed as Demonstrator, but in new post setup, which came into effect from 13.03.2003, post of Demonstrator was abolished and Demonstrators, who were working prior to date of coming into force of new post setup, were re-designated as Lecturers with effect from 13.03.2003 whereas appellant joined her services as Lecturer on 20.01.2004 on the post of Rog Nidan and Vikriti Vigyan, therefore, seniority has already been fixed on the basis of entering into cadre.

12. The learned Single Judge, after considering arguments advanced by respective counsel for the parties, dismissed the writ petition by holding that appellant after reading and understanding the contents of orders dated 09.12.1999 and 06.10.2003 has willfully and unconditionally joined the post of Lecturer of Rog Nidan and Vikriti Vigyan on 20.01.2004 and in order dated 06.10.2003 it has been specifically mentioned that adjustment on the post is from the date of her joining. Learned Single Judge concluded by observing as under :-

“10. Thus taking into consideration the documents filed along with the writ petition, return and the rejoinder, this Court is of the view that having accepted her appointment with open eyes at Raipur Ayurvedic College, she cannot challenge the same after a considerable long period. It is relevant to note that even after the new set-up came into existence, the petitioner did not object to it and has readily accepted her absorption against the new subject and therefore the respondents are fully justified in counting the seniority of the petitioner from 20.1.2004”

13. The other ground raised by learned counsel for appellant has already been considered by learned Single Judge and with respect to re-designation of respondents No.3 to 6 who were earlier working as Demonstrator, but by virtue of abolition of post of Demonstrator in new post setup published on 13.03.2003, respondents No.3 to 6 who are working prior to coming into force, have been re-designated as Lecturers and also arrived at a finding that there is lack of specific pleading and grounds of challenge.

14. Learned counsel appearing for appellant argued that learned Single Judge has failed to consider the Rules, i.e. Madhya Pradesh Lok Swasthya (Bhartiya Chikitsa Padhhati tatha Homeopathy) (Rajpatrit) Sewa Bharti Niyam, 1987 (hereinafter referred to as the 'Rules of 1987') vide Annexure P/3. He further argued that in the aforementioned Rules of

1987, method of appointment has been prescribed, that is, direct recruitment, recruitment by promotion and recruitment by way of transfer. He further argued that appellant has been appointed/posted by way of transfer from Autonomous Ayurvedic College, Bhopal to Autonomous Ayurvedic College, Raipur, therefore, it is an appointment by way of transfer and not a fresh appointment.

15. Learned counsel for appellant has also filed additional document, which is a copy of service book of appellant and argued that by perusal of entries made in service book, it is clear that appellant has been transferred to Autonomous Ayurvedic College at Raipur and it is not a fresh appointment. He lastly argued that by mentioning something adverse to appellant in letter dated 09.12.1999, will not affect the service of appellant as letter would not override the Rules of 1987.

16. On the other hand, learned counsel appearing for State argued that initial appointment of appellant was made by the College i.e. Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal Madhya Pradesh, which is an Autonomous College. Autonomous Colleges were run by society and they are independent entity having its own Rules for managing affairs of the College including recruitment of teachers and employees. He further argued that in letter dated 09.12.1999 (Annexure P/7), it has been specifically mentioned that appellant may be given appointment on equivalent post and further mentioned that earlier services

rendered by appellant in old institution will not be counted. He further argued that appellant has been given erroneous joining on the post of Dosdhatumal, which was vacant at that relevant time, but said post was reserved for woman candidate belonging to Scheduled Caste category, on which, the appellant could not have been appointed. He also argued that when the illegal joining of appellant came to the knowledge of authorities, it has been directed to Principal/Chief Executive Officer of Ayurvedic College, Raipur to issue show cause notice with respect to termination of services of appellant. He lastly argued that appellant accepted her adjustment on newly created post in new post setup on the post of Lecturer Rog Nidan and Vikriti Vigyan, wherein it has been specifically mentioned that she will be adjusted from the date of her joining and appellant joined on the post of Rog Nidan and Vikriti Vigyan on 20.01.2004, therefore, she has rightly been granted seniority from the date of her joining to the cadre since 20.01.2004. It was also specifically mentioned that the order dated 06.10.2003 will be effective from the date of her withdrawal of earlier writ petition.

17. Learned counsel appearing for respondent No.4/ Intervener raised same arguments as of learned counsel for State. He further added that appointment of appellant at Autonomous Ayurvedic College, Raipur on 11.12.1999 on the post of Dosdhatumal is illegal, therefore, she cannot take advantage of the same. He further argued that appellant belongs to Unreserved category, therefore, she cannot be

appointed/adjusted on the post reserved for candidate belonging to Scheduled Caste category. He also argued that appellant was appointed on the post of her category only vide order dated 06.10.2003, on which, she joined on 20.01.2004, therefore, her seniority has rightly been fixed from the date of her joining as mentioned in order of her adjustment/appointment, which was unconditionally and willfully accepted by appellant.

18. Learned counsel appearing for respondents No.5 and 8 in Writ Appeal No.387 of 2016 and respondents No.3 and 6 in Writ Appeal No.114 of 2017 adopted the arguments advanced by learned counsel for the State and argued that the said respondents were appointed prior to 2002 on the post of Demonstrator, but new post setup came after formation of State of Chhattisgarh. He further argued that post of Demonstrator, on which, the said respondents were appointed has been abolished and the State Government directed to re-designate the post of Demonstrators as Lecturers with effect from coming into force of new post setup i.e. 13.03.2003 and there is no illegality in re-designation of said respondents as Lecturers.

19. We have heard learned counsel appearing for parties and perused records of the writ petitions as well as writ appeals.

20. So far as argument raised by learned counsel for appellant that learned Single Judge failed to consider the Rules of 1987 (Annexure P/3), which are the service Rules in the

name of Madhya Pradesh Lok Swasthya (Bhartiya Chikitsa Padhhati tatha Homeopathy) (Gazetted) Sewa Bharti Niyam, 1987, under which, appellant was appointed is concerned, we are not impressed by argument so raised by learned counsel for appellant for more than one reasons. Firstly, Rule-2 of Rules of 1987 provides the definition with respect to "Appointing Authority" wherein it has been specifically provided that Appointing Authority means Government. The said Rules of 1987 also provides that appointment is to be made on the basis of examination to be conducted by the Commission and the "Commission" have been defined as Madhya Pradesh Lok Sewa Ayog (Madhya Pradesh Public Service Commission). Rule 11 of the Rules of 1987 provides for selection/direct recruitment by way of competitive examination to be conducted by the Ayog.

21. In the cases at hand, advertisement was issued by Principal-cum-Executive Officer of Seven Autonomous Ayurvedic Colleges and appointment order of appellant has been issued by Chief Executive Officer of Autonomous College i.e. Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal, Madhya Pradesh. From the aforementioned documents, it is clear that recruitment proceedings have not been initiated by the Government with the help of Public Service Commission, but it has been initiated by Autonomous Colleges independently and appointment order has been issued by Principal/Chief Executive Officer of College

in particular separately being the Appointing Authority.

22. In view of aforementioned clear factual matrix, arguments of learned counsel for appellant that the services of appellant is governed by the Rules of 1987 at the time of appointment, is not sustainable.

23. The Autonomous Colleges are governed by Statute No.28 i.e. College Code (hereinafter referred to as 'Code'). Clause 1(a)(iv) of Code defines "Autonomous College" as "a College so designated by the University as per provisions of Statute of M.P. Vishwavidyalaya Adhiniyam". Autonomous College is managed and run by Foundation Society and all the affairs are to be looked by Governing Body. Part-VI of the College Code provides for the Teachers of the College, which reads as under:-

"Part - VI : The Teachers of the College :

16. (1) No appointment to any teaching post in the college, including the post of the Principal but excluding part-time appointments, temporary appointments which are not to continue for more than six months and appointments to posts which are to be filled by promotion, shall be made except :

(a) After duly and widely advertising the post together with the minimum qualifications thereof and the emoluments of the post and allowing reasonable time within which the applicants may in response to the advertisement, submit their applications.

(b) On the recommendation of the Selection Committee constituted in accordance with the

provisions of paragraph 17 below for the "Non-grantee Colleges" and the Rules framed under M.P. Ashasakiya Shikshan Sanstha (Adhyapakon tatha Karma chariyon ke vetano ka Sandya) Adhiniyam, 1978 for "Grantee Colleges".

(2) No appointment to the post of Principal shall be made except with the prior approval of the Executive Council.

(3) No person shall be appointed to any teaching post including that of the Principal unless he possesses the minimum qualifications prescribed for the post by the University Grants Commission and approved by the State Government and/or M.P. Uchcha Shiksha Anudan Ayog from time to time.

(4) Every change in the teaching staff of the college shall be immediately reported to the University by the Principal."

24. From aforementioned provisions of College Code formulated for management of Autonomous College, recruitment of employees and provisions mentioned therein for taking disciplinary action etc., it is clear that College Code provides the complete procedure of all kinds of provisions for smooth running of Autonomous Colleges. Every Autonomous College is an independent institution of its own. Every Autonomous College have its own Foundation Society, Governing Body and College Council, which are authorities who manages all the activities of College including recruitment and

appointment of teachers and other employees.

25. Even from perusal of advertisement itself, it is clear that advertisement has been published by Principal-cum-Chief Executive Officer of all Autonomous Colleges for appointment on the post of Lecturers in different Colleges. It is not the case that only posts have been advertised and after selection, posting is to be made by the authorities in different Colleges. Vacant post of each college and reservation of seats in each college was separately advertised.

26. Undisputedly, appellant who belongs to Unreserved category candidate has submitted her application form for appointment on the post of Lecturer of Rog Vigyan advertised for Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal, Madhya Pradesh and she was selected by Selection Committee of that College, thereafter, appointment order has been issued by Principal-cum-Chief Executive Officer of the Ayurvedic College, Bhopal itself and not by Government.

27. Perusal of order of appointment of appellant itself makes it clear that College where appellant was appointed initially is an independent institution as appointment order bears a Clause that seniority to be reckoned within the institution.

28. The next argument advanced by learned counsel for appellant is that appointment of appellant at Autonomous Ayurvedic College, Raipur was not a fresh appointment, but the

appellant has been appointed on transfer.

29. From the discussion of preceding paragraphs, it is amply clear that Autonomous College have its own management and independent authorities for different affairs of college including recruitment of Teachers and staff. It is clear that the Government has no role to play in the matters of appointment of teachers.

30. Perusal of letter dated 09.12.1999, which is relied by learned counsel for appellant and is basis for sending the appellant to College at Raipur, it nowhere mentions that appellant is being sent on transfer. In fact, it had been clearly mentioned that appellant should be appointed on equivalent post since the date of her joining. Further, it was also clarified that benefit of earlier services, which have been performed by the appellant at old institution i.e. Ayurvedic College, Bhopal, will not be counted. The contents of letter dated 09.12.1999 itself are clear that appellant has not been sent on transfer, but has been recommended/directed her to be appointed on equivalent post from the date of her joining. The aforesaid letter dated 09.12.1999 was never challenged by appellant in fact it was acted upon without any demur.

31. In view of above factual matrix and unambiguous contents of letter, this argument of learned counsel for appellant is not sustainable that appellant has been sent by way of transfer. Further, it has also been clarified from the note mentioned in

service book of appellant that appellant will not be entitled for the benefit of services rendered by her at Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal, Madhya Pradesh. This also shows the intention of authorities while issuing letter dated 09.12.1999 that services of appellant have not been transferred. In fact, it has been directed to provide her fresh appointment.

32. Along with an application for taking additional document on record, Intervener has filed letter dated 10.01.2000 issued by the office of Pandit Khushilal Sharma Ayurved Mahavidyalaya evam Sansthan, Swayatyashasi, Bhopal, Madhya Pradesh (initial place of appointment of appellant), wherein it has been specifically mentioned that appellant has not been transferred.

33. After recording the aforementioned findings, the next question arising for consideration before us is that what will be the date of appointment and joining on the post of Lecturer by appellant at Autonomous Ayurvedic College, Raipur for fixing her seniority.

34. Appellant had given her joining at Ayurvedic College, Raipur on 11.12.1999 vide Annexure P/8 and in her service book, it has been mentioned that she joined on the vacant post of Lecturer of Dosdhatumal. Appellant was initially appointed on the post of Rog Vigyan by College at Bhopal. The advertisement itself shows that Ayurvedic College, Raipur advertised one post of Lecturer of Dosdhatumal Vigyan showing

it to be reserved for woman candidate belonging to Scheduled Caste category meaning thereby that in the year 1998, only one post of Dosdhatumal Vigyan was vacant and that too for the Scheduled Caste category candidate (woman), whereas the appellant belongs to Unreserved category candidate (woman).

35. In the aforementioned facts, appellant could not have been given appointment on the post which was reserved for candidate belonging to Scheduled Caste category candidate. The reservation of posts in service is provided under Article 335 of Constitution of India, and therefore, under the law, it is not permissible to fill the post reserved for particular category by some other category candidates.

36. Accordingly, in the eyes of law, appointment of appellant on the post of Lecturer of Dosdhatumal is *per se* illegal, for which, the show cause notice for terminating her services was issued within few months of her joining on the said post.

37. Appellant continued on the post by virtue of an interim order passed by the High Court in the writ petition challenging notice of termination, but subsequently, said writ petition was withdrawn. During pendency of the writ, State Government notified new post setup for the Ayurvedic Colleges and some new posts were created and some post which were in earlier setup were abolished. Appellant has been provided appointment on the post of Rog Nidan and Vikriti Vigyan (newly created post) vide order dated 06.10.2003 with a condition that

order of appointment will come into force only after withdrawal of writ petition, she will be adjusted from the date of her joining. Appellant is well qualified person and after reading and understanding the contents of order dated 06.10.2003, had accepted the same, withdrawn writ petition unconditionally and also joined the post, on which, she was appointed as Lecturer of Rog Nidan and Vikriti Vigyan for Unreserved category candidate (woman). The order dated 06.10.2003 clearly mentions that adjustment has been made from the date of her joining. Appellant did not challenge order dated 06.10.2003, in fact, she had willfully and unconditionally complied all the conditions mentioned therein and joined on the post on 20.01.2004. The aforementioned action of appellant clearly demonstrates that respondents have not committed any illegality in fixing the seniority on the basis of date of her joining on the post of Lecturer of Rog Nidan and Vikriti Vigyan on 20.01.2004. After accepting and complying the conditions mentioned in letter dated 09.12.1999, order dated 06.10.2003, the appellant is estopped from claiming that her seniority be fixed as per order of appointment dated 19.03.1999 which was issued by a different College. Appellant is estopped for claiming seniority prior to entering into cadre of Lecturers at Autonomous Ayurvedic College at Raipur. Her legal appointment at the present institution was by virtue of order dated 06.10.2003 on which she joined only on 20.01.2004. There is no challenge to the order of adjustment dated 06.10.2003 by the appellant and

therefore, appellant cannot claim seniority contrary to the order dated 06.10.2003 till it exists. Appellant cannot claim any benefit under the law for her appointment and working on the post, in which, she could not have been appointed in any manner or appointment itself was illegal, because appellant belongs to Unreserved category candidate (woman), whereas she has been illegally given appointment by adjusting on the post which was reserved for Scheduled Caste category candidate (woman).

38. As the posts of Demonstrators were abolished in new post setup and they continued to work and draw salary they shall be deemed to have worked and drawn the salary of the post of Lecturers. The contents of the order of Government in very specific term mentions that respondents-Dr. Rakshpal Gupta and Dr. Sanjay Shukla will be kept below the Lecturers already working on 13.03.2003 i.e. when the new post setup was brought into force. Admittedly, the appellant accepted the new appointment/adjustment by order dated 06.10.2003 and joined the post on 20.01.2004 and her adjustment is mentioned from the date of her joining to the post.

39. The next question now arises for consideration is that whether appellant could have been placed above in seniority list from respondents No.5 to 8 in Writ Appeal No.387 of 2016 and respondents No.3 to 6 in Writ Appeal No.114 of 2017 who have been re-designated as Lecturers.

40. Central Council of Indian Medicine, New Delhi wrote a letter on 02.05.1991 that the council has decided to adopt recommendations made by University Grants Commission and to follow the same pattern of teaching post in all Indian Systems of Medicine (ISM) Colleges. In that letter, it has been specifically mentioned that post of Demonstrator has been abolished and same has been re-designated as Lecturer. In the said letter, it has been requested to take necessary steps to change the staffing pattern in Ayurvedic Colleges of the State to bring similarity of staffing pattern in all Colleges under Central Council of Indian Medicine.

41. After re-organization of State of Madhya Pradesh, in new State of Chhattisgarh, staffing pattern has been changed as per directions issued by Central Council of Indian Medicine and new post setup has been created, in which, post of Demonstrator was omitted. Subsequently, respondent No.2 realized that they have not issued consequential orders with respect to status of the Demonstrator after formation of new post setup, therefore, order dated 01.03.2007 has been issued specifically mentioning therein that post of Demonstrator is re-designated as Lecturer and the order will be enforced from the date when new post setup came in existence and published by State Government. It is not a case where some person has been given promotion with retrospective effect, but it is a case where persons who were already appointed on certain posts and re-designated by virtue of directions of Central Council of Indian Medicine by

creating new post setup, therefore, they will have to be re-designated on the date when new post setup was published and came into force i.e. 13.03.2003. More so, when post of Demonstrator was omitted only under the directions issued by Central Council of Medicine in the year 1991 to re-designate them as Lecturers, appellant herein has not challenged action of State Government in publishing/notifying new post setup for Ayurvedic Colleges, but she is only aggrieved with her seniority.

42. The law is well settled that in appropriate cases looking to the facts and circumstances of each case, authorities can direct for any order of having its retrospective effect. The Hon'ble Supreme Court in the matter of **Sunaina Sharma and others v. State of Jammu and Kashmir and others**¹ held as under :-

“18. In our view the rules in question clearly provide that not only vacancies should have been existing from an earlier date but the person to be granted retrospective promotion should have also been working against the post. To give an example in the context of the present Rules, a vacancy in the promotional cadre existed on 1-1-2010. However, a person from the feeder category is promoted on temporary/officiating/adhoc/ or on any other basis to work against the post on 1-1-2011. He is thereafter regularly appointed on 1-1-2012. Though the vacancy may have existed from 1-1-2010 the employee can get promotion only from 1-1-2011 when he actually started working

¹ (2018) 11 SCC 413

against the said post.

19. It is well settled that retrospective promotion to a particular group can violate Articles 14 and 16 of the Constitution of India. Even if the Rules enable the State to make retrospective promotion, such promotion cannot be granted at the cost of some other group. Therefore, the only reasonable interpretation can be that the promotees can get promotion from an anterior date only if they have worked against the said post even if it be on temporary or officiating, or ad-hoc basis etc.

21. Therefore, on a combined reading of Rule 9 of the Excise Rules and Rule 23 and 24 of the Civil Services Rules, we are clearly of the view that promotion can be granted on retrospective basis to promotee officers from a date on which the clear-cut vacancy in the promotional cadre has occurred subject however to the conditions that the promotee should have worked against that post prior to his regular appointment.”

43. In the instant cases, as soon as new post setup came into force, private respondents who were appointed on the post of Demonstrators in the year 1999 and working there continuously, should have been re-designated immediately thereafter as per directions of Central Council, New Delhi as soon as new post setup came in existence. It is in this background, order dated 01.03.2007 passed by respondent No.2, which could not be

said to be illegal in any manner or in violation of Articles 14 and 16 of the Constitution of India. Even no specific arguments were raised by learned counsel for appellant in this regard.

44. So far as challenge to order dated 07.07.2016 passed in Writ Petition (S) No.1331 of 2016 is concerned, we have already held in preceding paragraphs that appellant's seniority has been rightly fixed from the date of her joining on the post of Lecturer of Rog Nidan and Vikriti Vigyan, therefore, right of appellant is not affected in any manner. By the impugned order dated 07.07.2016, in which, there is only a direction to respondent authorities to convene DPC in accordance with the Rules of 2003 and more so consider the cases of all eligible employees.

45. In view of above discussions, we do not find any perversity or infirmity in the impugned orders dated 07.07.2016 and 17.02.2017 passed by learned Single Judge in Writ Petition (S) No.1331 of 2016 and Writ Petition (S) No.1310 of 2008 respectively. The appeals being devoid of any substance, are liable to be and are hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Parth Prateem Sahu)
Judge