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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5066 of 2018**

Dr. Dhanesh Kumar Sharma Aged About 62 Years (wrongly mentioned in impugned order as Dr. Dinesh Kumar Sharma) S/o Late Shri Sharda Prasad Sharma, Aged About 62 Years, Presently Working As Additional Professor and Head of The Department, Department Of Anatomy Aiiims, Raipur, District Raipur Chhattisgarh, R/o 15/8, Sharda Kunj, Choubey Colony, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Union of India Through Secretary Ministry of Health And Family Welfare, Nirman Bhawan, New Delhi, 110108.
2. All India Institute of Medical Sciences, Through its Director, Tatibandh, Raipur, District Raipur Chhattisgarh.
3. Dr. Tarkeshwar Devidas Golghate S/o Shri Devidas Golghate, D-3, Shree Ganga Apartment, Temple Bazar, Behind Apna Bhandar, Sitabuldi, Nagpur, Maharashtra.

--- Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Ms. Naushina Afrin Ali, Advocate
For Respondent No.1 & 2	: Mr. Ramakant Mishra, Assistant Solicitor General with Ms. Purnima Singh, Advocate
For Respondent No.3	: Mr. Harsh Wardhan, Advocate

and**WPS No. 7098 of 2018**

1. Union of India Ministry of Health and Family Welfare, Through its Secretary Nirman Bhawan, New Delhi.
2. All India Institute of Medical Sciences Through its Director, Tatibandh Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Dr. Tarkeshwar Devidas Golghate aged about 42 Years R/o D-3, Shree Ganga Apartment, Temple Bazar, Behind Apna Bhandar, Sitabuildi, Nagpur, Maharashtra.
2. Dr. Dhanesh Kumar Sharma (wrongly mentioned in impugned order as Dr. Dinesh Kumar Sharma), Additional Professor, Department of Anatomy, All India Institute of Medical Sciences, Raipur, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Ramakant Mishra, Assistant Solicitor General with Ms. Purnima Singh, Advocate
For Respondent No.1	: Mr. Harsh Wardhan, Advocate
For Respondent No.2	: Ms. Naushina Afrin Ali, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N. K. Chandravanshi, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

02.12.2021

The hearing of the cases had begun on 01.12.2021 and it having not been completed, we have concluded the hearing today. We have heard Ms. Naushina Afrin Ali, learned counsel for the petitioner in WPS No.5066/2018 and for respondent No.2 in WPS No.7098/2018; Mr. Ramakant Mishra, learned Assistant Solicitor General, along with Ms. Purnima Singh, learned Central Government counsel, for the petitioners in WPS No.7098/2018 and for respondent Nos.1 and 2 in WPS No.5066/2018 and Mr. Harsh Wardhan, learned counsel for respondent No.3 in both the petitions.

2. In both WPS Nos. 5066/2018 and 7098/2018 challenge is mounted to an order dated 11.05.2018 passed by the learned Central Administrative Tribunal, Principal Bench New Delhi (for short, 'the Tribunal') in OA No.1252/2017, registered on the basis of an application filed by one Dr. Tarkeshwar Devidas

Golghate, respondent No.3 in both the petitions, wherein the learned Tribunal had passed the following directions :

“14. In the light of our above discussions, we quash the impugned order dated 12.3.2014 (Annexure A/1) and direct the respondent nos. 1 and 2 to appoint the applicant to the post of Additional Professor (Anatomy) at AIIMS, Raipur, with effect from the date of joining of the private respondent no.3 as Additional Professor (Anatomy) at AIIMS, Raipur, and grant him all consequential service benefits, except back wages. The respondent nos. 1 and 2 are also directed to consider the entire matter and take appropriate decision to accommodate the private respondent no.3 in service as Additional Professor (Anatomy) against a vacancy now available at any of the AIIMS, or by creating a supernumerary post of Additional Professor (Anatomy), or by upgrading a post of Associate Professor (Anatomy) to that of Additional Professor (Anatomy) at any of the AIIMS functioning under the respondent no.1, with all consequential service benefits from the date of his joining as Additional Professor (Anatomy) at AIIMS, Raipur. The respondent nos. 1 and 2 shall comply with the directions contained in this order within a period of three months from today.”

3. In the application before the Tribunal, the petitioner in WPS No.5066/2018 was arrayed as respondent No.3 and Ministry of Health and Family Welfare, through its Secretary and All India Institute of Medical Sciences, through its Director, Chhattisgarh were arrayed as respondents No.1 and 2, respectively.

4. For the sake of convenience, the parties shall be referred to as they are arrayed in WPS No.5066/2018.
5. In WPS No.5066/2018, an interim order was passed on 08.08.2018, staying the order dated 11.05.2018 passed in O.A. No.1252/2014.
6. Pursuant to an advertisement dated 28.12.2011 for filling up of various vacancies in the posts of Professor, Additional Professor, Associate Professor and Assistant Professor in six proposed All India Institute of Medical Sciences (for short, 'AIIMS') to be established at Rishikesh, Bhopal, Jodhpur, Patna, Raipur and Bhubaneswar under *Pradhan Mantri Swasthya Suraksha Yojana*, the petitioner applied in the subject of Anatomy for the post of Additional Professor in AIIMS, Raipur. The respondent No.3 also applied in the subject of Anatomy for the post of Additional Professor as well as Associate Professor.
7. Examinations had taken place separately for all the aforesaid posts. The select list was published on 13.07.2012.
8. So far as post of Additional Professor is concerned, one Dr. Hitendra Kumar Loh had secured highest marks of 68. While the petitioner in WPS No.5066/2018 had secured 50 marks, the respondent No.3 had secured 55 marks for the post of Additional Professor. Respondent No.3 had secured highest marks in the subject of Anatomy for the post of Associate Professor. Accordingly, Dr. Hitendra Kumar Loh was given appointment to the post of Additional Professor and the respondent No.3 to the post of Associate Professor by order dated 13.07.2012. However, it transpires that none of them joined their respective posts.
9. It is in that circumstance, a waiting list was published on 07.03.2013 in which the name of petitioner in WPS No.5066/2018 appeared at Sl.No.1.

10. After publication of the waiting list, on 20.03.2013, the respondent No.3 had filed a representation praying for appointment to the post of Additional Professor on the ground that he was more meritorious than the petitioner. However, without considering such representation, the petitioner in WPS No.5066/2018 was appointed on 03.04.2013 to the post of Additional Professor.

11. In the background of the aforesaid facts, an application was filed on 13.07.2012 before the Tribunal by the respondent No.3, registered as O.A. No.1252/2014, reference to which had already been made.

12. Because of the interim order passed by this Court, the petitioner in WPS No.5066/2018 continued to discharge his duties as Additional Professor and subsequently, he was also promoted to the post of Professor and Head of the department and he eventually retired from service on 30.06.2021.

13. The respondent No.3 is presently working as Assistant Professor in Nagpur Medical College, Maharashtra.

14. Learned counsel for the respondent No.3 submits that since the petitioner in WPS No.5066/2018 has already retired and post of Additional Professor is lying vacant, the respondent No.3 ought to be appointed in the said post maintaining his seniority with effect from the date when the petitioner had joined, i.e., 03.04.2013. He, however, submits that seniority may be fixed without any back-wages.

15. Mr. Ramakant Mishra, learned Assistant Solicitor General, submits that there is no objection for appointment of the respondent No.3 as Additional Professor in AIIMS, Raipur. However, he opposes the prayer for grant of seniority to the respondent No.3 from the date when the petitioner was appointed.

16. Having regard to the factual matrix as noted above and the submission of the learned counsel for the parties, the only issue that requires consideration as to whether seniority without any back-wages is to be accorded to the respondent No.3 with effect from 03.04.2013.

17. It appears that there is no dispute that in the examination held for appointment to the post of Additional Professor in the subject of Anatomy, the respondent No.3 had secured more marks than the petitioner. While the petitioner had applied only for the post of Additional Professor, the respondent No.3 had applied both for the post of Additional Professor as well as Associate Professor. Respondent No.3 having secured first position in the merit list in respect of post of Associate Professor, he was appointed to the post of Associate Professor. The petitioner, at the time of original appointment of respondent No.3 as well as Dr. Hitendra Kumar Loh, was not in the picture for appointment because of lower merit position. It was much later that the waiting list came to be prepared on 07.03.2013, after Dr. Hitendra Kumar Loh did not join. It is not understood why the waiting list had to be prepared at that point of time or, if at all the same was to be prepared, why the name of the respondent No.3 did not figure in such waiting list, when admittedly, he had secured more marks than the petitioner in WPS No.5066/2018. It is a different matter that he had not chosen to join in the post of Associate Professor, for which appointment was offered to him.

18. We are of the opinion that exclusion of the name of the respondent No.3 from the waiting list cannot be justified. If his name was included, obviously he would have been the person who would have been offered the appointment to the post of Additional Professor consequent upon Dr. Hitendra Kumar Loh not joining such post, and not the petitioner.

19. Taking note of the aforesaid factual events, the Tribunal had passed

directions for appointing the petitioner as Additional Professor (Anatomy) at AIIMS, Raipur with effect from the date of joining of the petitioner with all consequential service benefits, except back-wages, while directing appointment of the respondent No.3 as Additional Professor (Anatomy) against a vacancy available at any of the AIIMS or by creating a supernumerary post or by up-gradation of a post of Additional Professor in any of the AIIMS.

20. Since the petitioner has already retired from service and since the respondent No.3 is not claiming any back-wages, we are of the opinion that there is no impediment for grant of seniority with all service benefits except back-wages to the respondent No.3 in the post of Additional Professor on and from 03.04.2013. Ordered accordingly.

21. Since the petitioner in WPS No.5066/2018 has retired, the respondents will take steps for grant of release of retiral benefits expeditiously.

22. With the above directions and observations, the two writ petitions stand disposed of.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge