

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19082 of 2018

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Dr. Prakash Chandra S/o Late Dahu Choudhary, Resident of Shivpuri, P.S.-
Gardamonagh, P.O.-Anisabad District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Additional secretary department of Health, Govt. of Bihar.
3. The Deputy Secretary Department of Health, Govt. of Bihar.
4. Joint Secretary Department of Health, Govt. of Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhay Kumar Chandra, Adv.
For the Respondent/s	:	Mr.Mujtabul Haque, GP XII with Mr. Pranoy Kumar, AC to GP XII

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 17-10-2022 Heard the parties.

2. The petitioner has prayed that he should be treated as promoted on the post of Professor, Preventive and Social Medicine, with effect from the date of his appointment as Professor, i.e., on 03.12.2003 instead of 22.05.2008, that is the date from which the petitioner has been treated as regularly appointed Professor.

3. Learned counsel has placed before the Court judgments passed by the coordinate Bench in relation to other Doctors who were promoted along with the petitioner and the question raised in the present petition under mere res integra in view of the Division Bench judgment passed in L.P.A. No. 1451

of 2013 (State of Bihar & Ors. Vrs. Dr. (Mrs.) Geeta Singh decided on 03.04.2017. The respondent Dr. (Mrs.) Geeta Singh as well as the petitioner were granted promotion with effect from 22.05.2008 while they were earlier promoted vide order dated 03.12.2003 on the post of Professor on working arrangement basis in their own pay scale. The Division Bench after examining the three writ petitions came to be decided by the Court relating to Dr. (Mrs.) Geeta Singh Vrs. State of Bihar & Ors. (C.W.J.C. No. 13132 of 2012), Dr. Sachchidanand Sharma Vrs. State of Bihar & Ors. (C.W.J.C. No. 12453 of 2010) and Dr. Gajendra Kishore Thakur Vrs. State of Bihar & Ors. decided on 05.09.2012 in C.W.J.C. No. 14372 of 2012 respectively wherein the coordinate Bench held as under :

(in C.W.J.C. No. 13132 of 2012)

“The Court therefore holds that if there was a vacancy available on 25.4.1998 when the petitioner was promoted as a working arrangement, she fulfilled the conditions of eligibility, the lapse lay with the respondents in not publishing the advertisement, denying timely consideration, they cannot take advantage of their own lapses. The petitioner shall be deemed to have been appointed substantively as a Professor on 25.4.1998. She is therefore held entitled to the dues of salary from that date on account of the higher duties and

responsibilities performed by her. The petitioner has continuously pursued her grievances by more than one writ application. In C.W.J.C. No.14374/12 considering a similar claim for promotion to the post of Professor, (Radiology) granted as a working arrangement without any justification despite fulfilling conditions of eligibility and availability of vacancy the petitioner was likewise held entitled to the full benefits of the post from the date of officiation.

Let the arrears be paid to the petitioner within a maximum period of three weeks from the date of receipt/production of a copy of this order. The impugned order dated 9.12.2011 is set aside.

The writ petition is allowed.”

(in C.W.J.C. No. 14372 of 2012)

“Any delay in preparation of the gradation list or any other grounds attributable to the respondents for which the claimants for promotion may not be responsible and/or answerable in any manner cannot work to his prejudice. If third party reasons were there also it does not affect his claim for consideration. The order dated 23.5.2008 appears to be taking advantage of the lapses of the respondents themselves in not having promoted the petitioner substantively on 9.12.2003 notwithstanding the fact that vacancy was available and he fulfilled the

eligibility. It is not the case of the respondents in the order dated 23.5.2008 that there as any deficiency or lacuna of any nature because of which despite vacancy being available the petitioner had not been found eligible for substantive promotion on 9.12.2003.

Every administrative action has to be guided by fairness and reasonableness. Administrative power is not absolute but is regulated by the law. The petitioner has also filed a representation on 12.7.2010. He invited the attention of the respondents to Annexure 7 series also. The subsequent promulgation of Bihar State Litigation Policy in 2011 appears to be of no concern for the respondents. They do not consider it necessary to deal his representation but rather prefer to generate litigation by inaction.

The Principal Secretary, Department of Health, Government of Bihar, is directed to consider the representation of the petitioner in light of the discussions contained in the present order and pass a reasoned and speaking order within a maximum period of six weeks from the date of receipt and/or presentation of a copy of this order before him. If others mentioned in Annexure 7 series have been granted retrospective regularisation along with all monetary benefits, the petitioner is held entitled to the same also.

The writ application stands disposed.”

4. The Division Bench in LPA No. 1451 of 2013 examined the judgment passed in the case of Dr. (Mrs.) Geeta Singh held as under :

“Respondent was granted regular promotion as a Professor in the department of Preventive and Social Medicine with effect from 22.05.2008. She claimed the benefit retrospectively with effect from 25.04.1998, on which date, she was appointed to the post. However treating her to be on officiating charge, initially, when the benefit was not granted she approached this court by filing a writ petition. The writ petition was disposed of directing her to represent and a decision was to be taken by the department. When the representation was rejected on 22.05.2008, the writ petition in question was filed. The petitioner claims retrospective promotion on the post of Professor on account of the fact that her appointment even though shown as officiating was after following the rules for recruitment namely the Bihar Medical Education Service Cadre Rule, 1997 and merely because an advertisement for appointment to the post was not issued, which was a fault on the part of the government, it was pointed out that the petitioner, who was otherwise appointed after following the due process of law can not be denied the benefit of appointment from the initial date, when she was selected and posted however showing on officiating basis. The respondent only

contented in the writ petition that as an advertisement was not issued the petitioner cannot take the benefit of her officiating appointment. However, the learned writ court has taken note of various aspects of the matter, considering the amendment made to the rule and finding the petitioner to have been appointed after following due process and her to be fulfilling all the eligibility criteria as contemplated under recruitment rule granted her benefit of appointment from the original date. In doing so, we find that no error has been committed by the learned writ court, in as much as the rule, which permit him to the post in question. The petitioner was appointed after following due process of law. That apart from the supplementary counter affidavit that has come on record, we find that several persons have been appointed on officiating adhoc basis, as is evident from Annexure-A series filed by the petitioner along with supplementary affidavit and in all these cases, the employee appointed in various faculty in the Medical Education Department have been granted the benefit of appointment from the initial date of appointment, even though they are termed as officiating on adhoc. That being the factual position, there is no reason as to why similar benefit should not be conferred to the petitioner, after the writ court has also decided the case in her favour.

Accordingly, we find no error in the order passed by the learned writ court warranting re-

consideration.”

5. Per contra learned counsel appearing for the State has filed a counter affidavit and has attempted to submit that promotions which were directed to be given by the Division Bench in judgment passed on 3rd April, 2017, was challenged before the Supreme Court in SLP pending. He has placed on record an order passed in M.J.C. No. 2847 of 2018 dated 01.04.2019 wherein the Court refused to initiate contempt proceedings. Learned counsel has also placed before this Court an order passed in M.J.C. (supra) dated 25.11.2019 wherein the said proceedings have been adjourned in view of an order passed in SLP. However, this Court finds that the order placed on record is relating to a separate set of proceedings which are in no manner allowed connected with that of the present case. In fact, from the perusal of the order passed in M.J.C. No. 1427 of 2019. It is apparent that the said case is in regard to the question relating to providing reservation quota in promotions as it refers to in M. Nagraj case.

6. Be that at it may, as pointed out and noticed by this Court here-in-above so far as the present case is concerned the same is governed by the judgment passed in the State of Bihar & Ors. Vrs. Dr. (Mrs.) Geeta Singh (supra) which is not

under challenge before the Supreme Court nor it is the case of the respondents that there is an interim order passed in the said case. Admittedly there was a substantive vacancy available in 2003 when the petitioner was promoted as has been noticed in the similar case of Dr. (Mrs.) Geeta Singh, Dr. Gajendra Kishore Thakur and Dr. Sachchidanand Sharma (supra).

7. Keeping in view thereto, the petitioner is also entitled for the same relief as granted to Dr. Gajendra Kishore Thakur as well as Dr. Sachchidanand Sharma (supra) and accordingly the petitioner would be entitled to benefit of regularization on the post of Professor from the date of his joining in terms of order, dated 03.12.2003, with benefit of arrears of salary from the said date as granted to the aforesaid all Doctors.

8. The writ petition is accordingly allowed. No costs.

(Sanjeev Prakash Sharma, J)

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