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10-06-2022
AKG
Ct. 40

WPA 8833 of 2019
Dr. Subikas Biswas
Versus
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay,
Mr. Sayan Chattopadhyay,
Ms. Snigdha Saha,
Mr. Santanu Maji,
Ms. Trisha Rakshit

...For the Petitioners

Mr. Swapan Kr. Dutta,
Mr. Tapas Kr. Dey

...For the State

Mr. Pankaj Agarwal

...For the W.B.U.H.S.

The petitioner at the relevant point of time had been discharging his duty as a Professor of the Department of Surgery, College of Medicine & Jawaharlal Nehru Memorial Hospital, Kalyani, Nadia.

By an order dated November 11, 2016, issued by the Registrar of the West Bengal University of Health Sciences, the petitioner was entrusted with the additional charge of Medical Superintendent cum Vice-Principal of the said medical institute. Subsequently, the Finance Committee of the said medical institute in its meeting dated April 6, 2017, resolved as follows :-

“ B) Appointment of Medical Superintendent :

Vice Chancellor informed the House that a permanent Medical Superintendent, to look after both the COM & JNMH & GMH, should be appointed at the earliest.

House discussed over the issue and resolved that process of appointment of Medical Superintendent should be initiated immediately .

At present, Dr. Subikash Biswas has been officiating as Medical Superintendent of both the COM & JNMH & GMH.

He is entitled to get next higher scale as per statute since his joining as Medical Superintendent.”

It appears that thereafter the Vice-Chancellor of the West Bengal University of Health Sciences on June 16, 2017, granted a higher scale of pay in favour of the petitioner **[Pay Band-5: Pay Band Scale – Rs.37400–67000, with higher initial pay in the pay band at Rs.39990/- plus Grade Pay: Rs.9500/-]** since his joining as a Superintendent of the said medical institute. An undertaking, however, was directed to be obtained from the petitioner to the effect that if his appointment was not ratified in the next Executive Council Meeting, he would refund the excess amount.

It is an admitted position that the appointment of the petitioner for officiating as the Medical Superintendent was not ratified by the Executive Council. The petitioner also did not furnish any undertaking before the authorities in terms of the aforesaid order dated June 16, 2017. The petitioner was relieved of his additional responsibility as Medical Superintendent with effect from June 27, 2018.

By a letter dated April 1, 2019, the Registrar of the West Bengal University of Health Sciences sought to recover the alleged overdrawn amount received by the petitioner as a Medical Superintendent of the said

institute. The said order dated April 1, 2019, is quoted below.

Memo No. : OG/WBUHS/2019-2020/0013

Date : 01-04-2019

**To
The Principal
College of Medicine & JNM Hospital
Kalyani, Nadia
West Bengal – 741235**

**Sub:- Overdrawn amount by Dr. Subikash Biswas
Professor (Dept. Surgery)**

Sir,

I am directed to inform you that the refund of overdrawn amount by Dr. Subikash Biswas Professor, Department of Surgery, College of Medicine & JNM Hospital Kalyani, Nadia is to be recovered by deduction from his salary in equal installments (Maximum 20 installments) for the evaluated amount of Rs. 782302/- (Seven lakh eighty two thousand three hundred two only).

This letter is issued as per the direction of competent Authorities of the University.

Thanking You,

**Sd/-
Registrar
The West Bengal University of Health Sciences**

The petitioner by filing this writ petition has impugned the order dated April 1, 2019.

Mr. Uday Sankar Chattopadhyay, learned advocate, appearing for the petitioner submits that the petitioner has discharged the additional higher responsibility as a Medical Superintendent. By virtue of Clause 68 of the West Bengal University of Health Sciences First Statutes-2003, the petitioner is entitled to get higher scale of pay.

Mr. Dutta, learned advocate, appearing for the State on the other hand submits that the petitioner is not entitled to get a higher scale of pay for officiating the post in question since the petitioner was directed to furnish an undertaking for the refund.

It has, further, been submitted by Mr. Dutta that since the appointment to the post of Medical Superintendent of the institute was not regularised by the

Executive Council, the petitioner could not claim benefits of the higher scale of pay.

An adjournment was sought on behalf of respondent nos. 2 and 3 on the ground of illness of the learned advocate. Since the affidavit of the University is on record, I decide to dispose of this writ petition without granting adjournment in this case.

The petitioner was a Professor of the surgery department and he officiated the post of Medical Superintendent of the said institute.

No doubt that the petitioner was entrusted with a post of greater importance and higher responsibility by the University authority.

In my view, Mr. Chatterjee has rightly placed reliance on Clause-68 of the West Bengal University of Health Sciences First Statutes-2003 which reads:

“An employee, if appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the officiating appointment involves assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post, on which he holds lien. In such a case, he shall draw pay at the next stage higher than his present substantive pay.

Provided that if he has previously held substantively or officiated in the same post or a post in the same or identical time-scale, then his initial pay in the officiating scale shall not be less than the pay, other than special pay or personal pay, which he drew on last such occasion.”

The petitioner cannot be held responsible for the fact that the Executive Council did not ratify his appointment as Medical Superintendent. The fact remains that the petitioner was allowed to officiate as Medical Superintendent without any ratification by the Executive Council. He was also allowed to enjoy the higher scale of pay till the last date of his additional duty without furnishing the undertaking.

The claim of the petitioner, therefore, cannot be rejected on the ground that appointment of the petitioner as Medical Superintendent was never ratified by the Executive Council. In my view, after exploiting the service of the petitioner as Medical Superintendent for more than one and half years the respondents cannot deny the right to a higher scale of pay in violation of Clause 68 of the West Bengal University of Health Sciences First Statutes, 2003.

In that view of the matter, I am of the opinion that the order dated April 1, 2019, cannot be sustained, and the same is accordingly set aside.

WPA 8833 of 2019 is accordingly allowed without any order as to costs.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

