

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18695 of 2019 and
WPC(OA) Nos.2044 & 2167 of 2017

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

W.P.(C) No.18695 of 2019

Dr. Bijay Kumar Behera **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s.S.K.Das, P.K.Behera &
N.Jena.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra.

WPC(OA) No.2044 of 2017

Dr. Bijaya Kumar Behera **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s.S.K.Das, P.K.Behera &
N.Jena.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra.

-AND-

WPC(OA) No.2167 of 2017

Dr. Bijay Kumar Behera **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s.S.K.Das, P.K.Behera &
N.Jena.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:20.07.2022 and Date of Order:06.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Since common question is involved in all the aforesaid Writ Petitions, all are heard analogously and disposed of by this common order.
3. Heard Mr. S.K.Das, learned counsel for the Petitioners in all the three cases and Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties as well as learned counsel for the private Opposite Parties in all the three cases.

3. Mr. Das, learned counsel for the Petitioners submitted that the Petitioner was initially appointed as an Asst. Surgeon in Class-II of Odisha Medical and Health Services Cadre (OMHS) vide order dated 04.02.1991 and the Petitioners joined in the said capacity on 25.02.1991.

4. It is submitted that while continuing as such, the Petitioner was appointed as a Junior Teacher (Lecturer) on ad hoc basis vide order dated 07.12.1995.

5. It is further submitted that pursuant to the advertisement issued by the Odisha Public Service Commission, the Petitioner was duly selected and recommended for his appointment as a Junior Teacher (Lecturer) in Medicine in Class-II of Odisha Medical Education Service Cadre (OMES) vide order dated 22.01.1997.

6. It is further submitted that the private Opposite Party Nos.2 to 7 in WPC (OA) No.2044 of 2017 were also appointed as Junior Teacher (Lecturer) in Medicine, pursuant to such recommendation of the Odisha Public Service Commission dated 22.01.1997.

7. Mr. Das, learned counsel for the Petitioners submitted that subsequently vide notification dated 17.03.1997, the Petitioner was appointed as a Lecturer in Medicine and in the said notification along with the Petitioners, the Opposite Party Nos.2 to 4 in WPC (OA) No.2044 of 2017 were appointed as such.

8. It is submitted that subsequently Opposite Party Nos.5 and 6 were appointed as Lecturer in Medicine in the

OMES Cadre on 12.09.1997 and Opposite Party No.7 was appointed as such on 26.09.1997.

9. Mr. Das, further submitted that the Petitioner was subsequently promoted and appointed as Assistant Professor in Medicine and posted to M.K.C.G., Medical College and Hospital, Berhampur vide order dated 26.11.2001.

10. It is submitted that the Opposite Party No.2 in WPC (OA) No.2044 of 2017 was promoted as an Assistant Professor on 28.03.2003 and the Opposite Party Nos.3 to 6 got such promotion to the post of Assistant Professor vide order dated 20.01.2004. Similarly, the Opposite Party No.7 was given such promotion vide order dated 21.01.2004.

11. Mr. Das further submitted that in the final gradation list/disposition list of OMES Cadre, 2005 published on 22.01.2005, the Petitioner was placed at Sl.No.21 and Opposite Party Nos.2 to 6 were placed at Sl. No.23,25, 26, 27 and 28 respectively. The Opposite Party Nos. 7 and 8 were placed at Sl. No.1 & 2 of the gradation list of the Lecturers as they were not promoted to the post of Asst. Professor by 22.01.2005.

12. Mr. Das also submitted that the gradation list published on 22.01.2005 was never challenged by any of the private opposite parties and accordingly it attained finality in the eye of law.

13. It is further submitted that Opposite Party No.8 was promoted to the post of Asst. Professor vide order dated 05.05.2006 only.

14. Mr. Das, also submitted that while continuing as an Asst. Professor, the Petitioner was promoted to the post of Associate Professor vide order dated 24.07.2008 and the Opposite Party Nos.4 & 5 were promoted to the said rank vide order dated 29.02.2012.

15. It is submitted that though the Petitioner was promoted to the rank of Associate Professor earlier than the Opposite Party Nos.2 to 5, but in the gradation list / disposition list of OMES Cadre published on 10.09.2012, the Petitioner when was placed below in the said Opposite Party Nos.2 to 5, Petitioner challenging such placement approached the learned Tribunal in O.A. No.3316(C) of 2012. The Petitioner also challenging his placement in the said gradation list of Associate Professor moved a representation before the Government-Opposite Party No.1 on 14.09.2012.

16. Mr. Das, also submitted that vide order dated 30.11.2012, the Opposite Party No.6 was promoted to the rank of Associate Professor.

17. It is submitted that subsequently and during pendency of O.A. No.3316(C) of 2012 while in the draft gradation list of OMES Cadre of Associate Professor published on 11.03.2014, when the petitioner was placed below Opposite Party Nos.2 to 6, Petitioner again filed his objection to the said gradation list on 25.03.2014 and also intimated therein about the pendency of O.A. No.3316(C) of 2012, which is filed against the final gradation list of Associate Professor published on 10.09.2012.

18. It is submitted that the O.A. No.3316(C) of 2012 was finally disposed of by the learned Tribunal on 10.03.2017 with a direction on the Opposite Party No.1 to decide the grievance of the Petitioners by treating the paper book as his representation.

19. It is submitted that WPC (OA) No.2044 of 2017 was subsequently filed with the following prayer:-

“ 1. Direct the Govt./ Respondent No.1 to modify the disposition list 2012 & 2014 under Annexure-8 & 9 by placing the applicant above the private respondents 2 to 7 in the rank of Asst. Professor & Associate Professor in Medicine and direct the Govt./Respondent No.1 to consider the case of the applicant for promotion to the post of Professor in Medicine ahead of the private respondents 2 to 7 with all service and financial benefits.

1(a). Quash the order of promotion under Anx.17 of Respondents No.4, 7 & 8 and direct the Govt. / Respondent to consider the case of the applicant for promotion to the post of Professor in Medicine from the date the private respondents 4, 7 and 8 were promoted with all service and financial benefits.

2. Pass any other order / orders as deemed fit and proper in favour of the applicant”.

Similarly WPC(OA) No.2167 of 2017 was filed with the following prayer:-

“Under the above circumstances, it is therefore humbly prayed that this Hon’ble Tribunal be graciously pleased call for the proceeding of the DPC and quash the proceeding of the DPC with regard to promotion to the post of Professor in Medicine and also quash the consequential promotion, if any given in the meantime.

And further the Hon’ble Tribunal be pleased to direct the respondent No.1 to promote the applicant to the post of Professor in Medicine and grant him all consequential service and financial benefit.

And / or pass any other order / orders direction / directions in the fitness of the case”.

20. Mr. Das, learned counsel for the Petitioner submitted that during pendency of WPC (OA) No.2044 of 2017 and WPC(OA) No.2167 of 2017, when Opposite Party No. 7 was promoted to the rank of Professor vide order dated 13.02.2019, W.P.(C) No.18695 of 2019 was filed challenging such order of promotion.

21. It is submitted that though this Court while issuing notice of the matter vide order dated 04.10.2019 passed an interim order by staying the operation of the order dated 13.02.2019 but vide order dated 17.02.2020 and 13.07.2021, Opposite Party Nos.2 and 3 in W.P.(C) (OA) No.2044 of 2017 were promoted to the rank of Professor in Medicine. Not only that vide order dated 05.11.2021, Opposite Party No.6 in W.P.(C) (OA) No.2044 of 2017 was also given such promotion to the rank of Professor in Medicine.

22. Mr. Das, learned counsel for the Petitioner submitted that since the Petitioner was all along promoted to the rank of Asst. Professor and Associate Professor in OMES Cadre ahead of the private opposite parties, the Petitioner should not have been placed below the private opposite parties in the gradation list/disposition list published on 10.09.2012 and draft gradation list published on 11.03.2014.

23. It is also submitted that the direction of the learned Tribunal dated 10.03.2017 passed in O.A. No.3316(C) of 2012 was never complied with by considering the grievance of the Petitioner either way and he was continuously

harassed by extending further promotion to private Opposite Parties.

24. It is also submitted that in the proceeding of the D.P.C held on 23.11.2017 for promotion of Associate Professor to the rank of Professor, though the Petitioner was within the zone of consideration but his case was not recommended on the ground of having in sufficient research publications. But it is submitted that prior to holding of such DPC on 23.11.2017, the Petitioner pursuant to the notification issued by the Government- Opposite Party No.1 on 17.10.2017 submitted all his publication with the evaluation sheet before the Dean and Principal of M.K.C.G., Medical College & Hospital, Berhampur on 18.10.2017. The Petitioner also moved the Opposite Party No.1 on 21.10.2017 with a prayer to restore his seniority prior to giving promotion to the rank of Professor in Medicine.

25. It is also submitted that as provided under Rule 9(2) (ii) of OMES Rules, 2013, the Petitioners had the eligibility for his promotion to the rank of Professor in Medicine. It is submitted that in order to be eligible for promotion to the post of Professor an Associate Professor as provided under Rule-9(2)(ii) of the OMES, Rules 2013 must have minimum four number of research publications Indexed in Index Medicus or National Journals, published during the tenure of Associate Professor.

26. Mr. Das, submitted that the Petitioner had the required 4 no's of publications as required under Rule-9(2)(ii) of the Rules and the said publications were duly

forwarded by the Dean and Principal, M.K.C.G., Medical College & Hospital, Berhampur after receipt of the same on 18.10.2017. Accordingly, it is submitted that since the Petitioner fulfills the criteria for his promotion to the rank of Professor as provided under Rule-9(2)(ii) of OMES Rules, 2013, the non-recommendation by the DPC in its proceeding dated 23.11.2017 by holding that the Petitioner does not have the required number of publications is illegal and liable for interference by this Court.

27. Mr. Das, learned counsel for the Petitioner submitted that since the Petitioner had required numbers of publications by the time the DPC was held on 23.11.2017, the Petitioner is eligible and entitled to get the benefit of promotion from the date the private opposite parties were so promoted vide order dated 13.02.2019 with all consequential service and financial benefits.

28. Mr. Mishra, learned Addl. Government Advocate for the State on the other hand made his submission basing on the counter filed by the Opposite Party No.1. It is submitted that since the D.P.C in its proceeding dated 23.11.2017 under Annexure-A/1 to the counter filed in W.P.(C) No.18695 of 2019 did not find the Petitioner having the required research publication, his case was rightly not recommended by the said D.P.C.

29. Mr. Mishra, learned counsel for the State-Opposite Party No.1 also brought to the notice of this Court the proceeding of the D.P.C wherein the case of the Petitioner was not recommended due to want of required research publications.

30. Accordingly, Mr. Mishra, learned counsel for the State-Opposite Party No.1 submitted that since the D.P.C did not recommend his case, no illegality has been committed in issuing the order of promotion in favour of the private opposite party Nos.4 to 7 in W.P.(C) NO.18695 of 2019 to the rank of Professor vide impugned order dated 13.02.2019.

31. Mr. P.K.Rout, learned counsel for the Opposite Party Nos.4 in W.P.(C) No.18695 of 2019 also made his submission basing on the stand taken in his counter affidavit. Though the Opposite Party No.4 in the counter affidavit has justified his promotion vide the impugned order dated 13.02.2019, but Mr. Das learned counsel for the Petitioner submitted that in the meantime the said Opposite Party No.4 has been discharged from service.

32. Mr. Pravakar Behera, learned counsel for the private Opposite Party No.6 also made his submission by supporting the impugned order dated 13.02.2019 though no counter affidavit has been filed by the said opposite party.

33. Heard learned counsel for the Parties at length.

34. Perused the materials available on record. This Court after going through the same finds that the promotion to the rank of Professor from the rank of Asst. Professor is governed under Rule-9 of the OMES Rules, 2013. Rule-9(2)(ii) of the said Rules provides as under:-

“(ii) Minimum of four number of research publications indexed in Index Medicus or National

Journals must be published during the tenure of Associate Professor”.

This Court further finds that Medical Council of India has issued a clarification under Annexure-8 by amending the regulation. In the said clarification and for promotion to the post of Professor and Addl. Professor the requirement as provided is as follows:-

“ Teaching & Research Exp.

Associate Professor in the subject for 3 years in a permitted / approved / recognized medical college/institution with 4 Research Publications in Indexed Journal on Cumulative basis with minimum of 2 Research Publication during the tenure of Associate Professor as 1st Author or as corresponding author”.

35. This Court further finds that pursuant to the direction issued by the State Government on 17.10.2017, the Petitioner submitted his research publications with the evaluation sheet through the Dean and Principal of M.K.C.G., Medical College & Hospital, Berhampur on 18.10.2017 under Annexure-5. The Petitioner as reflected in Annexure-5 had got four numbers of publications published in national / international journal with three of them as first author and one of them as the third author. Therefore, in view of the stipulation contained under Rule-9(2)(ii) of the OMES, Rules, 2013 read with the amended regulation issued by the Medical Council of India under Annexure-8, this Court finds the Petitioner does have the required eligibility for his promotion to the rank of Professor. But the D.P.C without proper appreciation simply did not recommend the case of the Petitioner by

stating that the Petitioner does not have required no's of research publications.

36. Since a bare perusal of Annexure-5 clearly shows that the Petitioner was having four no's of publication in national / international journal and the same is inconformity with Rule-9(2)(ii) of OMES, Rules, 2013 and the amended regulation issued by the MCI under Annexure-8, this Court is of the opinion that the Petitioners case should have been recommended along with the private Opposite Party Nos.4 to 6 by the D.P.C in its proceeding dtd.23.11.2017. While holding so, this Court since finds that the Petitioner had all the eligibility for his promotion to the rank of Professor, this Court without disturbing the order of promotion issued in favour of the Opposite Party Nos.4 to 7 in W.P.(C) No.18695 of 2019 direct the Opposite Party Nos.1 and 2 to give promotion to the petitioner to the rank of Professor from the date, the Opposite Party Nos.4 to 6 were so promoted vide order dated 13.02.2019 under Annexure-11 by convening a review D.P.C.

37. Since it is submitted that the Petitioner has been promoted to the rank of Professor vide order dated 25.11.2021 during pendency of the matter before this Court, the Petitioner is entitled to get all service and financial benefit for the period from 13.2.2019 to 24.11.2021. This Court directs the Opposite Party Nos.1 and 2 to complete the entire exercise within a period of three months from the date of receipt of this order.

38. With the aforesaid observations and directions, these Writ Petitions are disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 6th of September, 2022/Subrat

