

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.233 of 2018

In
Civil Writ Jurisdiction Case No.23649 of 2012

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Rajesh Kumar Jha, son of Late Upendra Kumar Jha, Resident of Village-
Bishwapuria, P.O. Kauchak, P.S. Navgachia, District- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through its Principal Secretary, Health Department, New Secretariat, Patna, Bihar.
2. The Principal Secretary, Finance Department, Old Secretariat, Bihar, Patna.
3. The Director, Deshi Chikitsa, Bihar, Patna.
4. The Deputy Secretary, Deshi Chikitsa, Bihar, Patna.
5. The Civil Surgeon cum Chief Medical Officer, Begusarai.
6. The Medical Officer in Charge, Balia Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Narain, Senior Advocate
Mr. Mukund Mohan Jha, Advocate

For the Respondent/s : Mr. Suryadev Yadav, AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-08-2023

The impugned judgment dated 17.01.2018 passed in
CWJC No.23649 of 2012 rejected the identical prayer made by
the writ petitioner, a Diplomat in Homoeopathy, for
equalization with Graduates in Homoeopathy and the payment
of salary as applicable to the Graduate Medical Practitioners
appointed in the Health Department of the State, with



consequential parity of pay and payment of arrears from the date of appointment.

2. We heard Sri Rajendra Narain, learned Senior Counsel for the appellant and Sri S. D. Yadav, learned Additional Advocate General-IX.

3. It is argued by the learned Senior Counsel that the Notification under which the appellant had applied itself was issued with lower pay scale being made applicable to the Diplomates as against the higher pay scale applicable to the Graduates. It is argued that the same was a mistake and the Diplomates are equated with the Graduates, if they have pursued a four years' course even by the Central Council for Homoeopathy; the Apex Body. There is also a judgment of this Court which found such equalization to be possible even when the Diploma was obtained after the Homoeopathy (Diploma Course) Regulations, 1983 was brought into force; if the course was commenced before 1983.

4. Learned Additional Advocate General, however, sought for sustaining the judgment of the learned Single Judge and supported the reasoning therein to the hilt.

5. The learned Single Judge found that the Central Council for Homoeopathy equalizes the Diplomates and the



Graduates only insofar as those amongst the former who obtained the qualification after undergoing course of Homoeopathy not less than four years' duration, with Diploma awarded prior to the enforcement of Regulation, 1983. The words 'obtained' and 'awarded' were found to be of significance and it would not take in the petitioners, who are persons who obtained and were awarded the Diploma, after the Regulations came into effect. The judgment of a learned Single Judge which found the Diploma Holders in Homoeopathic Medicine and Surgery (DHMS) equivalent to Graduation for the purpose of making an appointment to a different institution being Udhimta Vikas Sansthan was noticed. It was found that this Court, for the first time, by judgment dated 24.06.2008 in CWJC No.5795 of 2007 and other connected matters, declared that the Diplomates who obtained the degree after 1983, but commenced their course before 1983 should be equated with those who obtained and were awarded the Diploma prior to the cutoff date. It was found that by virtue of the declaration, the State Government sought the opinion of the Central Government and on it being informed that the judgment could be adopted, a decision was taken to equate the Diplomates and the Graduates; even those Diplomates who had obtained and were awarded the degree,



after 1983 but commenced the Course before the Regulations came into force. This decision was taken as on 15.01.2010, the cutoff date prescribed for equivalence and consequential parity. This being the date on which such equivalence was adopted by the State Government, the employer, it was found to be perfectly in order.

6. At the outset, we have to notice that the appellant had applied under a Notification wherein admittedly, there was a lesser scale of pay granted for Diplomates. The application of the appellant was to the post which was shown to have a lesser pay and the appointment was also to such posts. The appellant having applied without demur and having accepted the post with open eyes and having continued thereat, cannot later seek for an equalization from the date of appointment and parity of pay based on such equalization which was granted long thereafter. The writ petition itself is filed in the year 2012 whereas the retrospective effect sought for such equalization and parity of pay is from 13.07.1999. The claim arose only on the equalization being granted and the appellant had never sought for the same before such equalization came into effect.

7. We also perfectly agree with the learned Single Judge that the judgment of another learned Single Judge on



24.06.2008 was in a challenge to the advertisement itself, by the prospective applicants. The specific contention taken up in the batch of writ petitions were two fold. The first contention was that the petitioners in those cases though were Diploma Holders in Homoeopathic Medicine and Surgery (DHMS), were qualified to practice as Homoeopathic Doctor. By reason of the said advertisement they were held ineligible since only those persons who had obtained and were awarded the Diploma prior to 1983 were equated with the Homoeopathy Graduates. The said contention was rejected by the learned Single Judge. However, some of the writ applications sought for equivalence and challenged the Notification on the ground that the applicants were persons who were admitted to the course prior to 1983, before the Regulations came into force and obtained and were awarded the Diploma after the Regulations came into force. The learned Single Judge allowed the prayer and equated them with those Diplomates who obtained and were awarded degree prior to the Regulations of 1983, since they were also the persons who were admitted to the course prior to the Regulations coming into force and they could be deemed to be identical to those who obtained and were awarded the Diploma prior to 1983. The reasoning was insofar as their course also



being regulated by the earlier stipulations and not by the Regulations of 1983.

8. As was noticed by the learned Single Judge, the equalization was granted in a set of writ petitions which cannot be automatically claimed by the appellant herein who was not a party therein. The appointment in the said case was also to another service not capable of equation to the services in which the appellant was appointed and continued. Moreover, the petitioners therein had challenged the stipulation in the advertisement, which discriminated the Diplomates, who had commenced their course prior to 1983, but were appointed and awarded Diploma after 1983.

9. At the risk of the repetition, it has to be noticed that the writ petitioner never challenged his appointment in the lower pay scale and also did not pray for equalization before a competent Court prior to the decision taken by the Government on 15.01.2010. True, the Government sought for clarification from the Central Government when the judgment above referred was delivered. The Central Government left it to be considered by the State Government and found no fault with the judgment of the learned Single Judge. The State Government took a conscious decision to equalize the posts with effect from



15.01.2010 and the appellant can have claim of parity of pay only from that date and not from a retrospective date, when they continued in the service without demur in the lower pay and also without any declaration of equalization.

10. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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