

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 39 of 2023

Rajat Suvra Moral

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Kallol Basu, Adv.
 Mr. Suman Banerjee, Adv.

For the State : Mr. Biswabrata Basu Mallick, Ld. AGP
 Mr. Sayan Ganguly, Adv.

For the National Medical Commission : Mr. Indranil Roy, Adv.
 Mr. Sunit Kr. Roy, Adv.

Hearing Concluded on : August 17, 2023
 Judgement on : August 23, 2023

DEBANGSU BASAK, J.:-

1. The writ petitioner is aggrieved by an order dated March 14, 2022 passed by the West Bengal Tribunal in OA No. 818 of 2017.

2. The Tribunal by the impugned order, had disposed of the original application filed by the writ petitioner by permitting the writ petitioner to apply for the promotional post in accordance with the law and if such application was filed, the respondent was directed to consider the same in

accordance with law and in light of the eligibility criterion/qualification prescribed.

3. Learned advocate appearing for the writ petitioner has submitted that, the writ petitioner initially participated in the selection process for the promotion to the post of Associate Professor. The private respondent had also participated therein and was granted regular promotion to the post of Associate Professor with effect from November 25, 2003 superseding the writ petitioner. The writ petitioner had been given regular promotion to the rank of Associate Professor on March 26, 2008 which is after five years from the supersession. He has submitted that, the writ petitioner is entitled to promotion to the post of Associate Professor with effect from November 25, 2003.

4. Learned advocate appearing for the writ petitioner has submitted that subsequently process for promotion to the post of Professor for General Surgery was undertaken. He has drawn the attention of the Court to the Recruitment Rules for the promotion to the post of Professor of General Surgery. He has submitted that, the writ petitioner satisfies all the essential qualifications and that the writ petitioner is eligible to be granted the promotion. In support of his contention, he

has relied upon **1983 Volume 1 Supreme Court Cases 345 (Asim Kumar Bose (Dr) vs. Union of India and Other).**

5. Learned advocate appearing for the petitioner has submitted that, although the petitioner did not process any research publication, possession of the same was not essential and that the same was only a desirable qualification. Out of 16 (sixteen) candidates who had got promoted, two candidates secured 0 (Zero) with regard to research publication. Therefore, according to him, the plea that since the petitioner did not submit any research publication was of no relevance.

6. Learned advocate appearing for the petitioner has submitted that, the other candidates who were granted promotion produced case reports which they passed off as research publications. He has submitted that, such case report should not be considered as research publication. He has relied upon **2015 Supreme Court Cases OnLine Patna 2511 (Dr. Narendra Kumar Singh versus The State of Bihar & Ors.)** with regard to the meaning of the expression 'original research publication'.

7. Learned advocate for the writ petitioner has relied upon the Medical Council of India circular dated September 3, 2015. He has relied upon **2007 Volume 15 Supreme Court**

Cases 435 (Binani Industries Limited, Kerala vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Others) with regard to retrospect application of clarificatory circulars.

8. Learned advocate appearing for the State has submitted that, the so called supersession happened in 2003. The writ petitioner had been regularized to the promotional post in 2008. After a lapse of 9 years from the date of his regularization in 2017, the writ petitioner had approached the Tribunal praying for promotion to the post of Professor in General Surgery with effect from March 25, 2008.

9. Learned advocate appearing for the State has submitted that, a subsequent selection process for the post of Professor in General Surgery was held in 2017 where the petitioner did not appear.

10. Learned advocate appearing for the State has submitted that, at the time of the interview for the post of Professor in General Surgery held on January 21, 2008, the petitioner was in the post of Associate Professor (ad hoc) and was not eligible for promotion.

11. Learned advocate appearing for the State has submitted that, the private respondent No. 5 produced

publications of research papers which were accepted at the interview. The petitioner was without any publication.

12. Petitioner has sought promotion to the post of Professor in General Surgery with effect from March 25, 2008 and to the post of Associate Professor (Regular) with effect from November 25, 2003.

13. The memo dated December 26, 2008 has prescribed the procedure for promotion to the post of Professor in General Surgery. The memo dated December 26, 2008 has prescribed the eligibility criterion/qualification. It has divided the eligibility criterion/qualification into two parts, namely essential eligibility/qualification and desirable eligibility/qualification.

14. An interview for the promotion to the post of Professor has been held on January 21, 2008 in which the writ petitioner participated. In such selection process the writ petitioner had been declared ineligible and the private respondent was granted promotion to the rank of Professor.

15. Writ petitioner had been appointed as Medical Officer on December 31, 1993. He had been promoted to the rank of Assistant Professor on May 24, 2000 and promoted to the rank of Associate Professor on ad hoc basis on March 4, 2003.

He had been given regular promotion to the rank of Associate Professor on March 26, 2008, that is, after the date of the interview for the promotion to the post of professor.

16. Records disclosed by the State in the instant writ petition has established that, the appointing authority considered not only the age but years of service rendered by the incumbent and publications published in journal. 22 candidates had been considered for the post of Professor in General Surgery and since there were 16 vacancies, the top 16 were promoted.

17. The appointing authority had taken the stand, that on the date of the interview for the promotion to the post of Professor, the petitioner was neither eligible as per duration of service nor did the writ petitioner produce any publication which was also desirable for promotion to such post.

18. At the interview, the appointing authority had taken the view that, an ad hoc Associate Professor was not eligible. Such view had been universally applied during the selection process across all candidates. It cannot be said that, the authority took a different view with regard to other candidates.

19. The interview board had also found that the petitioner was without any publication. The fact that the petitioner had

been without any publication as a desired qualification, is admitted. The quality of publication that had been relied upon by other persons who were promoted is being questioned herein.

20. *Dr. Asim Kumar Bose (supra)* has in the facts and circumstances of that case, found that, working in ex officio capacity can be considered to fulfil the experience qualification prescribed for consideration for promotion to a superior post.

21.The Patna High Court in ***Dr. Narendra Kumar Singh (supra)*** has considered the expression “Original Research Publication” and held that, such words cannot mean a case history.

22. *Binani Industries Ltd (supra)* has considered an assessment proceeding and held that, reopening of assessment due to change of opinion of the Commissioner was impermissible.

23.The parties have argued with regard to the meaning of research publication as should be understood. We have also taken the assistance of the National Medical Commission on such topic.

24. We would have embarked upon the contentions of the writ petitioner that he was unfairly treated and discriminated against in the process for promotion to the post of Professor but for the conduct of the writ petitioner as noted above and reiterated hereinafter.

25. The writ petitioner had opposed the tribunal primarily with twofold prayers. The first prayer in the original application that the writ petitioner had made was with regard to a direction upon the respondents to promote the writ petitioner to the post of Professor in Gen Surgery in the West Bengal Medical Education Service with effect from March 25, 2008 with all consequential benefits. The 2nd prayer that the writ petitioner made was consequential to the first prayer. In the 3rd prayer the writ petitioner has sought a direction upon the authorities to consider the writ petitioner as promoted to the post of Associate Professor (Regular) in Gen surgery in the West Bengal Medical Education Service with effect from November 25, 2003 and to grant him all consequential benefits.

26. The original application filed before the tribunal had been dated September 1, 2017. The writ petitioner had sought reliefs with effect from November 25, 2003 with all

consequential benefits. The respondent No. 5 who was junior to the writ petitioner had been promoted to the post of Associate Professor in General Surgery on May 24, 2000. On the same day, the writ petitioner had been conferred the rank of Assistant Professor of General Surgery. The respondent No. 5 and the writ petitioner had been conferred the rank of Associate Professor (ad hoc) with effect from March 4, 2003. The notification dated March 4, 2003 by which the writ petitioner and the respondent No. 5 had been promoted to the post of associate Professor stated that, the sequence of names of the Medical Teachers in the notification indicates their inter se seniority position. The writ petitioner had appeared in serial No. 29 ahead of the respondent No. 5 at serial No. 30.

27. The authorities had promoted the respondent No. 5 to the post of Associate Professor (Regular) with effect from November 25, 2003. The writ petitioner has claimed that, such promotion was made without any interview and that the writ petitioner was not even considered for such promotion although entitled thereto. The promotion had been given in violation of all existing provisions of rules of regulation and guidelines pertaining thereto.

28. The writ petitioner had not assailed the decision of the authorities to promote the respondent No. 5 to the post of associate Professor (Regular) on November 25, 2003 although being aware of the same. The first challenge thereto had been made by the writ petitioner by filing the original application on September 1, 2017. The writ petitioner had allowed a period of about 14 years to lapse from the date when the respondent No. 5 was promoted to the post of Associate Professor (Regular).

29. The interview for the promotion to the post of Professor in General Surgery had been held on January 21, 2008 where the writ petitioner had participated. The writ petitioner had been declared as not eligible for promotion to such post on January 21, 2008. The writ petitioner had assailed such a decision before the tribunal on September 1, 2017 after a lapse of a period of more than 9 years.

30. The writ petitioner by his conduct has allowed a state of affairs with regard to fixation of the seniority inter se between him and the respondent No. 5 to attend finality from November 25, 2003 when the respondent No. 5 was promoted to the post of Associate Professor (Regular) and thereafter from January 21, 2008 when the candidature of the writ petitioner

was declared as not eligible for promotion to the post of Professor in General Surgery. The authorities had undertaken an interview procedure in 2017 for the promotion to the post of Professor in General Surgery where the writ petitioner did not participate.

31. It is trite law that, where, the writ petitioner by his conduct has accepted a position with regard to the gradation list or the seniority between him and his colleagues, over a period of time, then such settled position should not be disturbed. The writ petitioner had accepted a position obtaining from November 25, 2003 with regard to inter se seniority between him and the respondent No. 5. The writ petitioner had also accepted the promotion of the respondent No. 5 to the post of Professor in General Surgery from January 21, 2008 without protest till the filing of the application before the tribunal on September 1, 2017. The writ petitioner had another opportunity in 2017 for being promoted to the post of Professor in General Surgery where he did not participate. It cannot be said that, the writ petitioner had been unfairly treated or discriminated against during the promotional procedure to the post of Professor in General Surgery held in 2017.

32. In such context, we are not minded to grant any relief to the writ petitioner.

33. In view of the discussions above we find no merit in the present writ petition. WP.ST 39 of 2023 is dismissed without any orders to cost.

[DEBANGSU BASAK, J.]

34. I agree.

[MD. SHABBAR RASHIDI, J]