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WPA 7715 of 2021

Dr. Sasanka Sekhar Debnath
Vs.
The University Grants Commission & Ors.

Mr. Partha Sarathi Bhattacharyya
Senior Advocate,
Mr. Sudip Sarkar
Mr. Raju Bhattacharyya
... For the petitioner.

Mr. Soumya Majumder
Mr. Victor Chatterjee
... For the University

Mr. Anil Kr. Gupta
... For UGC.

The petitioner was appointed to the post of Chief Medical Officer, Visva Bharati by a letter dated April 30 of 2007 from the Registrar of Visva Bharati.

By the order impugned dated December 01, 2020, issued by the Registrar (Acting) of Visva Bharati, he was directed to act as a 'Medical Officer" till the disposal of the disciplinary proceedings initiated against him. By the said order another doctor attached to the University was directed to take care of the administrative responsibility of the hospital of the University and to function as the interim in-charge of Chief Medical Officer of the said hospital in addition to his normal duties.

The University initiated a disciplinary proceeding against the petitioner on the basis of an alleged dereliction of duty perceived by it as a misconduct.

It has been argued by Mr. Partha Sarathi Bhattacharya, Senior Advocate, that the respondent authorities could not have reduced the rank/position of the petitioner from the post of Chief Medical Officer to Medical Officer simultaneously with the issuance of chargesheet. Mr. Bhattacharya submits that the order impugned in the writ petition amounts to reduction in rank of the petitioner even before the commencement of the disciplinary proceedings. Mr. Bhattacharya submits that the Chief Medical Officer is a post superior to the post of Medical Officer with a higher pay scale and responsibility. He refers to Rule 49 (vi) of the Service Rules for Non-Academic Employees of the Visva-Bharati to suggest that the order impugned constitutes a punishment within the meaning of the said Rules. The petitioner has been reduced in rank from the Chief Medical officer to Medical Officer as punishment without conclusion of the disciplinary proceedings initiated against him.

Mr. Soumya Majumder, learned advocate representing the University, on the other hand, submits that the post of Chief Medical Officer is not a promotional post from Medical Officer. He submits that

in the Medical Service Cadre of the university, the post of Chief Medical Officer is also a post just like the post of Medical Officer. The authority thought it fit not to suspend the petitioner from his service in contemplation of the disciplinary proceedings as there was a dearth of doctors in the University. The University felt that the service of the petitioner should be utilised and at the same time, the departmental proceedings initiated against him would not be influenced by allowing him to continue as the Chief Medical Officer. Therefore, the University relieved him of the administrative responsibilities but his pay scale and other facilities remained intact. It cannot be said that a punishment has been imposed upon the petitioner by way of reduction in rank even before the conclusion of the disciplinary proceedings.

The moot point that requires to be considered is whether the post of Chief Medical Officer is higher in rank than the Medical Officer. This can be easily determined by examining the comparative chart presented by the petitioner in his affidavit-in-reply, which has not been disputed by the University. The chart is as follows:-

Chief Medical Officer	Medical Officer
Qualification:	
1) MBBS	1) MBBS
2) MD/MS/MRCP/FRCS	
Experience:	

10 years	1 year
Age limit:	
50 years	35 years
Pay scale:	
Rs. 14,300/- (5th CPC) Rs. 18,300/-	Rs. 8000/- to Rs. 13,500/-
Job:	
1) Head of the Medical, Health & Sanitation of the University	General duty as Dr.
2) Controlling Officer of Medical Superintendent	
3) Controlling all categories of staff of PM Hospital, Medical Superintendent, Doctors, Store & Office under direct control.	

The memo dated June 5, 2009, issued by the Registrar of Visva Bharati appearing at page 28 of the writ petition outlines the duties and responsibilities of the Chief Medical Officer. The relevant part of the said office order is quoted below: -

“The Chief Medical Officer will work as head of medical, Health and Sanitation services of the University. All the health services activities/units in the University will be directly involved and controlled by him.”

It is, therefore, clear that the prescribed qualifications of the Chief Medical Officer are higher than those of a Medical Officer. The pay scale attached to a Chief Medical Officer is also higher than that of a

Medical Officer. The Chief Medical Officer is the head of medical, health, and sanitation services of the University, including the hospital of the University amongst the other Medical Officers.

I accept the submission of Mr. Majumder that the post of a Medical Officer is not a feeder post of the Chief Medical Officer and the post of Chief Medical officer is not a promotional post from Medical Officer. The appointment letter dated April 30, 2007, of the petitioner also makes it clear that the petitioner was a direct recruit to the post of Chief Medical Officer. The qualification, pay scale and the responsibilities attached to the post of Chief Medical Officer, however, make it clear that it is superior to that of a Medical Officer.

The authority, therefore, could not have reduced the rank of the petitioner from the superior post of Chief Medical Officer to the inferior post of Medical Officer in contemplation of the disciplinary proceedings initiated against him.

It is open for an employer to transfer an employee or suspend him/her in contemplation of a disciplinary proceeding to ensure that he does not influence the departmental proceedings due to his physical presence. In the present case, it is not tangible how the said

object has not been achieved. The petitioner is still present at the University and performing his duties.

I am also of the view that even after the conclusion of proceedings, by way of punishment, the University cannot reduce the rank of the petitioner to the lower post of Medical Officer from the post of Chief Medical Officer to which he was directly recruited. **[See: (1988) 4 SCC 170 (*Nyadar Singh v. Union of India*)]**

In any event, it has been submitted by Mr. Majumder that enquiry has been completed. The petitioner has also submitted his response against the findings of the Enquiry Committee. At this juncture, there is no justification to ask the petitioner to continue as a Medical Officer, since there is no question of influencing the disciplinary proceedings any further.

In that view of the matter, the order impugned dated December 01, 2020, is set aside. The University is directed to restore the rank/position of the petitioner to the post of Chief Medical Officer immediately and only thereafter, it will proceed further with the disciplinary proceedings initiated against him.

With the above directions, WPA 7715 of 2021 is allowed.

There will be no order as to costs.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)