

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15565 of 2019

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Raghubansh Kishore Prasad Shahi S/o Ram Raksha Prasad Shahi, R/o Village
Shahi Jiwan, PS Hathauri, Dist. Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Panchayat Raj,
Govt. of Bihar, Patna
2. The Secretary of Zila Parishad, Sitamarhi
3. Dy. Development Commissioner-cum-Chief Executive Officer, Sitamarhi
4. The Secretary, District Health Establishment Committee, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.N.P. Singh, Sr. Adv. Mr. Rakesh Kumar, Adv.
For the State	:	Mr. Kameshwar Prasad Gupta (GP-10) Mr. Satyavrat (AC to GP-10)
For the Zila Parishad	:	Mr. Ranjeet Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

9 24-06-2024 Heard learned senior counsel for the petitioner,

learned counsel for the State and learned counsel for the Zila

Parishad, Sitamarhi.

2. The present writ petition has been filed for
quashing the Memo No.215 dated 02.07.2019 (annexed as
Annexure-5) issued under the authority of Dy. Development
Commissioner-cum-Chief Executive Officer of Zila Parishad,
Sitamarhi by which the petitioner has been retired on
30.06.2019 at the age of 60 years without giving him promotion
to the post of Medical Officer which was due since long for
which the date of retirement is fixed as 65 years.



3. Learned senior counsel for the petitioner submits that the petitioner has filed representation for consideration of the promotion prior to his retirement but, no final decision has been taken by the Zila Parishad, Sitamarhi due to which, the petitioner retired on a lower post. Counsel also submits that if his promotion was considered, then the petitioner was entitled to be retired after completion of 65 years which shall be completed on 30.06.2024 itself. Counsel further submits that the counter affidavit and a supplementary counter affidavit have been filed and in the supplementary counter affidavit, the stand has been taken by the Zila Parishad that a new rule namely “Bihar Zila Parishad (Sevashart) Niyamawali 2023” has come whose rule 16 is very much clear and states that ‘*no such post which is recognized under new law shall continue*’ and as such, the post for which the petitioner wants promotion is now no more. In response there of, learned senior counsel for the petitioner submits that in the said rule itself, it is very much clear about the date of implementation of the said rule i.e. 05.12.2023 from the prospective effect. Counsel submits that the entitlement for promotion was accrued according to the then rule and therefore, by virtue of new law, his right shall not went in air and it shall still accrued in him till his retirement.



4. Learned senior counsel for the petitioner further submits and relied on a judgment of Hon'ble Supreme Court of India namely ***Major General H.M. Singh, VSM Vs. Union of India and Anr. in Civil Appeal No.192 of 2014*** in which it has been held that even if, during pendency of the litigation, the petitioner could not be promoted and subsequently, in the litigation it has been decided that he was entitled for promotion and his age of superannuation has been crossed, then also the petitioner shall be deemed to be entitled for all monetary benefits which would have been due to him on account of his promotion to the post for which he has made his representation.

5. Learned counsel for the Zila Parishad submits that in any view of the matter, the petitioner's date of retirement is 30.06.2019 at the age of 60 years without giving him promotion to the post of Medical Officer which was due since long for which date of retirement has been fixed for 65 years which is also going to lapse on 30.06.2024 itself. As such, there is no case of the petitioner and his case is fit to be dismissed. Counsel further submits that in the counter affidavit, the specific stand has been taken that promotion from the post of Mishrak (compounder) to the post of Vaidya (Medical Officer) is not permissible in the eye of law because both the posts are of



different cadre.

6. In the light of the submissions made by the parties, it transpires to this Court from the record that so far as the petitioner's claim is concerned, the Zila Parishad has never taken a decision about his entitlement for the post for which he has made a consistent claim that he has qualification of B.A.M.S degree and therefore, he is entitled to be a Doctor according to the then law.

7. From the annexures which has been attached by the learned senior counsel for the petitioner in the writ petition, it transpires to this Court that decision has not been taken on his representation about his entitlement. Therefore, it is directed to the Zila Parishad, Sitamarhi to pass order considering the then law due to the reason that under General Clauses Act, 1897, the date on which right has been accrued in a person claiming his entitlement shall continue. Hence, the new law which has come in 2023 shall not help the Zila Parishad in any manner and if, by virtue of the representation, the authority concerned decides about the entitlement of the petitioner for promotion then he shall be entitled for relief for all the monetary benefits which would have been due to him on account of his promotion to the rank of Doctor, even if he crosses the age of retirement.



8. Accordingly, the present writ petition is hereby disposed off directing that a final decision shall be taken by the Executive Officer, Zila Parishad, Sitamarhi with regard to the petitioner within 90 days and if, it has been found that the petitioner was entitled for promotion on the post of Doctor, then all the monetary benefits during the period the day on which he was entitled to the date of his retirement be calculated and shall be released within six months thereafter.

9. The final order shall be passed after granting opportunity of hearing to the petitioner and the petitioner shall be entitled to place supplementary pleadings as well as the judgment on which he relied before this Hon'ble Court within the said period.

(Dr. Anshuman, J)

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