

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17382 of 2024

Prof. (Dr.) Shyam Sundar Gupta son of Late Sarju Prasad, resident of Opposite CDA office, Rajendra Path, P.S.-Gandhi Maidan, District-Patna-800001, at presently posted as a Professor cum Head of the Department of Rachna Sharir, Government Ayurvedic College and Hospital, Kadamkuan, Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Additional Chief Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
4. The Secretary, Health Department, New Secretariat, Government of Bihar, Patna.
5. The Additional Secretary, Health Department, New Secretariat, Government of Bihar, Patna.
6. The Joint Secretary, Health Department, New Secretariat, Government of Bihar, Patna.
7. The Officer on Special Duty, Health Department, New Secretariat, Government of Bihar, Patna.
8. The Deputy Secretary, Health Department, New Secretariat, Government of Bihar, Patna.
9. The Under Secretary, Health Department, New Secretariat, Government of Bihar, Patna.
10. Dr. (Prof.) Kumari Uma Pandey Daughter of Late Jagdish Pandey, Resident of C/o A.K. Pandey, Dwarika Mandir Lane, West Boring Canal Road, P.s.-Srikrishnapuri, Town and District-Patna-800001 at present posted as Professor cum Head of Department, Shalakyta Tantra Department, Government of Ayurvedic College, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate



For the State	:	Mr. Pranav Kumar Ms. Shrishti Singh Mr. P.K. Shahi, A.G. Mr. Dhurjati Kumar Prasad, GP 14
For the Resp.No. 10	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Girish Pandey
For the Informant	:	Mr. Shanti Pratap

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
C.A.V. JUDGMENT

Date : .. -02-2025

Heard finally.

2. This writ petition has been filed seeking following reliefs:

i) To issue an appropriate writ order/direction in the nature of certiorari for quashing the reasoned order bearing memo no. 1191 dated 25.10.2024 issued under the signature of Additional Chief Secretary, Health Department, whereby and whereunder on the representation of the private respondent no. 10 (Dr. (Prof.) Kumari Uma Pandey) the seniority of the petitioner has been affected and it was decided that the seniority of the private respondent no. 10 will be decided as specified in the merit list prepared by the Bihar Public Service Commission at the time of appointment to the post of Ayurvedic Medical Officer (Annexure-P/10).

ii) To issue an appropriate writ order/direction in the nature of



mandamus commanding the respondents not to give effect to the reasoned order bearing memo no. 1191 dated 25.10.2024.

iii) To issue an appropriate writ order/direction in the nature of mandamus commanding the respondents to take decision in terms of provisional seniority list issued by the Health Department dated 31.07.2024 till the pendency of the writ application.

iv) To issue an appropriate writ order/direction in the nature of mandamus commanding the respondents to restore the seniority of the petitioner in terms of provisional seniority merit list issued by the Health Department vide letter no. 793 dated 31.07.2024.

v) To any other relief or reliefs for which the petitioner are found to be entitled in the facts and circumstances of the case.

3. The brief facts of this case as per pleadings is that the petitioner and the private respondent no. 10 were appointed as Ayurvedic Medical Officer in the year 1994. As per the merit list prepared by the Bihar Public Service Commission, the petitioner was placed at serial no. 86 and the respondent no. 10 was placed at serial no. 4. Both the petitioner and the respondent no. 10 and other Ayurvedic Medical Officers were



deputed to the post of Lecturer vide Notification No. 333 dated 16.05.1997 issued by the Health Medical Education and Family Welfare Department, Government of Bihar. Name of the petitioner was at serial no. 9 as lecturer in Shalkya Tantra (Eye, ENR Department), Government Ayurvedic College, Begusarai and the respondent no. 10 was placed at serial no. 19. Subsequently, through notification dated 06.06.2007, Annexure-P/4, the petitioner and similarly situated persons were promoted to the post of reader.

4. One Dr. (Smt.) Shanno Gupta filed a writ application bearing C.W.J.C. No. 2317 of 2006 and one Dr. Birender Kumar Singh also filed a writ application bearing C.W.J.C. No.9885 of 2006. In both the writ applications, the issue was in relation to the final gradation list issued by the Health Department vide notification dated 09.11.2010. Vide order dated 30.01.2012, this Court set aside the said notification with a direction to prepare a fresh gradation list for the purpose of promotion on the post of reader and professor in the Government Ayurvedic Colleges. Being aggrieved by the order dated 30.01.2012, the writ petitioner of C.W.J.C. No. 9885 of 2006 filed an intra court appeal bearing L.P.A. No. 759 of 2012 before this Court. The Division Bench of this Court vide its



order dated 11.09.2015 disposed of the appeal with certain directions.

5. On the basis of direction given by the Division Bench of this Court, the Health Department issued a notification No. 1175 dated 09.12.2015, a gradation list was published for all categories as identified by the Division Bench of this Court vide its order dated 11.09.2015. The private respondent no. 10 filed a writ application bearing C.W.J.C. No. 17540 of 2015, which was heard on 05.10.2023 and was disposed of with a direction upon the Additional Chief Secretary, Health Department to dispose of the representation filed by the respondent no. 10 and pass a reasoned and speaking order within a period of 8 weeks. The Health Department came out with a provisional seniority list of Government Ayurvedic Colleges through letter no. 793 dated 31.07.2024, in which the petitioner has been placed at serial no. 7 and the private respondent no. 10 has been placed at serial no. 9. The private respondent no. 10 filed another writ application bearing C.W.J.C. No. 16089 of 2024 for revision of provisional seniority list dated 31.07.2024, which was heard and vide order dated 21.10.2024, this Court disposed of the writ petition with direction upon the respondent to consider the objection of the petitioner therein against the provisional



seniority list and take a final decision. Meanwhile, the private respondent no. 10 filed her representation in the light of direction given by the Court dated 05.10.2023 passed in C.W.J.C. No. 17540 of 2015, vide order dated 25.10.2024, the respondent allowed the representation of respondent no. 10 and it was decided that the seniority of the private respondent no. 10 will be decided as specified in the merit list prepared by the Bihar Public Service Commission at the time of appointment to the post of Ayurvedic Medical Officer. Since by this order the seniority of the petitioner has been affected, this petition has been filed by the petitioner seeking reliefs as mentioned hereinabove.

6. It is submitted by the learned counsel for the petitioner that while decided the representation of the private respondent no. 10, the respondent Additional Chief Secretary, Health Department wrongly relied upon paragraph no. 35 of the judgment passed by the Division Bench of this Court dated 11.09.2015. According to the counsel, the applicability of the said judgment is only to the extent of determining inter se seniority upon the post of professor and after promotion to the post of professor, the said judgment has no applicability for the purpose of determining inter se seniority. Referring to the clause



6 of the memo no. 878 dated 27.11.2004, Annexure-P/3, the learned counsel further submits that as contained in clause 6 of the said memo, for the purpose of determining inter se seniority in teaching cadre will be determined on the basis of date of joining/taking over charge on the post of Lecturer. The said decision vide memo no. 878 dated 27.11.2004 has been approved by the Ministers of counsel. However, while deciding the issue of inter se seniority, the said memo was not placed before the Division Bench of this Court while passing of its order dated 11.09.2015. Therefore, the order dated 11.09.2015 passed by the Division Bench of this Court appears to be per incuriam. The learned counsel further submits that the Additional Chief Secretary, Health Department has not given any opportunity to the petitioner to explain his case before passing of the order dated 25.10.2024, which has a direct bearing and consequence over the petitioner. There is complete violation of the principle of natural justice and behind back of the petitioner, order dated 25.10.2024 has been passed, which is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. Reliance has been placed by the counsel to the judgment passed by the Co-ordinate Bench of this Court in *C.W.J.C. No. 190 of 2022 (Nari Gunjan Vrs. Union of*



Indian & Ors.) reported in 2023(5) BLJ, 577.

7. Learned counsel for the respondent no. 10 opposes the above arguments raised by the counsel for the petitioner and submits that undisputedly, at the time of initial appointment of the petitioner as well as the private respondent no. 10 in the merit list the name of the private respondent no. 10 was placed at serial no. 4 and the name of the petitioner was placed at serial no. 9. He further submits that the Division Bench of this Court in L.P.A. nos. 759 of 2012 and 757 of 2012 categorically held that seniority can not and could not be dependent upon the date of joining as lecturer but their original inter se seniority would be maintained. Thus, in the light of the above judgment passed by the Division Bench of this Court, the Additional Chief Secretary, Health Department has rightly allowed the representation of the petitioner and passed the order dated 25.10.2024, Annexure-P/10. Further that the memo no. 878 dated 27.11.2004, Annexure-P/3 is not a Cabinet decision. Clause 12 of the said memo reveals that approval of counsel of ministers if requested only with regard to clause 5 and nor at all with relevant and applicable clause 6. There is no statement therein that the clause 6 has even been approved. Therefore, it cannot be said that the judgment and order dated 23.06.2015



passed by the Division Bench of this Court is per incuriam.

8. Learned counsel for the other respondents i.e. respondent nos. 1 to 9 supported the above arguments raised by the learned counsel for the respondent no. 10.

9. I heard learned counsel appearing for both the parties and perused the documents annexed with the petition as well as counter affidavit submitted by the respondents.

10. There is no dispute on the point that at the time of initial appointment through R-10/B, the petitioner and the respondent no. 10 were appointed as Ayurvedic Medical Officer and as per the merit list prepared by the Bihar Public Service Commission, the name of the petitioner is reflected at serial no. 86 and the name of the respondent no. 10 is reflected at serial no. 4.

11. Perusal of the order dated 25.10.2024, Annexure P/10, also shows that this order has been passed by the Additional Chief Secretary, Health Department on the basis of observation given by this Court in L.P.A. No. 759 of 2012. At this juncture, it would be appropriate to reproduce the relevant paragraphs of the said judgment for ready reference:

“Para-30. Now to the principles of inter se seniority. If we could understand the State, they state that first as per decision



of the Government dated 15.12.2004, the inter se seniority would be determined on basis of the date of taking of charge. The learned Single Judge disapproved it and we approve the learned Single Judge. Nothing could be more arbitrary than this. It is contended and rightly so on behalf of the doctors cum Lecturers, that once, pursuant to a policy decision taken on 16.05.1997, doctors were selected and deputed from Health Service to Lecturers, all such persons would come to be deputed in the same transaction. The expression "same transaction" has been explained by this Court on more than one occasion. It has been noticed by this Court in judgment, namely, Hem Kant Roy & Others-Versus-Government of Bihar & Others, 2013 (2) PLJR 316 which noticed the case of Bishundeo Mahto-Versus State of Bihar & Others, 1982 BBCJ 45 (FB). In effect, what is meant is that the action is taken pursuant to a singular decision, though, it is implemented at different times, because of various other reasons. That being so, we are unable to accept the contention on behalf of the State that though, several doctors were deputed by



a singular order dated 16.05.1997 to the Ayurvedic Colleges or by later notification dated 19.06.1997 pursuant to the same policy decision, they would not constitute same transaction. Specifying the date of joining as relevant for determining seniority would be grossly arbitrary. It would be dependent upon fortuitous circumstances. A person who comes to know of notification and is available near the College would join immediately. Another who does come to know of the notification but is far away from the College would join later. Their seniority could not be altered by reason of this alone. They were all deputed by the same notification. It would be one transaction and their seniority would not be affected or changed by the date of joining. Similar is the case of persons who were deputed by notification dated 19.06.1997. This is also in pursuant to the same transaction. Thus, we have, this one group of AMO being deputed en masse as Lecturers and then being absorbed as Lecturers. What would be the seniority? In such an event, if certain group of people from one service are brought in to another service



pursuant to the decision of the Government, then it is well established that their inter se seniority in the earlier cadre would be maintained. That cannot be altered merely by reason of date of joining.

Para-31. Thus, so far as Dr Mahendra Prasad Singh, Dr Umesh Chandra Sinha, Dr (Smt) Shanoo Gupta, Dr Ganesh Prasad Gupta, Dr Birendra Kumar Singh, Dr Ram Adhar Singh are concerned, their inter se seniority would be the same as it was when they were AMO and their services as Lecturer would also be acknowledged from the date when they took charge pursuant to deputation.

Para 35. Thus, we are of the view that so far as the inter se seniority of those who were earlier AMO and had PG qualification and were first deputed as Lecturers and then regularized as such, in the same transaction, their original inter se seniority would be maintained. It cannot and could not be dependent upon their date of joining, which being entirely fortuitous circumstances is even otherwise arbitrary and illegal.”

12. Bare perusal of above, it is clear that the



Division Bench of this Court clearly held that the inter se seniority would be maintained and it cannot be dependent upon their date of joining. Since the Division Bench of this Court has already settled the issue with regard to the inter se seniority of the persons, who were initially appointed as AMO and subsequently, deputed as lecturers. Relying upon the above observations made by the Division Bench of this Court, I find that the Additional Chief Secretary has rightly allowed the representation of the respondent no. 10 and fixed her seniority accordingly.

13. With regard to the argument raised by the counsel for the petitioner is concerned that as the memo no. 878 dated 27.11.2004, Annexure P/3 has not been placed before the Division Bench and has not been considered, therefore, the Judgment of the Division Bench is *per incuriam* is concerned, perusal of Annexure-P/3 clearly show that it is not a memo/order rather it is a *Sanlekh*, which was prepared for approval of council of ministers regarding adjustment of deputed Ayurvedic Medical Officers. Clause 12 of the said *Sanlekh* further shows that the approval of council for ministers was requested only with regard to clause 5 and not at all with the relevant and applicable clause 6. There is also no statement



therein that clause 6 of the said *Sanlekh* has even been approved by the Cabinet. Thus, the memo no. 878 dated 27.11.2004, Annexure-P/3 does not help the petitioner.

14. With regard to the argument raised by the counsel that there was violation of principles of natural justice is concerned, it is quite clear that on the basis of the direction given by the Co-ordinate Bench of this Court, the respondent no. 10 made her representation before the respondent and relying upon the judgment passed by the Division Bench of this Court as referred earlier order dated 25.10.2024 has been passed. Since the representation has been made by the respondent no. 10 on the basis of direction given by this Court, there was no necessity of hearing of the petitioner at the time of deciding the representation of respondent no. 10. Therefore, it cannot be said that any violation of principle of natural justice was done while passing the order dated 25.10.2024.

15. In conclusion, as discussed above, I find that the order dated 25.10.2024 has been passed by the respondent Additional Chief Secretary on the basis of judgment passed by the Division Bench of this Court dated 11.09.2015, wherein the matter of inter se seniority has already been settled by the Division Bench of this Court. I do not find any merit in this writ



petition. Accordingly, the writ petition is dismissed, having no merit.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	15.02.2025
Transmission Date	NA

