(2010) 01 JH CK 0025

Jharkhand High Court

Case No: None

Dr. Nandjee Singh		APPELLANT
	Vs	
The State of Jharkhand, The Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand and The Director, Rajendra Institute of Medical Science		RESPONDENT

Date of Decision: Jan. 30, 2010

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.
Heard counsel for the parties.

2. The petitioner in this writ application has prayed for issuance of a direction upon the respondents to correct the notification No. 141(2)/Health dated 31.05.2004 (Annexure-10) whereby the petitioner has been promoted as Assistant Professor with effect from 21.05.2000 by considering his date of holding the teaching post from 21.05.1997. The petitioner has sought modification of the aforesaid notification for correcting the date of his promotion as Assistant Professor from 12.02.1985 instead of 21.05.2000.

3. The grounds advanced by the petitioner in support of his claim is that he had joined the teaching post under the respondents in the post of Pathologist in the Artificial Kidney Unit in the Medicine Department, on 12.02.1982 and had completed three years of teaching experience on 12.02.1985 and as such, as per the Rules, the date of promotion of the petitioner has to be fixed from 12.02.1985.

4. Facts of the petitioner''s case in brief are that he was appointed on a sanctioned post of Pathologist in the Artificial Kidney Unit of Medicine Department in the R.M.C.H. on 12.02.1982. He possesses a Master Degree in pathology. He had claimed his promotion to the higher post on the basis of his work experience. When the petitioner wanted to enroll himself as a student in M.D. in the General Medicine Department, an objection was raised by the respondents on the ground that the petitioner was not holding the teaching post and that he belongs to the Pathology Department and not to the Medicine Department and as such, his teaching experience cannot be counted in the Medicine Department. The dispute was resolved by the Supreme Court in Civil appeal No. 2909 of 1993 in favour of the petitioner with an observation that the State Government, by its letter dated 17th September, 1984 addressed to the Principal of the R.M.C.H., had acknowledged that the post which the petitioner was holding, namely the post of Biochemist in the Artificial Kidney Unit of Rajendra Medical College and Hospital, was a teaching post and that the petitioner was appointed on to that post since 12.02.1982 and therefore his teaching experience should be counted from the date of his posting in the Kidney Unit from that date.

5. Pursuant to the observation contained in the order of the Supreme Court, the respondents acknowledged that the petitioner did possess teaching experience and accordingly, had designated him as a Tutor and granted him promotion to the post of Assistant Professor and later, to the post of Associate Professor.

6. The grievance of the petitioner is that on the basis of the State Government''s declaration that the post of Biochemist in the Artificial Kidney Unit of the R.M.C.H. was a teaching post and which was taken note of by the Supreme Court in its aforementioned judgement and a corresponding notification was issued in the year 1987 by the State Government, directing the authorities concerned to treat the post of petitioner equivalent to that of a Tutor, the petitioner ought to have been treated as Tutor from the year 1985 i.e. soon after completing three years of service on the post on which he was initially appointed. Yet, though the promotion was given to the petitioner vide the impugned notification (Annexure-9) but the same has wrongly been made effective from 21.05.2000 by arbitrarily fixing the date of petitioner''s holding the teaching post from an artificial date of 21.05.1997.

7. A counter affidavit has been filed on behalf of the respondents. Justifying the date from which the petitioner''s promotion to the post of Assistant Professor was made effective, the respondents would want to inform that the petitioner was initially appointed as Biochemist in the Artificial Kidney Unit of the Medicine Department and he was never posted in the Pathology Department and as such, the petitioner could not claim benefits of the promotional avenues applicable to the employees of the Pathology Department.

8. The controversy as sought to be raised appears to be on the ground that the petitioner was recognized as a Tutor in the Artificial Kidney Unit in the Department of Medicine and he could not get any promotion on higher post since he did not have any Post Graduate

Degree in this faculty and although he possesses a Post Graduate Degree in Pathology, he had never worked in the Department of Pathology and as such, he does not have the desired experience in the Pathology Department for being considered for promotion in the higher post of Associate Professor.

It is further explained that a sympathetic consideration was however made by the Grievance Redressal Committee and by accepting his post equivalent to the basic post of Tutor with effect from 21.05.1997, the period of three years was accordingly calculated for his promotion to the next higher rank of Associate Professor and he was accordingly granted promotion with effect from 21.05.2000.

9. The further stand of the respondents is that having all along worked in the Medicine Department, the petitioner had availed all the advantages of his posting in the said department which he could not have availed had he been working in the Pathology Department. The petitioner being a new entrant in the Department of Pathology, he cannot be promoted to the next post until he acquires the minimum five years experience as per provisions of the Medical Council of India and the Recruitment to Teaching Posts Rules, 1997 and until a vacancy arises in the post of Associate Professor in the department of Pathology. It is further stated that there are a sizeable number of teachers in the Department of Pathology and the petitioner cannot be allowed to supercede all such teachers on his claim of being a teacher in some other department. Explaining the basis of the cut of date of 21.05.1997, it is sought to be explained that the Bihar Medical Education and Recruitment to Teaching Posts Rule, 1997 was enforced on and from 21.05.1997 and therefore with effect from this date the petitioner was considered to be in service in the Department of Pathology for which he was having a basic qualification and a Master Degree.

10. From the rival submissions, the facts which emerge are as follows;

(i) The petitioner was appointed on a sanctioned post of Biochemist as Pathologist in the Artificial Kidney Unit of the Medicine Department on 12.02.1982. Admittedly he was holding a Master Degree in Pathology.

(ii) Thus, though appointed in the Artificial Kidney Unit, he was appointed essentially as a Pathologist and was also assigned teaching job.

(iii) The post which the petitioner was holding was acknowledged as a teaching post and the petitioner was recognized as a Tutor.

11. It is apparent from the above facts that the petitioner was working as a Pathologist since 1982 although the Department in which the petitioner was made to work, was a unit of the Medicine Department. Merely because he was not posted in the Department of Pathology, it cannot frustrate the petitioner''s claim as Pathologist since 1982.

12. This view finds support from the fact that notwithstanding the deficiencies as pointed out by the respondents, the Departmental Grievance Redressal Committee had also acknowledged that the post on which the petitioner was working was that of a Pathologist, and equivalent to the basic post of Tutor in the Department of Pathology. This is infact what the petitioner has been claiming from the very beginning and which was later supported by the Departmental Grievance Redressal Committee. The Government Notification No. 162(17) dated 21.05.1997 referred to by the respondents as the Bihar Chikitsa Shiksha Seva Samvarg Avam Sambargiya Pado Par Bharti Niyamawali 1997, has at best clarified the position supporting the claim of the petitioner, since he is deemed to have continued in the Department of Pathology though deputed initially in the Department of Medicine.

13. In the light of the above discussions and finding merit in this application, the same is allowed. The respondent authorities are directed to correct the notification dated 31.05.2004 (Annexure-10) by computing the period of three years of the petitioner''s teaching experience from 12.02.1982 and fixing the date of his promotion to the post of Assistant Professor as 12.02.1985. The compliance of this order must be carried out by the concerned authorities of the respondents within two months and the same be communicated to the petitioner effectively. The petitioner shall be entitled to all consequential benefits pursuant to the correction of the date of his promotion to the post of Assistant Professor.