

(2002) 08 JH CK 0043
Jharkhand High Court
Case No: L.P.A. No. 545 of 2002

Dr. Supriya Dhaboo

APPELLANT

Vs

Dr. Basant Kumar Agarwal and
Others

RESPONDENT

Date of Decision: Aug. 18, 2002

Citation: (2004) 1 JCR 335

Hon'ble Judges: Lakshman Uraon, J; Gurusharan Sharma, J

Bench: Division Bench

Advocate: Murli Manohar Prasad, for the Appellant; R. Krishna and Pradeep Modi, G.P.I.
for the respondent Nos. 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

1. The subject-matter of the present appeal is the question of seniority between the appellant in one hand and the respondent No. 1 on the other.
2. The appellant did her M.B.B.S. from Nagpur University in the year 1971 and obtained M.S. degree in the year 1978. She was appointed as lecturer in Anatomy Department of the Government Medical College, Nagpur and served there from 1.11.1973 to 7.7.1980 on the said post. On 16.3.1988 she was appointed as Assistant Professor, Non-Clinical, in the Anatomy Department of M.G.M. Medical College, Jamshedpur. However, on account of nonavailability of the vacant sanctioned post at the relevant time, she was allowed to join on the post of Tutor, from where on 2.5.1994 she was transferred to Anugrah Narayan Medical College, Gaya, on the post of Assistant Professor, but she expressed her unwillingness to go to Gaya and continued at Jamshedpur as Tutor.
3. Respondent No. 1, on the other hand, was appointed as Tutor on 26.6.1986 and thereafter on 30.5.1992 he was posted as Assistant Professor and thereafter worked as Associate Professor from 14.5.1997 onward in M.G.M. Medical College, Jamshedpur.

4. The State Government on 26.12.1996 prepared a provisional seniority list for the teachers working in the department of Anatomy as Tutor/Assistant Professor, wherein the name of the respondent No. 1 was shown at Sl. No. 16 and that of the appellant at Sl. No. 22 and called for objection, if any. The appellant filed objection thereto. Another provisional seniority list/gradation list of the officers posted as Professor/Associate Professor/Assistant Professor/Tutor in different Medical Colleges of the State of Jharkhand, as on 4.10.2001 was published, wherein the appellant was shown at Sl. No. 4 and the respondent No. 1 at Sl. No. 6. On 5.10.2001 objection was invited with respect to the said provisional seniority/gradation list, Respondent No. 1 filed objection thereto on 10.11.2001.

5. The Jharkhand Government thereafter published the final seniority/ gradation list on 10.1.2002, which was subject to amendment/correction in accordance with the final cadre division.

6. The name of appellant was again shown at Sl. No. 4 and that of respondent No. 1 at Sl. No. 6. Both were shown to have been holding the post of Associate Professor with effect from 16.5.1997. The appellant was shown to have worked as Tutor from 24.6.1988 to 15.5.1997; whereas the respondent No. 1 was shown to have worked as Tutor from 26.6.1986 to 15.5.1997. Further, the appellant's name was recommended for promotion on the post of Professor by the Departmental Promotion Committee in its meeting held on 22./23.1.2002.

7. The respondent No. 1 filed W.P. (S) No. 1014 of 2002 in this Court for quashing the part of the aforesaid seniority/gradation list, dated 10.1.2002, wherein the appellant was shown senior to him and further for a direction to the respondents not to notify the recommendation of the Departmental Promotion Committee, whereby the appellant was promoted to the post of Professor, Anatomy Department. During the pendency of the Writ petition, the prayer of the respondent No. 1 for amendment of the writ petition was allowed and thereby the Notification dated 3.4.2002 promoting the appellant to the post of Professor, Department of Anatomy in M.G.M. Medical College, Jamshedpur was challenged.

8. The appellant, who was respondent No. 4 in the Writ petition in her counter affidavit stated, inter alia, that over all evaluation and assessment of merit for promotion to the post of Professor was based on academic qualification/teaching experience/research work was as overall proficiency essential for quantitative reckoning or seniority, merit and ability. Her position was superbly much ahead of the respondent No. 1. Further, she from the very beginning of appointment remained as Assistant Professor and also discharged the work of Tutor under very pressing circumstances and he performed dual role of Assistant Profession and that of Tutor in the Department of Anatomy. Respondent No. 1 was appointed and worked as Tutor; whereas the appellant was appointed as Assistant Professor (Anatomy). She was never appointed as Tutor; rather she was looking after the work of Tutor.

9. Both the appellant and respondent No. 1 were promoted to the post of Associate Professor on the same day, i.e., on 14.5.1997 and were given charge of the said post on 16.5.1997. In the final gradation list, prepared after the reorganisation of the Bihar State into Bihar and Jharkhand containing the inter se seniority position, the appellant and respondent No. 1 have rightly been placed at Sl. Nos. 4 and 6 respectively.

10. Another counter affidavit was filed by the respondents 1 to 3, supporting the case of the present appellant, who was appointed as Assistant Professor on 16.3.1988; whereas the respondent No. 1 was appointed as Tutor in the year 1986 and was posted as Assistant Professor on 30.5.1992. It was, therefore, clear that the appellant was senior to the respondent No. 1 as Assistant Professor.

11. The learned Single Judge allowed the Writ petition on 16.9.2002 holding that although the appellant was appointed/promoted to the post of Assistant Professor, but did not join the said post and continued to function against the lower post of Tutor. She was, therefore, debarred for five years" of further promotion, which period continued up to 21.5.1999. So the Notification dated 24th June, 1988, and 2nd May, 1994, were not acted upon and as such she cannot claim seniority on the basis of such Notifications. On the other hand, the date of appointment/promotion of the respondent No. 1 as Assistant Professor being 30.3.1992 and the appellant having been debarred upto 21.5.1999 for such promotion, the respondent No. 1 became senior to the appellant.

12. The final gradation list dated 10.1.2002 in respect of the appellant as well as the respondent No. 1 was accordingly set aside and the Notification dated 3.4.2002, whereby the appellant was made Incharge Professor (Anatomy) was also set aside. The respondents were directed to modify the gradation list accordingly and JCR--(1)--22(HC) also to consider the case of the respondent No. 1 for promotion to the post of Professor (Anatomy), if the State Government intends to make such ad hoc arrangement.

13. It is not indispute that the appellant declined to join as Assistant Professor in Anugrah Narayan Medical College, Gaya, and continued as Tutor in M.G.M. Medical College, Jamshedpur and thereby became liable for being debarred for further promotion. In the aforesaid circumstances, we, therefore, find no reason to interfere with the impugned order passed by the learned Single Judge, in this Appeal.

14. In the result, this Appeal is dismissed, having no merit. There shall be no order as to costs.