

(2014) 12 JH CK 0078

Jharkhand High Court

Case No: W.P.(S) No. 4996 of 2004

Devi Prasad
Bandyapdhyay

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Dec. 11, 2014

Citation: (2015) 1 JLJR 336

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: M.M. Pal, Sr. Advocate, Mahua Palit and S.C. Roy, Advocates for the Appellant;
Vaibhav Kumar, J.C. to A.G, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the Parties.

2. It is not in dispute that the petitioner was initially appointed on the post of Medical Officer in the general health cadre of the State Government and posted at different places. Before being transferred to MGM Medical College, Jamshedpur, he was posted at Baharagora Primary Health Centre.

3. It appears from the judgment dated 17.07.2003 passed in W.P. (S) No. 966 of 2003 preferred by the petitioner that he was transferred as Medical Officer to MGM Medical College & Hospital, Jamshedpur vide notification dated 23.10.2001 and asked to perform the duty of Anaesthetist. His grievance was that though he was made to perform duty on the post of Anaesthetist by the Superintendent, MGM Medical College, Jamshedpur through letter dated 06.08.2002, but the salary is not being paid as no post of Anesthetist was sanctioned for the college. The writ petition was disposed of with a direction to the Secretary to decide the petitioner"s representation and pay admitted dues, if found payable. The present writ petition was preferred in 2004 as the petitioner"s promotion as Assistant Professor vide Memo dated 31.05.2004, Annexure-2 issued by the

respondent-Department of Health, Health Education and Family Welfare, Government of Jharkhand, Ranchi w.e.f. 01.04.2004 was revoked by a corrigendum dated 16.06.2004, Annexure-4. Annexure-4 indicates that the substantive post of the petitioner was medical officer (Anesthetist) while he was promoted as Assistant Professor, however, when he was reverted from the post of Assistant Professor, he was shown as Senior Resident/Lecturer. The petitioner claims to have joined on the promoted post on 01/06/2004. It appears that after the order of reversion, the petitioner had joined on the reverted post on 18.06.2004 as per the submission made at para-12 of the writ petition.

4. The petitioner has approached this Court for quashing of the order of reversion in the present writ petition. Vide interim order dated 23.09.2004, it was observed that if the petitioner has joined in the promoted post on 01.06.2004 then the impugned notification so far as the petitioner is concerned shall remain stayed. The petitioner pursued a contempt petition as the interim orders were not being obeyed and thereafter the reversion order was stayed by the respondent-State treating him to continue on the post of Assistant Professor, vide order dated 09.01.2008, Annexure-i6 to the supplementary affidavit filed on 18.05.2010. However, such an order was an interim arrangement subject to the final order passed by this Court in the present writ petition. During the period of reversion and its stay, the respondents had issued another notification by which he was transferred and posted at Bundu vide notification dated 31.12.2006. Now the question, which is required to be answered as to whether the petitioner had rightly been reverted vide impugned order dated 16.06.2004 or he is entitled to continue on the post of Assistant Professor to which he was earlier promoted vide memo dated 31.05.2004.

5. Learned senior counsel for the petitioner has forcefully argued that the petitioner has continued on the teaching post for long and under the guidelines and regulations of the Medical Council of India, which is enclosed as Annexure-10, if the petitioner was lacking in any requisite qualification and experience, a reference can be made by the appointing authority to the Medical Council of India for consideration on merits. It has also been submitted that there are instances of certain persons, who have been promoted to the post of Assistant and Associate Professor in the Medical College and Hospital though they were not having the requisite qualification and the teaching experience.

6. Learned senior counsel for the petitioner also made a point that the order of reversion was passed without any notice or compliance of the principle of the natural justice and therefore it is bad in law.

7. The respondents seems to have made reply at para-13 of the counter affidavit in respect of two such persons that they were Anaesthetist and were having teaching experience, therefore they were considered fit to be promoted.

8. However, to determine the issue involved in the present writ petition, it is necessary to go back to the statutory Rules, which governs the cases of Medical Officers/Teaching Employees, who are serving in the medical colleges. Annexure-G is the Rule notified on

21.05.1997 by the Department of Health, Medical Education and Family Welfare, Government of Bihar in that respect. The Bihar Medical Teaching Service Cadre Rule of 1997 provides for recruitment and promotion to various posts of teaching cadre by the said Rules and creation of a Bihar Teaching Service Cadre. As per Rule 5(K) the posts which fall in the teaching cadre are indicated thereunder w.e.f. 01.04.1997. Such posts include that of Resident Tutor, Registrar, Assistant Professor, Associate Professor, Principal as also certain posts to be filled up from the medical teaching cadre of the Directorate such as Deputy Director, Joint Director-cum-Examination Controller and Director or Additional Director. Rule 5(kha) indicates that posts of resident tutor and registrar would be converted to that of lecturer. Rest of the posts would remain as it is. 5(Ga) provides that incumbents, who are posted on the post as indicated above, would have to exercise an option in the prescribed format to either come into the teaching service cadre or to revert to their basic cadre i.e. the Bihar State General Health Cadre. Those incumbents, who did not exercise option within the time prescribed, would be reverted to their basic cadre. It further indicates that for coming into the teaching cadre or being absorbed therein they need to fulfill the eligible qualification and experience etc. failing which they would be reverted to the general health cadre. Rule 8 prescribes the modes of recruitment to the post of lecturer and also provisions for promotion to the post of Assistant Professor, Associate Professor, Professor etc.

9. It therefore is abundantly clear that any person who seeks to join the medical teaching cadre in any of medical college hospital under the respondent State Government, were required to comply with the conditions as imposed in the Rules of 1997. From the preceding facts, which have been noticed, it is for certain that the petitioner was member of the general health cadre till he was posted at the MGM Medical College & Hospital, Jamshedpur in the year 2001 by the respondent-Health Department, Government of Jharkhand. The Rules of 1997 prescribes that for promotion to the post of Assistant Professor, one has to remain for a minimum period of four years as a Lecturer and also fulfill the other qualification including teaching experience. It is the definite case of the respondent that the petitioner did not have the teaching experience at the relevant point of time when he was promoted inadvertently as an Assistant Professor through memo dated 31.05.2004. It appears that immediately on detection of such a mistake, the corrigendum was issued vide order dated 16.06.2004 whereby earlier promotion was revoked and the petitioner was reverted to the post of Senior Resident/Lecturer with his basic substantive post shown as medical officer (Anesthetist), Annexure-4. It therefore appears that on the date on which the order of promotion was issued, the petitioner was not having the requisite teaching experience to be promoted as an Assistant Professor. The order of reversion, therefore, cannot be faulted on that count.

10. It is another matter for the respondents to examine whether the petitioner has been absorbed in the teaching cadre in the medical college after having been posted in 2001 from the general health cadre or not? However, for the purpose of deciding the present controversy, it is to be held that the impugned order reverting the petitioner from the post

of Assistant Professor does not appear to suffer from any illegality or any error. The petitioner may have continued because of the operation of the interim order after the order of reversion was stayed on 09.01.2008. However, this Court does not find any reason to interfere in the impugned order, as the claim of the petitioner for the promotion to the higher post of Assistant Professor does not seem to be justified on the basis of statutory Rules, which apply to the medical teaching cadre employee under the medical colleges of the respondent-State. Therefore, no benefit can be drawn from the order of promotion, which was erroneously issued.

11. Accordingly, the writ petition is dismissed.

12. The I.A. No. 3330 of 2010 also stands disposed of.