
Vijay Kumar Vs State of Bihar

Civil Writ Jurisdiction Case No. 13470 of 2013

Court: Patna High Court

Date of Decision: May 16, 2014

Acts Referred:

Constitution of India, 1950 – Article 14, 16

Citation: (2014) LabIC 2967 : (2015) 2 PLJR 625

Hon'ble Judges: Mihir Kumar Jha, J

Bench: Single Bench

Advocate: Prabhas Dwivedi, Bipin Bihari Singh, Maya Nand Jha, Ajit Kumar and Krishna Murari Raut, Advocate for the Appellant; Awanish Nandan Sinha, G.P. II, Shukhankar Sharma, AC to GPII, Dinbandhu Singh, G.P. 9, Rana B.N. Singh, AC to GP9, Ashok Kumar Sinha, Vikas Kumar, Madhukar Krishna Sinha, SCI and Sanjeev Kumar, AC to SCI, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mihir Kumar Jha, J.

Heard learned counsel for the parties. All these three writ applications have something in common and something

different but its nucleus is the concern of the State Government to fill up teaching posts in the newly established Government Medical Colleges at

Bettiah and Pawapuri. The impugned orders/action, therefore, in all these writ applications, in first two of them relating to transfer of the petitioners

to the aforementioned Govt. Medical College, Bettiah and in the third writ petition refusing voluntary retirement to the petitioner on the ground that

his services were required to be utilized for Govt. Medical College, Pawapuri, have become the bone of contention between the parties.

2. Before this Court would advert to the aforementioned issue it would be, thus, necessary to have a glance over the facts in these three cases.

C.W.J.C. No. 13470/2013

3. In this case the sole petitioner has assailed his order of transfer dated 7.7.2013, whereby and whereunder he has been sought to be transferred

on the post of Associate Professor in the Department of Orthopaedics from Patna Medical College and Hospital, Patna (PMCH) to Govt.

Medical College, Bettiah. The case of the petitioner herein is that he holds the substantive post of Assistant Professor in the Department of

Orthopaedics which has a combined cadre for all the Govt. Medical Colleges and in the last final gradation list dated 8.7.2008 he was placed at

serial No. 20 out of total 33 Assistant Professors. According to the petitioner, he was assigned the duty of the higher post of Associate Professor

under the decision of the State Government dated 11.5.2009 when the State Government had made a number of postings in different Medical

Colleges either by transferring incumbents on the equal post held by them or by giving them the higher post, such as Associate Professor or

Professor by way of current charge arrangement and in this exercise in the Department of Orthopaedics eight Assistant Professors including the

petitioner were also posted as Associate Professor on the current charge basis.

4. The petitioner, who was working as an Assistant Professor in the Department of Orthopaedics in P.M.C.H. was also posted as Associate

Professor in the same department in PMCH. According to the petitioner, this was done strictly as per seniority position in the gradation list and all

the eight Assistant Professors, five of them being senior to the petitioner as also two of them being junior to the petitioner, were posted in the same

Medical College where they were earlier working as Assistant Professors. It is, however, the case of the petitioner that all of a sudden by the

impugned order he has been transferred as Associate Professor from PMCH to Govt. Medical College, Bettiah even while continuing the same

current charge arrangement which, according to him, is illegal as also discriminatory in nature.

5. When this case was heard on 18.7.2011 this Court while directing the respondents to file the counter affidavit as also refusing to pass any

interim order on account of apprehended de-recognition of the Govt. Medical College, Bettiah by the Medical Council of India had noted the

submission of the learned counsel for the petitioner for ensuring that the counter affidavit filed by the respondents would definitely answer the main

issue. The order of this Court dated 18.7.2011 reads as follows:

Heard learned counsel for the parties.

Assailing the impugned order of transfer, learned counsel submits that the petitioner was earlier promoted and posted in Patna Medical College

Hospital as an Associate Professor on the basis of his merit-cum-choice but now he is being edged out on a consideration that his services is

required in the newly established Medical College at Bettiah. He has explained that in normal circumstances either the senior most Associate

Professor of Patna Medical College Hospital of the Department of Orthopaedics or the Junior most person could have gone to Bettiah but the

petitioner fails to understand on what basis he has been selected which eventually may deprive him being posted in the Patna Medical College

Hospital after his promotion on the post of Professor.

Learned counsel for the State prays for and is allowed four weeks time to file counter affidavit.

List this case accordingly after four weeks at the top under heading Admission-i.

It is however made clear that as this Court has not stayed the impugned order of transfer of the petitioner to Bettiah Medical College, his joining

over there will be without prejudice to his right of being reverted back to PMCH in the event of his success in this writ petition.

6. The respondents, however, started delaying the matter and did not file the counter affidavit as a result whereof this Court had passed another

order on 11.9.2013 which again is quoted hereinbelow:

Heard learned counsel for the parties.

While learned counsel for the State has made a prayer for adjournment of this case to enable him to file counter affidavit, learned counsel for the

petitioner complains that despite the petitioner complying the order of this Court by relinquishing the charge from PMCH on 18.7.2013 as also

joining at Bettiah on 22.7.2013, neither his joining has been accepted nor he has been paid salary at Bettiah.

Having regard to the fact that the order of this Court dated 18.7.2013 requiring the learned counsel for the State to file counter affidavit has not

been complied and the learned counsel for the State has submitted that despite letters written to the Principal Secretary and Additional Secretary

of the Health Department in addition to Principal of Patna Medical College, no instruction has been received by him till date.

In that view of the matter, this Court would direct for personal appearance of the Principal Secretary as well as Additional Secretary of the Health

Department on 23.9.2013 if the counter affidavit is not filed till that date.

Put up this case on 23.9.2013 at the top of the list as a first case.

In the meantime, the concerned authority of the Health Department must ensure that the salary of the petitioner is paid from the date of his joining

at Bettiah within a period of seven days of the receipt/production of a copy of this order.

7. Subsequently, a counter affidavit was filed in which the respondents took a plea that in the matter of transfer and posting of the teachers in

Medical Colleges there is no seniority-cum-choice policy and in fact merit-cum-choice policy is available only at the time of initial appointment and

not during the midway of service. Reliance in this connection in the counter affidavit was placed on the Full Bench of this Court in the case of Dr.

(Mrs.) Shushma Pandey Vs. State of Bihar . To that extent it would be also necessary to reproduce paragraph 8 of the counter affidavit which

reads as follows:

8. That it is further humbly submitted that there is no seniority-cum-choice policy for transfer/posting. Merit-cum-choice policy is available only at

the time of initial appointment and not during the midway of service as has been clearly held by the Full Bench of this Hon"ble Court in the case of

Dr. (Mrs.) Shushma Pandey Vs. State of Bihar .

8. Let it be noted that in paragraph Nos. 9 and 10 of the counter affidavit a justification was also given for transfer of the petitioner to Govt.

Medical College, Bettiah by highlighting that it was in order to comply the requirement of Medical Council of India for allowing the teaching in

Govt. Medical College, Bettiah that the transfer of the petitioner and other teachers were made to Govt. Medical College, Bettiah and that when

such transfer orders were issued on 7.7.2013 the Medical Council of India had given permission on 15.7.2013 for starting teaching work in the

Govt. Medical College, Bettiah.

9. This Court, however, upon perusal of the counter affidavit and hearing the parties as also after examining the ratio of the case of Sushma Pandey

(supra) had found the plea of the respondents to be not tenable in the eye of law and thus, another opportunity was given to the respondents by an

order dated 25.9.2013 to explain the issues raised by the petitioner as with regard to seniority and is being subjected to transfer on pick and

choose basis. To that extent it would be relevant to quote the order of this Court dated 25.9.2013 which reads as follows:

Heard learned counsel for the parties.

Having regard to the stand taken by the respondents in their counter affidavit as also reliance on paragraph 41 of the judgment of the Full Bench in

the case of Dr. (Mrs.) Shushma Pandey Vs. State of Bihar , this Court would give an additional indulgence to the learned counsel for the petitioner

to file a clear supplementary affidavit as to how many persons are working on their substantive post of Assistant Professors and amongst them how

many have been given the current charge of the post of Associate Professor. The petitioner should, therefore, append a list of all the working

Assistant Professors/Associate Professors of PMCH with their respective date of posting strictly as per final seniority list, as contained in Annexure

1, dated 8.7.2008.

Put up this case on next Monday (30-9-2013), as prayed for, within 1-5 cases.

10. Let it be noted that no supplementary counter affidavit was filed even after expiry of four weeks and therefore, further indulgence was given to

the respondents to file their supplementary counter affidavit by an order dated 23.10.2013 and the supplementary counter affidavit ultimately was

filed on 13.12.2013, whereafter the parties were heard and the order in this case was reserved on 17.12.2013.

11. Before this Court would record about further development which had taken place in course of hearing of the first writ application, C.W.J.C.

No. 13470/2013, it would be necessary to record here the facts relating to second case, C.W.J.C. No. 15916/2013.

C.W.J.C. No. 15916/2013

12. In this writ application though the sole petitioner has assailed his order of transfer and posting on the post of Associate Professor in the

Department of Anatomy dated 3.7.2013, whereby and whereunder he has been posted as Associate Professor upon his promotion from the post

of Assistant Professor in Nalanda Medical College and Hospital, Patna (NMCH) to Govt. Medical College, Bettiah. According to the petitioner of

this case, he too was holding the substantive post of Assistant Professor in NMCH and on 8.3.2010 he was assigned the work and duty of

Associate Professor in NMCH when nine teachers in all working in NMCH were given the current charge of the post of Professor/Associate

Professor in order to remove deficiency as pointed out by the Indian Medical Council in course of its inspection for starting the post Graduate

teaching in NMCH. It is the further case of the petitioner that on 3.7.2013 he was given regular promotion on the post of Associate Professor in

the Department of Anatomy but surprisingly when he was neither senior most or junior most in the combined cadre of Associate Professor in the

Department of Anatomy, inasmuch as by the same notification dated 3.7.2013 three of his juniors i.e. respondent Nos. 5, 6 and 7 were also

promoted to the post of Associate Professor but they were allowed to be continued at their previous place of posting where they were holding the

current charge post of Associate Professor and it was only the petitioner who by way of pick and choose was shifted to Govt. Medical College,

Bettiah. According to this petitioner, in the final gradation list of combined cadre of the Department of Anatomy in all the Medical Colleges while

the petitioner was at serial No. 25 respondent Nos. 5, 6 and 7 were at serial Nos. 26, 27 and 28 and yet without following the policy of transfer of

teachers in Medical Colleges on the principle of merit-cum-seniority he was singled out for a discriminatory treatment.

13. This writ application was filed on 16.8.2013 and in which the respondents, who were directed to file counter affidavit by an order dated

28.8.2013 within a period of two weeks, had ultimately filed such counter affidavit on 22.1.2014. What is more interesting to be noted here is that

while justifying the transfer and posting of the petitioner in this case a plea has been put forward that since the petitioner was the junior to another

Associate Professor promoted and posted at NMCH he was sought to be transferred to Govt. Medical College, Bettiah. To that extent it would

be relevant to quote paragraph No. 9 of the counter affidavit filed in this case, which reads as follows:

9. That it is being further humbly submitted that out of the aforesaid 6 (six) recommended Assistant Professors for promotion to the post of

Associate Professor, Anatomy, two of them namely Dr. Aran Prasad Singh (Gradation serial number-24) and the petitioner (Gradation serial No.

-25) were working at the NMCH, Patna and therefore, in the interest of work as well as in the exigency and urgency of posting of Associate

Professor, Anatomy at Govt. Medical College, Bettiah, the petitioner who happens to be junior to the said Arun Prasad Singh, was posted at the

Govt. Medical College, Bettiah as Associate Professor, Anatomy in view of the minimum displacement criteria. Therefore, there is no illegality in

the impugned order and posting of the petitioner at the Govt. Medical College, Bettiah in view of the totality of the circumstances.

14. As this plea of the respondents regarding justification of the petitioner posting at Govt. Medical College, Bettiah on the post of Associate

Professor in the Department of Anatomy was contested by the learned counsel for the petitioner by filing a supplementary affidavit bringing on

record the fact regarding respondent Nos. 5, 6 and 7 being junior in the combined cadre of the Department of Anatomy, his prayer made for their

being made as a party to this writ application was allowed by an order dated 23.1.2014 which for the sake of clarity and convenience is quoted

herein-below:

Heard learned counsel for the parties.

Learned counsel for the petitioner prays for and is allowed to implead Dr. S.K. Karn, Dr. Vinod Kumar and Dr. Ashok Kumar Singh as

respondent Nos. 5, 6 and 7 to this writ application.

Having regard to both the Rules and the Policy of the Government in the Department of Health of giving promotion on the principle of seniority-

cum-choice Dr. Maya Nanda Jha, learned counsel for the petitioner has submitted that while it may be true that the petitioner was the junior most

Assistant Professor at Nalanda Medical College and Hospital (NMCH), who had got promoted and was denied the promotional post of

Associate Professor at NMCH on account of two Associate Professors already working over there, despite one vacancy still remaining unfilled at

NMCH, the said principle has not been followed while giving promotion and filling up the promotional post of Associate Professor in Darbhanga

Medical College and Hospital (DMCH) and S.K. Medical College, Muzaffarpur (S.K.M.C.H.) inasmuch as the persons, junior to the petitioner,

such as Dr. S.K. Karn and Dr. Vinod Kumar, have been sought to be retained in their own Medical Colleges at Darbhanga where they were

working as an Assistant Professor.

Learned counsel for the State on the other hand has tried to defend the Government decision by taking a plea that Bettiah Medical College is a

new Medical College of the State Government and there was infact requirement for filling up the teaching posts in absence whereof its recognition

could have been cancelled by the Medical Council of India (M.C.I.). He has, however, failed to satisfy this Court from the averments made in the

counter affidavit as to why such posting at Bettiah could not have been given to juniors to the petitioner namely Dr. S.K. Karn and Dr. Vinod

Kumar, who were retained at D.M.C.H. and S.K.M.C.H.

In such a situation, learned counsel for the State prays for and is allowed four weeks time to file supplementary counter affidavit explaining the

aforesaid aspect.

In view of the fact that any order that may be passed by this Court after examining the supplementary counter affidavit to be filed by the officials

respondents, may also adversely affect the newly added respondent Nos. 5, 6 and 7 let notices to the respondent Nos. 5, 6 and 7 be also issued

both under ordinary process as well as registered cover with A/D for which requisites etc. must be filed within a period of one week from today,

failing which this writ application as against the concerned respondents, shall stand rejected without further reference to a Bench.

Additionally, Mr. Jha will serve three copies of the writ application on the learned counsel for the State which then will be served on respondent

Nos. 5, 6 and 7 through the Deputy Secretary, Health Department, author of the impugned notification, who will be also under obligation to file an

affidavit showing service of such notice on respondent Nos. 5, 6 and 7 within a period of two weeks from the date of receipt of copies of the writ

application by him from the learned counsel for the State.

Put up this case after four weeks under the same heading.

15. Let it be noted that though respondent Nos. 5, 6 and 7 have been served the notice as per affidavit filed by the officials of the Health

Department and the report of the Registry of this Court, a counter affidavit has been filed only on behalf of respondent No. 6. No supplementary

counter affidavit has, however, been filed on behalf of the officials respondents.

16. It is significant to note here that at this stage this Court had also been hearing C.W.J.C. No. 15916/2013 and when in that case a counter

affidavit was filed on 22.1.2014 taking exactly opposite stand and justifying the transfer of the petitioner of the second case on the ground of his

being junior, that hearing of the first case was resumed after placing the case under the heading "to be mentioned" on 17.2.2014 and the

respondents were directed to produce the relevant file by an order dated 17.2.2014. Let it be noted that in the meantime as certain developments

had taken place which had given the petitioner further material to establish the allegation of discrimination in the matter of transfer of the teachers to

Govt. Medical College, Bettiah, prayer of the learned counsel for the petitioner was also allowed to file a supplementary affidavit and a direction

was given to the learned counsel for the State that apart from producing the relevant file a supplementary counter affidavit should also be filed with

regard to that plea of discrimination.

17. Pursuant thereto both the cases i.e. C.W.J.C. No. 13470/2013 and C.W.J.C. No. 15916/2013 were heard together on 26.3.2014 and the

prayer of the learned counsel for the State to file supplementary counter affidavit was allowed. This Court on 26.3.2014 had passed the following

order:

When both these cases have been taken up for further hearing, learned counsel for the State, having appreciated the issue involved in these two

writ applications, seeks time and is directed to file a supplementary counter affidavit on behalf of the Principal Secretary of the Health Department

stating clearly as to how the Government has decided to make transfer and posting for filling up the post of teaching posts in the newly established

medical colleges from amongst the teachers already working in other old existing medical colleges posted there on the basis of their merit-cum-

choice.

Put up both these cases again under the same heading on Friday i.e. 28th March, 2014. Let a copy of this order be given to the learned standing

Counsel Mr. Dinbandhu Singh, GP9.

18. It is only after the matter was further heard on 28.3.2014 and 4.4.2014 whereafter the orders were reserved.

C.W.J.C. No. 23812 of 2013

19. The inception of this third case in fact was also made during the pendency of these two writ petitions which was filed on 28.11.2013 by Dr.

Lalit Kumar, the petitioner of third case, C.W.J.C. No. 23812/2013. It would, thus, be relevant to also have the facts of the third case, C.W.J.C.

No. 23812/2013.

20. In this case the petitioner, a Professor in the Department of Radiology in Vardhman Institute of Medical Science, Pawapuri, Nalanda, a

Government Medical College, has assailed an order of the State Government dated 24.9.2013, whereby and whereunder the prayer of the

petitioner for his voluntary retirement has been refused. The petitioner has, therefore, prayed a consequential prayer that upon quashing of the

impugned order dated 24.9.2013 he should be allowed to avail the benefit of voluntary retirement as prescribed under Rule 74 of the Bihar

Service Code.

21. The facts are very short and simple that while the petitioner was working as an Assistant Professor in the Department of Radiology in PMCH,

he had been posted as a Professor in Pawapuri Govt. Medical College on current charge basis but then he did not want to continue in Government

service and had filed an application on 21.6.2012 for voluntary retirement on the ground that he had completed 58 years of age as also more than

30 years of his Government service and as such, his prayer for voluntary retirement in terms of Rule 74 of the Bihar Service Code should be

accepted with effect from 1.10.2012. His such application was, however, rejected by the State Government on 24.9.2013 on the ground that there

was dearth of teachers in Medical Colleges.

22. As a matter of fact when this case came to be heard on 7.4.2014 the respondents who despite expiry of a period of more than four months

had not filed counter affidavit, were given an indulgence to file their counter affidavit by an order dated 7.4.2014, relevant portion whereof reads as

follows:

Heard learned counsel for the parties.

Having regard to the impugned order passed by the Health Department refusing voluntary retirement of the petitioner, prima facie against the spirit

of Rule 74 of the Bihar Service Code, this Court would direct the Principal Secretary of the Health Department to file counter affidavit, explaining

as to how the State Government intends to manage the cadre of teachers of newly established medical colleges specially when he has gone on

record in CWJC No. 13470 of 2013 and CWJC No. 15916 of 2013 that the State Government can keep on transferring the teachers of the

medical college initially selected and allocated posting in one particular medical college on the basis of merit-cum-choice as per the Government

policy. In other words, the Principal Secretary, Health Department, will clarify the stand of the Government with regard to refusal of voluntary

retirement to the petitioner and its impact on the present policy of transfer and posting of teachers in the newly established medical colleges.

Put up this case after two weeks on 23.4.2014 at the top of the list as a tied up case.

23. Let it be noted that the stand taken in this case had a direct impact on the stand taken by the respondents in the first two writ petitions,

inasmuch as the State Government was all along taking the plea of administrative exigencies for managing its newly established Medical Colleges at

Bettiah and Pawapuri and its recognition by the Medical Council of India.

24. The counter affidavit which has been filed in this case on 25.4.2014 does not answer the query in the order of this Court dated 7.4.2014 and

on the other hand, justification was given for not allowing the voluntary retirement of the petitioner in paragraph Nos. 6 to 10 which reads as

follows:

6. That at the outset it is humbly submitted that it may be true that petitioner is otherwise eligible for grant of voluntary retirement but, his prayer

for the same has been refused in exceptional circumstances and also in the large public interest of the State because there is serious paucity of

Medical Teachers in the Govt. Medical Colleges.

7. That it may not be out of place to mention here that the Vardhman Institute of Medical Science, Pawapuri was granted approval for taking

admission of 100 students in the MBBS course in the session 2013-14 by the MCI and for obtaining aforesaid approval the Health Dept. Govt. of

Bihar had made a lot of effort including reducing the deficiency of faculty.

8. That it is further humbly submitted that the inspection by the MCI for renewal of the aforesaid approval of the Vardhman Institute of Medical

Science, Pawapuri, Nalanda was due this year i.e. 2014 and that time also the fulfillment of the norms of adequate faculty is an important condition

for further extension of the said approval and therefore, under such circumstances if the prayer of the petitioner for his voluntary retirement is

accepted then it would result in shortage of faculty which may cause obstacle in the renewal of the Vardhman Institute of Medical Science,

Pawapuri, Nalanda.

9. That it is important to submit here that the Principal, Vardhman Institute of Medical Sciences, Pawapuri, Nalanda vide his memo No. 244 dated

19.3.2014 has informed that due to inspection of the MCI, petitioner and other medical teachers were directed to present on the proposed date of

inspection but, petitioner and some other medical teachers knowingly, did not appear till 6.00 p.m. on the fixed date i.e. 10.3.2014 and

11.3.2014.

10. That it is further humbly submitted that due to dereliction of duty by the petitioner and other medical teachers, the Health Dept. Govt. of Bihar

is contemplating to take disciplinary action against the erring medical teachers.

25. Having thus set out the background fact of these three cases this Court before going into the issues involved therein can only say that there is a

complete anarchy in the Health Department and anyone who dares to question the arbitrary and illegal decision of the Health Department of the

State Government is treated as enemy. It is all more unfortunate that inconsistent and contradictory pleas in the same matter is being taken before

this Court by the same set of officials of Health Department of the State Government.

26. In the first case relating to transfer of the petitioner Dr. Vijay Kumar from the post of Associate Professor from PMCH to the Government

Medical College, Bettiah the respondents have taken a categorical plea that the seniority is no criteria for transfer and posting of a teacher in

Medical College but in the second case of Dr. Subodh Kumar, Associate Professor for his posting from N.M.C.H. to Bettiah Medical College the

same respondents do not lose a single breath in filing an affidavit that the transfer of the petitioner of the second case in the Department of Anatomy

from NMCH to Government Medical College, Bettiah was made because he was the junior to other teachers working in NMCH. What is still

more unfortunate is that repeated judicial pronouncement of this Court which had remained unchallenged and in fact had acquired finality are being

disregarded by the authorities of the Health Department.

27. Let it be noted that the Full Bench of this Court in the case of Dr. Shushma Pandey (supra) in no unequivocal terms has laid down that the

principle of merit-cum-choice in posting of the teachers in Medical College was subsisting and has not been abrogated. To that extent it would be

relevant to quote paragraph No. 13 of the judgment of the Full Bench in the case of Shushma (supra) containing questions and its answers in

paragraph Nos. 29, 31, 38 and 44 which are quoted hereinbelow:

13. In view of aforesaid following questions fall for our determination:--

(i) Whether the State Government has framed policy of merit-cum-choice for posting of teachers in Medical Colleges?

(ii) Whether the policy of merit-cum-choice for posting subsists and not superseded later on?

(iii) Whether the policy of merit-cum-choice, if existed, continued after coming into force of Bihar Medical Education Services Cadre and

Recruitment of Cadre Posts Rules, 1997?

(iv) Whether the policy of merit-cum-choice, if existing, can be enforced by issuance of an appropriate writ?

29. In view of the discussion aforesaid, the first question posed at the outset is answered in affirmative and it is held that there exists the policy of

merit-cum-choice in posting of teachers of Medical Education Cadre in Medical Colleges.

31. Accordingly, answer to the second question set out at the outset is answered in the negative and it is held that policy of merit-cum-choice has

not been superseded either directly or by implication by any subsequent decision.

38. The analysis aforesaid leads me to conclude that the principle of merit-cum-choice in posting has not been abrogated by the Rules and answer

to question No. 3 at the outset is rendered in affirmative and it is held that existing policy of merit-cum-choice continues after coming into force of

the Bihar Medical Education Services Cadre and Recruitment of Cadres Posts Rule, 1997.

44. To conclude, the answer to question No. (iv) set out at the outset is rendered in affirmative and it is held that the policy of merit-cum-choice

can be enforced by issuance of a writ in the nature of mandamus.

28. What really has perturbed and in fact shocked this Court is that even after the judgment of the Full Bench in the case of Dr. Shushma Pandey

(supra) when the same plea was raised by the Health Department in the case of Dr. Devi Dutta Gupta Vs. The State of Bihar and Others, and was

answered in negative, the respondents have not as yet been able to reconcile with the facts that their such plea has been rejected. In this regard it

would be useful to refer to paragraph Nos. 5, 6 and 7 of the judgment of the learned Single Judge in the case of Dr. Devi Dutta Gupta (supra),

wherein it has been held as follows:

5. The matters have therefore been heard afresh. While the present matters were thus pending before this Court, both the issues falling for

consideration have been authoritatively decided by a Full Bench of this Court dated 21.2.1006, reported in Dr. (Mrs.) Shushma Pandey Vs. State

of Bihar and analogous cases.

6. Learned counsel for the private respondent No. 4 in C.W.J.C. Nos. 14012/03 and 14197 of 2003 sought to persuade this Court that the

principles of merit-cum-choice to be followed as laid down by the Full Bench were applicably only at the stage of initial posting after appointment

and did not cover transfers and postings made after such initial appointment. This Court does not concur with the same.

7. A judgment is an authority for what it decides and not what may be interpreted on it by extracting lines from passages, torn out of context. That

the principle of merit-cum-choice shall apply not only at the time of initial appointment but even subsequent transfer and posting stands

authoritatively decided by the Full Bench. There is no occasion for this Court to dwell upon the same.

29. As a matter of fact if the transfer of the teachers, who are initially given their choice of posting as per their merit, is disturbed in the midstream,

the very object of the policy would be frustrated. Let it be noted that this policy has been continued for a long time and in fact all the teachers in

respect of Medical Colleges have been finding it very difficult to function on their respective post on account of this threat of transfer in the

midstream. No one can question the power of the employer to transfer but then such power has to be exercised in an uniform and rational manner.

In fact barring administrative exigency or indiscipline there may not be many cases which would justify for transfer and posting from one medical

college to another. Such administrative exigency may be on account of promotion and moment the question of promotion will come out and if there

would not be vacancy on the higher post, he in order to earn promotion is definitely to move out from that place. That itself becomes a case of

merit-cum-seniority.

30. The second situation may be that the transfer has to be made while the promotions have not been given as yet. In such a situation when the

current charge arrangement is also being made strictly as per seniority there would be no difficulty in allowing that person to remain at that very

place if the vacancy on the higher post on which such current charge arrangement is made is there.

31. The third situation can be that if a person has rendered himself unfit even after being posted at a particular medical college on account of his

being indisciplined or having committed misconduct he would automatically gives up his right to continue on the post that he was given on the basis

of merit-cum-seniority.

32. The last situation which this Court can envisage is when a new post in the cadre is created in new Medical Colleges. In such case if the

Government needs the senior most person in the cadre for establishing that College for its becoming viable and functional either the senior most of

the cadre have to be sent or in alternative the junior most of the cadre who will have to move to the new Medical College. There cannot be a pick

and choose of disturbing a teacher who was earlier given his posting on the basis of principle of merit-cum-seniority.

33. In the present case, however, there has been no rational policy and as because of this the petitioner of third case, who was earlier working as

an Assistant Professor in the Department of Radiology in PMCH on being sent to Pawapuri Govt. Medical College has sought voluntary retirement

even when he has been left with almost 6 years of service inasmuch as the age of retirement in Medical College is 65 years. The treatment being

meted out to the petitioner to two cases may also infact follow the same result.

34. Let it be noted that the petitioner of the first case on the basis of his seniority-cum-merit was not only posted in the Department of

Orthopaedics in PMCH both as Assistant Professor but also as an Associate Professor under current charge arrangement. This current charge

arrangement has continued for a period of five years and yet his case of promotion along with others have not been finalized. As is known in the

current charge arrangement one does not get the rank and pay scale of the promotional post. A period of five years of career of the petitioner of

the first case has been wasted and yet he has been given a marching order from Patna to Bettiah despite the fact that he is neither the senior most

cadre nor the junior most in the cadre. He had never asked for being made as an Associate Professor on current charge in the Government

Medical College, Bettiah. If the Government Medical College, Bettiah came in existence after the petitioner was made as Associate Professor in

the Department of Orthopaedics it was the junior most of the cadre of the Assistant Professor working as an Associate Professor who had to be

moved out to the newly created post of Associate Professor in Government Medical College, Bettiah. This Court fails to understand as to on what

basis and what rational the petitioner of the first case was selected and posted as Associate Professor in Government Medical College, Bettiah.

35. It was for this purpose and when the respondents had not only taken a contradictory stand in their counter affidavit in the first two cases i.e. the

case of Dr. Vijay Kumar and Dr. Subodh Kumar as explained earlier that the original file has been called for. The perusal of the main file relating to

transfer and posting of the petitioner Dr. Vijay Kumar would really shock anyone because the file which was of course initiated for filling up the

post of Medical College, Bettiah has in it the list of teachers of the Department of Medicine at page 5, the list of teachers of the Department of

Surgery at page 6, the list of teachers of Department of Preventive and Social Medicine at page 7, the list of teachers of Physiology at pages 8 and

9, the list of teachers of the Department of Bio Chemistry at page 10, the list of teachers of the Department of Anatomy at pages 11 and 12, the

list of teachers of the Department of Skin and diseases at page 14 and the list of teachers of the department of Obstetrics and Gynecology at page

15. Surprisingly there is no list of the teachers of the Department of Orthopaedics nor even the gradation list has been kept there and one does not

know from which source either the Additional Secretary or the Health Commissioner got the dream about the petitioner being only person eligible

for his transfer on the post of Associate Professor.

36. Let it be noted that when the petitioner was given the current charge of the post of Associate Professor for saving recognition of different

Medical Colleges along with others vide notification dated 11.5.2009 (Annexure 5) he was at serial No. 6 and thus, junior to five persons senior to

two persons. Those senior to the petitioner in this list were Dr. Satyendra Kumar, Assistant Professor at NMCH, who was retained on the basis of

his seniority-cum-merit at NMCH, Dr. Vishvendra Kumar Sinha, Assistant Professor at PMCH, who was again allowed to remain at PMCH, Dr.

Nand Kumar, Assistant Professor at Darbhanga Medical College, Darbhanga, was again allowed to remain as Associate Professor on current

charge in Darbhanga Medical College, Darbhanga, Dr. Ram Nandan Suman was shifted from Nalanda Medical College and Hospital to Patna

Medical College and Hospital and Dr. Dilip Kumar Singh, Assistant Professor of Bhagalpur Medical College, Bhagalpur was again allowed to

remain at Bhagalpur Medical College, Bhagalpur, whereas juniors to the petitioner Dr. N.K. Singh, Assistant Professor in S.K. Medical College,

Muzaffarpur was allowed to remain at S.K. Medical College, Muzaffarpur and it was only Dr. Arbind Kumar, the second junior to the petitioner

who was shifted from S.K. Medical College, Muzaffarpur to A.N. Medical College, Gaya. Thus, if from this arrangement made on the basis of

current charge in the department of Orthopaedics no one was to be moved out on account of creation of a new post of Associate Professor at

Govt. Medical College, Bettiah, it was the junior most or senior most who had to be moved out. In any case the petitioner could not have been

singled out for his out of turn posting as Associate Professor in Govt. Medical College, Bettiah. By doing so not only the law laid down by this

Court in the case of Dr. Shushma Pandey (supra) and Dr. Devi Dutta Gupta (supra) has been violated but even doctrine of fair play has been

breached.

37. This Court has also very carefully gone into the records, namely, the Government files to find out any answer with regard to selection of the

petitioner Dr. Vijay Kumar for his transfer on the post of Associate Professor, Orthopaedics from PMCH to Govt. Medical College, Bettiah and

at least there is nothing in the Govt. File No. 17/A1-05/2013 which would indicate the reasons for transfer of the petitioner Dr. Vijay Kumar. It is,

thus, here that the element of public interest which has been pleaded in the counter affidavit is found to be mere hoax. It is true that the Government

needed teachers in the Government Medical College, Bettiah but that would not mean that no norms had to be followed. In view of above, this

Court will have no difficulty in holding that the impugned order transferring the petitioner Dr. Vijay Kumar falls short of the principles of both under

Articles 14 and 16 of the Constitution of India which have been lucidly stated in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, :

.... Where the operative reason for State action, as distinguished from motive inducting from the antechamber of the mind, is not legitimate and

relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts.

14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends

the former. Both are inhibited by Arts. 14 and 16.

38. The aforesaid observations of the Apex Court came to be made while dealing with the case of transfer of the Chief Secretary of the State of

Tamil Nadu and therefore, is also well referable to the present case of transfer of the petitioner. There is one significant aspect which has to be

noticed in selective transfer of the petitioner Dr. Vijay Kumar. It has to be noted that when a current charge arrangement by way of assigning the

higher post was made for saving the de-recognition of all the Medical Colleges on the basis of strictly seniority-cum-merit, not only the petitioner

among 40 teachers covered by the notification was given a place of his choice as per his seniority but so were 39 others. Today however when the

impugned order has been issued no one of that notification dated 11.5.2009 has been sent to Govt. Medical College, Bettiah. As a matter of fact

no one from that list of 40 doctors of the Assistant Professors given current charge of the post of Associate Professor have been shifted barring the

petitioner.

39. This Court, therefore, would find that the plea of discrimination raised by the petitioner is writ large on the face of record and in fact has no

satisfactory answer from the respondents who have very conveniently despite being given repeated opportunity not stated anything except making

a bald statement that the principle of seniority-cum-merit is not followed in the midstream of career of teachers. Such stand in fact is not only

contemptuous in view of what has already been held in the judgment of the Full Bench but also in the subsequent judgment of Dr. Devi Dutta

Gupta (supra) but is also reflective of partisan attitude of the respondents as would be found hereinafter.

40. The petitioner in this regard has cited an example of a case of Dr. Ajit Bahadur Singh, who was a Professor of surgery and was sought to be

transferred from PMCH to Government Medical College, Bettiah. Let it be noted that Dr. Ajit Bahadur Singh had filed a writ petition in this Court

assailing his order of transfer and posting from PMCH to Govt. Medical College, Bettiah dated 7.7.2013 in C.W.J.C. No. 13456/2013.

41. In this regard it is very significant to note here that the same respondent officials of Health Department while defending the decision of posting

of Dr. Ajit Bahadur Singh as Associate Professor from P.M.C.H. to Bettiah Medical College had taken a categorical stand in their counter

affidavit as has been recorded in the order of this Court dated 26.08.2013 in C.W.J.C. No. 13456/2013 which reads as follows:--

Learned counsel, appearing on behalf of the State, on the other hand, has filed counter affidavit wherein, apart from other things, two pleas have

been raised. Firstly, it has been stated that in the matter of promotion and thereafter posting the principle of posting as per merit-cum-choice

cannot be followed and, secondly, it has been stated that the posting of the petitioner outside PMCH and, in fact, in Bettiah Medical College was

on account of compulsion. To that extent it would be relevant to quote paragraphs 6, 7, 8 and 9 to the counter affidavit which reads as follows:--

6. That it is humbly stated that all together 17 posts of Professor, Surgery, are sanctioned for all 9 Medical Colleges in Bihar including one post of

Professor in the newly established Government Medical College, Bettiah.

7. That it is stated that the State Government decided in the year 2007 to set up three new Medical Colleges in Bihar to address shortage of

doctors. However, none of these could get permission to admit students prior to this year. The Government Medical College, Bettiah was one

amongst those. As per procedure, the Medical Council of India inspected this College and reported a faculty shortage of over 18%. With a view

to obtain permission to admit students in a newly established medical College, it is imperative to bring down the faculty shortage below 10%.

Accordingly, eleven faculty positions including the post of Professor in Surgery were filled in the Government Medical College, Bettiah to bring

down the shortage of faculty position and an undertaking to address other deficiencies in a time bound manner was given to the Medical Council of

India. As a consequence thereof MCI has granted permission to establish Government Medical College, Bettiah and admit 100 students for the

first time this year.

A photo copy of the MCI letter showing faculty shortage is attached herewith as Annexure-A to this Counter affidavit.

8. That four Associate Professors working in the Surgery Department of different Medical Colleges, including the petitioner, were promoted to the

post of Professor. The name of the petitioner appears at No. 3 in the list of such promoted Professors as per his inter se seniority. The first two of

them were posted in the same Colleges against vacant posts of Professor, Surgery, where they were posted earlier as Associate Professors. The

last fourth was also posted in J.L.N. Medical College, Bhagalpur, against a vacant post, i.e., in the College where he was posted earlier as

Associate Professor, because as per MCI Inspection carried out in that College earlier, shortage of Professor in surgery was pointed out.

However, with a view to bring down the faculty shortage in the Government Medical College, Bettiah for getting recognition for admission of

MBBS 1st year course for Session 2013-14 the competent authority was left with no choice except posting the petitioner, who was at No. 3 in the

list, to that Medical College.

9. That the posting of petitioner has been made in the larger interest of the State. Due to posting of eleven faculty positions, including the petitioner

in the Government Medical College, Bettiah, the State was successful in getting permission to admit 100 students in this new Medical College this

year, i.e., for the first time.

42. This Court relying on the aforesaid averment of Respondents in C.W.J.C. No. 13456 of 2013 by an order dated 26.8.2013 without interfering

with the transfer order of Dr. Ajit Bahadur Singh the petitioner of that case and upholding the projected and highlighted administrative exigency

arising out of certain de-recognition of Govt. Medical College, Bettiah had only observed that in the event of filling up the post of Professor in the

Department of Surgery his case shall be considered first before posting anyone else. To that extent it would be also useful to quote the relevant

part of the order of this Court dated 26.8.2013, relevant portion whereof reads as follows:--

Having thus considered the plea of the respondents in paragraphs 6 to 9 of the counter affidavit and, in fact, that no one junior to the petitioner has

been given posting to the PMCH by way of choice cum merit on the post of Professor in the Department of Surgery, this Court must hold that the

order of posting in Bettiah Medical College does not suffer from any error. To that extent the challenge of the petitioner must fail.

That would bring this Court to the last issue for which the learned counsel for the respondents was given indulgence, even after filing the counter

affidavit, by order dated 23.08.2013, relevant portion of which reads as follows:--

This Court has been consistently putting one question to the State Counsel for last one month, whenever this case has been taken up, as to

whether the petitioner shall be accommodated at PMCH once necessity, under which the petitioner is sought to be posted in Bettiah Medical

College, will come to an end when the person junior to the petitioner becomes available on the recommendation of the Commission for being

promoted and posted on the post in the Department of Surgery. In other words, the State will have to explain as to whether it intends to only

disqualify the petitioner from getting PMCH or persons junior to the petitioner will also have to give up PMCH for the same reason.

Today learned counsel for the State, having taken instructions from the respondents, have stated that they are not in a position to give any firm

undertaking that when from the same panel the persons posted below the petitioner could give choice of PMCH they will not be posted to PMCH

and the junior most amongst them transferred to Bettiah Medical College. This however cannot be permitted inasmuch as if the petitioner has been

sought to be sent to Bettiah Medical College on the ground of threatened de-recognition of Bettiah Medical College the Government cannot post

any one below the petitioner from the same panel at PMCH who have also given option for PMCH and yet are junior to the petitioner in the

combined cadre.

In that view of the matter, if from the same Panel any one placed below the petitioner is considered for the posting at Patna Medical College the

case of the petitioner will be considered first for posting to the petitioner in the Department of Surgery in PMCH. In other words, the petitioner

being at serial No. 3 in the Panel and there are five vacancies on the post of Professor of Surgery at PMCH, he will be given the first preference

and no one junior to him will be posted in PMCH unless he is given such posting.

43. The subsequent events taking place in the corridors of Secretariat of the State Government however go to show that this court was totally

misled by the Respondents. It actually now transpires that Dr. Ajit Bahadur Singh had infact never joined the Govt. Medical College, Bettiah in

compliance of his order of transfer even after its being upheld by this Court in the judgment dated 26.08.2013 and yet on the basis of a direct

representation filed by him in the Chief Minister Secretariat after his writ petition was dismissed he was transferred back from Bettiah Medical

College to PMCH on 28.1.2014 even without referring to the aforesaid judgment of this Court dated 26.8.2013 in the case of Dr. Ajit Bahadur

Singh (supra).

44. Thus when this case of Dr. Ajit Bahadur Singh was cited by the petitioner Dr. Vijay Kumar by filing a second supplementary affidavit and as

this development had taken place only during the pendency of the writ application the respondents on being directed have filed a second

supplementary counter affidavit wherein not a word has been stated as with regard to favourable treatment meted out to Dr. Ajit Bahadur Singh.

The file which has been produced by the respondents would itself go to show that on a representation filed by Mr. Ajit Bahadur Singh before the

Principal Secretary to the Chief Minister on 2.9.2013 i.e. after disposal of his writ application by an order of this Court dated 26.8.2013

comments were called for from the Health Department and a plea was developed that since in his case the principle of merit-cum-choice and the

minimum replacement was not followed could he be brought back to PMCH. To that extent it would be relevant to quote the relevant portion of

noting of the file relating to Dr. Ajit Bahadur Singh, which has been produced before this Court by the learned counsel for the State:

(Underlining of notes in file by me for emphasis)

45. It would, thus, be clear that though the State Government has produced photostat and truncated file in the case of Dr. Ajit Bahadur Singh

whatever has been done in the case of Dr. Ajit Bahadur Singh while issuing his being restored to PMCH by an order dated 28.1.2014 even

without noticing an adverse judgment of this Court dated 26.8.2013 against him and only at the behest of Principal Secretary to the Chief Minister

if the same principle was followed in the case of the petitioner Dr. Vijay Kumar he too was not required to be transferred because alike Surgery

teaching of Orthopedics is also not done in the first two years of M.B.B.S. course. In his case also the principle of merit cum choice was not

followed because both seniors and juniors to him were retained in their respective Medical Colleges. The question, therefore, would be why such

singular discrimination was sought to be made only in the case of the petitioner Dr. Vijay Kumar. No answer in fact can be found either from

counter affidavit or the Government files which have been produced by the learned counsel for the State before this Court.

46. It is at this stage that one has to now look into the facts of the second case relating to Dr. Subodh Kumar, Associate Professor in the

Department of Anatomy. As noted above, in the case of Dr. Subodh Kumar also his arrangement on current charge basis was made on the post of

Associate Professor at NMCH while he was functioning as an Assistant Professor in NMCH on 8.3.2010. Alongwith him seven other teachers in

Preventive and Social Medicine Department, Eye Department, Micro Biology Department and Physiology Department were made out of whom

three of them, namely, Dr. Sunil Kumar Mallick, in the Department of Orthopedic, Dr. Sanjay Kumar in the Department of Micro Biology and Dr.

Sujit Kumar in the Department of Physiology were not even the members of regular cadre of teachers rather they were taken on contract basis.

Let it be noted that Rules do provide for filling up the higher promotional post either by way of promotion on the basis of merit-cum-seniority or by

way of contractual appointment as would be evidenced from the following portion of the Rules, namely, Senior Resident, Tutor and Bihar Medical

Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008. Chapter 6 of the Rules under Rule 9 while laying down the

provision for promotion lays down as follows:--

a.

b. Regular Promotion from the post of Assistant Professor to the post of Associate Professor and from Associate Professor to Professor will be

given in their respective speciality and superspeciality concerned by taking into account the Principle of seniority-cum-merit, teaching experience

etc. in accordance with the mandatory regulation of the Medical Council of India.

c. In case of exigency or non-availability of suitable doctors to be appointed/promoted on the aforesaid posts, the Government can make

appointment on contract basis for a limited period from outside sources.

47. Thus, when the case of Dr. Subodh Kumar for his promotion after working on the post of Associate Professor for a period of more than three

years on current charge basis had matured, the principle of seniority-cum-merit had to be essentially followed but by the notification dated

3.7.2013 while two of the seniors of Dr. Subodh Kumar, namely, Dr. Gaurikant Mishra, working as Assistant Professor in Darbhanga Medical

College, Laheriasarai and Dr. Arun Prasad Singh working as Associate Professor in Nalanda Medical College were allowed to be continued by

way of promotion in DMCH and NMCH respectively and even two juniors to the petitioner, namely, Dr. S.K. Karn, Assistant Professor, working

in DMCH and Dr. Binod Kumar, Assistant Professor in S.K. Medical College, Muzaffarpur on promotion were allowed to be retained in DMCH

and SKMCH respectively it was the petitioner Dr. Binod Kumar who was picked out for his being posted at Govt. Medical College, Bettiah. In

his case the respondents unlike in the counter affidavit of his case have not taken a plea that the seniority in the midstream is never taken into

consideration rather in his case in paragraph No. 9 of the counter affidavit, as quoted above, it is said that since the petitioner was junior of the two

working at NMCH he was sought to be removed.

48. A question will arise why the same principle could not be followed in the case of Dr. Arun Kumar and Dr. S.K. Karn who too were working

in DMCH. Dr. S.K. Karn being junior to the petitioner was still retained at Darbhanga Medical College, Laheriasarai even after his promotion. As

a matter of fact this Court would find that in the case of petitioner Dr. Subodh Kumar also there were four persons being junior to him, namely, Dr.

S.K. Karn, Dr. Binod Kumar, Dr. Ashok Kumar Singh and Dr. Birendra Kumar Singh at serial Nos. 26, 27, 28 and 29 of the gradation list

(Annexure 6), wherein the petitioner Subodh Kumar was at serial No. 25. There is nothing in the file to show that the same principle which was

sought to be applied in the case of Dr. Ajit Bahadur Singh regarding seniority-cum-merit was followed in the case of posting of the petitioner Dr.

Subodh Kumar.

49. This Court, therefore, will have no option but to agree with the submission of the learned counsel for the petitioner in the second case relating

to Dr. Subodh Kumar that he despite being not the junior most was transferred in an arbitrary manner by way of protecting the interest of

respondent Nos. 6 to 8.

50. Let it be noted that when respondent No. 6 Dr. Binod Kumar has filed his counter affidavit his defence is that the promotion, transfer and

posting is in the hand of the State Government and he has only to abide by the decision of the State Government and has supported the transfer of

the petitioner Dr. Subodh Kumar that the Government had found that he was the junior to other teacher working in NMCH. According to

respondent No. 6, the petitioner was the senior most and since there was a vacancy in Govt. Medical College, Bettiah his transfer was made as

per MCI Guideline.

51. Unfortunately neither of the two statement either of the official respondents or respondent No. 6 is correct because the petitioner Dr. Subodh

Kumar was never the senior most much less the junior most in the cadre of teachers in the Department of Anatomy as would be evidenced from a

bare perusal of Annexure 6, the gradation list produced by the petitioner in the writ application as has also been asserted by him in reply to the

counter affidavit while replying paragraph No. 9 of the counter affidavit of the State which reads as follows:--

9. That the statement made in para-8 to the counter-affidavit is not correct and the same has been wrongly interpreted. The petitioner was

working as the Associate Professor in NMCH before the notification and as such, the working employees/Professors are 2 instead of 1 but with a

purpose to create confusion against his name Assistant Professor had been shown.

52. Thus, this Court also does not find that the order of transfer and posting of Dr. Subodh Kumar, the petitioner of the second case, is based on

any sound rationale and in fact is equally arbitrary as in the case of the petitioner of first case, namely, Dr. Vijay Kumar.

53. The third case which has been clubbed by this Court would require no longer discussion and deliberation in view of the statutory provision

made in Rule 74 of the Bihar Service Code, relevant portion whereof reads as follows:

74(a)

(b)(i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months previous notice, in

writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years qualifying

service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government.

Provided further that in case of the officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the rule making

authority of the Chief Justice, no such officer and servant under suspension shall retire from service except with the specific approval of the Chief

Justice.

(ii).....

(iii).....

54. Scope of Rule 74(b)(i) of the Bihar Service Code has been decided by this Court in C.W.J.C. No. 2900/2007 (Gauri Devi v. The State of

Bihar & Ors.) as also in the case of Dr. Shah Azad Siddiqui Vs. The State of Bihar and Others, , wherein it has been held that the option lies with

the employee to initiate the process of voluntary retirement and the only right given to the Government is that if the Officer is under suspension,

such option of the employee for voluntary retirement can be denied. It has further been held that the Government could also refuse voluntary

retirement only during the notice period of three months, otherwise it would be a deemed retirement on expiry of three months notice. This Court in

fact had taken the aforesaid view in the light of law laid down by the Apex Court in the case of Union of India and others Vs. Sayed Muzaffar Mir,

, B.J. Shelat Vs. State of Gujarat and Others, , State of Haryana and Others Vs. S.K. Singhal, , Tek Chand Vs. Dile Ram, and in the case of P.

Lal Vs. Union of India (UOI) and Others, .

55. As would be apparent from reading of the aforesaid judgments of Apex Court and this Court as well as the clear provision of Rule 74(b)(i) of

the Bihar Service Code, there is no option to the State Government to refuse voluntary retirement on any ground except when the Government

servant has been placed under suspension. In fact the concept of approval of the State Government comes only where the Government servant is

under suspension.

56. Admittedly the petitioner of the third case, namely, Dr. Lalit Kumar was never placed under suspension till he had given a three months notice

by his application dated 21.6.2012 (Annexure 2) seeking his voluntary retirement with effect from 1.10.2012 on the ground that he had already

completed 30 years of service and more than 58 years of age. In such event his voluntary retirement was automatic but the State Government kept

the matter lingering and initially did not entertain his plea of voluntary retirement on the ground that his application was not forwarded through

proper channel. Subsequently when he had sent his application through proper channel the same was rejected by an order dated 24.9.2013 which

reads as follows:--

(Vernacular matter omitted.....Ed.)

57. A question would, therefore, arise whether such order passed by the Government is in accordance with the provisions made in Rule 74 of

Bihar Service Code? There would be no difficulty in holding that such rejection of the application of the petitioner for his voluntary retirement was

in teeth of the provisions of Rule 74(b)(i) of the Bihar Service Code. As a matter of fact from the circular of the State Government dated

2.12.2013 on the subject of voluntary retirement it would be also found that such request of voluntary retirement could be rejected only on the

ground of pendency of the departmental proceeding or any audit objection or his not qualifying twenty years of service. To that extent it would be

relevant to quote the Government circular dated 2.12.2013 which reads as follows:--

(Vernacular matter omitted.....Ed.)

58. A question would arise that if the petitioner's application dated 21.6.2012 was kept pending for fifteen months before its being rejected on

24.9.2013 who is responsible for such delay? Secondly, the paucity of teachers in the Government Medical College being not a ground referable

to the provisions of Rule 74(b)(i) of the Bihar Service Code such rejection infact wholly uncalled for and per se illegal. In the considered opinion of

this Court Rule 74(b)(i) of the Bihar Service Code does not brook of any two interpretation and in fact this aspect of the matter stands well settled

in the line of catena of decision of the Apex Court and of this Court as referred above that the provision of voluntary retirement by way of three

months notice is automatic and the incumbent cannot be refused the privilege of voluntary retirement save and except when he has been placed

under suspension. In fact even pendency of the departmental proceeding and/or audit objection as per circular of the department quoted above

cannot be made a ground in view of the provisions made in Rule 74(b)(i) of the Bihar Service Code.

59. It is here that a lot of serious thinking will have to be done at the highest level and the powers to be running the administration. The Government

may open any number of Medical Colleges but if its faculties (i.e. teachers) are not given due respect and are treated whimsically and arbitrarily, a

day is not far that any and every respectable teacher in the Medical College upon completion of the period after which he can get voluntary

retirement will not like to serve these Medical Colleges. If the petitioner of the third case had sought voluntary retirement after being transferred

from PMCH and NMCH where he was working as Assistant Professor and Associate Professor so may others, who too are subjected to

arbitrary transfer and posting without following any rationale and in fact in violation of the statutory Rules of promotion and posting envisaging

concept of seniority-cum-merit. It is, thus, high time that the Government should evolve some rational and uniform policy for treating the cadre of

teachers of Medical College with some more respect.

60. It is really pitiable that those who take decision sitting in the Secretariat in capacity of the officials of the administrative service are themselves

assured of their first promotion on completion of six years and second promotion on completion of fourteen years but the persons like the

petitioners in the first case and second case have been allowed to work on their post of Associate Professor for years together on current charge

basis while continuing on their substantive post Assistant Professor. A current charge arrangement is only giving them the higher post without the

privilege of the post and pay scale. This Court infact fails to understand as to why regular promotion cannot be given on annual basis or as and

when vacancy arises. A day, therefore, is not far that if the things do not improve in the service conditions of teachers of Medical College the

Government will have to face endless flake not only from the Medical Council of India by way of de-recognition of degrees of these Medical

Colleges but also on account complete extinguishment of experienced teachers of class and merit. It is, thus, in the interest of the administration that

some uniform mechanism is evolved for transfer and posting in the newly Medical Colleges which may be that either the senior most for his

experience is posted in these newly medical colleges or junior most because he has something to gain by way of promotion on the higher post in

these new medical colleges.

61. Moreover when there has been now a practice of a large number of contractual appointment even on the post of Professors, Associate

Professors and Assistant Professors in the medical colleges there should not be much difficulty at least in providing these medical colleges with such

hands even on contract basis. In any event the State Government must stop arm twisting method for demoralizing teachers of the Medical Colleges

and must keep in mind that the case of Dr. Lalit Kumar, the petitioner of the third case by way of voluntary retirement is only a manifestation of the

heart burning in the cadre of the teachers of the Medical Colleges. If the Government does not act rationally and also immediately, even after

noticing beginning of the end as found in these three cases, it may be well too late to revamp the situation.

62. It is well known that the Court cannot run the administration as it has neither the time nor expertise to do so but if the Court finds, as is in these

three cases, that public administration is run at the dictate and design of the persons who had no fixed and uniform principle, it is the duty of the

Court to interfere and straighten matters out so that people do not lose confidence in the fairness of the administrative machinery. Thus, rethinking

has to be done at the highest level in the light of whatever has been observed above with regard to present deteriorating condition of teaching in the

medical colleges where repeated de-recognition degrees of Government Medical Colleges of the State of Bihar has become the order of the day.

63. As a consequence of the aforesaid discussion the transfer order dated 7.7.2013 in C.W.J.C. No. 13470/2013 is hereby quashed and since

there is an existing vacancy on the post of Associate Professor in the Department of Orthopedics in PMCH the petitioner Dr. Vijay Kumar shall

immediately stand reverted to his old post in P.M.C.H. forthwith.

64. Similarly, the transfer order in the second case dated 3.7.2013 in C.W.J.C. No. 15916/2013 is also hereby quashed and as there is a vacancy

on the post of Associate Professor in the Department of Anatomy in NMCH, the petitioner Dr. Subodh Kumar would also immediately revert

back to his own post in NMCH.

65. The third writ application, C.W.J.C. No. 23812/2013 is also allowed and the impugned order refusing the request of the Dr. Lalit Kumar for

his voluntary retirement is hereby quashed and as notice period of three months has already been completed the petitioner of this case would be

entitled for his voluntary retirement and he would accordingly stand relieved of the duties of his post in Pawapuri Govt. Medical College with

immediate effect.

66. Nothing said in this judgment will stand in the way of the State Government to frame a rational and transparent policy for transfer and posting

of the teachers in Medical Colleges strictly in keeping with the statutory Rules, namely Senior Resident Tutor and Bihar Medical Education Service

cadre Recruitment Appointment and Promotion Rules, 2008 and the law laid down by this Court in the case of Dr. Shushma Pandey (supra) and

Dr. Devi Dutta Gupta (supra). Having framed such policy, it would also be open to State Government to fill up all the vacancies on the teaching

posts in its all medical colleges either by direct appointment or promotion or even transfer or deputation strictly in accordance with law. This

exercise however must be completed within a period of three months from today so that the recognition of any of the Government Medical College

is not adversely affected. In the result all the three writ applications are allowed with cost, quantified at Rs. 10,000/- each, payable to the three writ

petitioners by the State of Bihar within three months from today.