

(2015) 09 PAT CK 0011

In the Patna High Court

Case No : Letters Patent Appeal No. 759 of 2012 in Civil Writ Jurisdiction Case No. 9885 of 2006 and Letters Patent Appeal No. 757 of 2012 in Civil Writ Jurisdiction Case No. 2317 of 2006

Birendra Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 PAT CK 0011

Hon'ble Judges : N.P. Singh, J;Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Bajarangi Lal, Nagendra Pd., Radha Mohan Pandey, Sanjay Kr. Singh and Chandra Shakhar Verma, for the Appellant; Nivedita Nirvikar, GA X, Nagendra Pd. and Manoj Kr., ACs to GA X, Advocates for the Respondent

Final Decision : Disposed off

Judgement

N.P. Singh, J—These two Letters Patent Appeals (LPAs) arise from judgment and order dated 30th of January, 2012 passed in CWJC No. 2317 of 2006 [Dr. (Smt) Shanoo Gupta v. State of Bihar & Others] and CWJC No. 9885 of 2006 (Dr. Birendra Kumar Singh v. State of Bihar & Others). The issue in both the writ petitions was primarily with regard to seniority of Ayurvedic Lecturers in Pharmacology Department working in various Government Ayurvedic Colleges. The learned Single Judge held that normally if a group of persons come from a particular cadre to another cadre in the same transaction, they would carry with them their inter se seniority and their inter se seniority in the new cadre cannot be disturbed on ground of date of joining in the new cadre. Though there can hardly be any dispute with regard to this proposition but as the learned Single Judge had not considered all the cases and their peculiar facts, persons were aggrieved and these two LPAs were filed, first by Dr. Mahendra Prasad Singh being LPA No. 757 of 2012 which arises out of CWJC No. 2317 of 2006 and then Dr. Birendra Kumar Singh filed LPA No. 759 of 2012 arising out of CWJC No. 9885 of 2006. While the matter was pending, pursuant to directions issued by the

learned Single Judge, the Health Department, in the Directorate of Indigenous Medicines, in purported implementation of the judgment, prepared a fresh gradation list, inter alia, for the Teachers in the Pharmacology Department of Ayurvedic Colleges. It may be noted that some of the persons being aggrieved by the said seniority list, alleging that it was not in accordance with the directions of the learned Single Judge, initiated contempt proceedings which have been kept in abeyance by the learned Single Judge awaiting judgment of this Court in the Division Bench in these LPAs. When these appeals were taken up, we were of the view that there were other issues also which were required to be decided, in order to give finality to the principles on which seniority of the Teachers of Pharmacology Department of Ayurvedic Colleges would be decided and facts needed to be appreciated in a greater detail. In an effort to end controversies or at least make an attempt to reduce the scope of controversy as far as possible, we directed that all other Lecturers in the Department of Pharmacology of Ayurvedic Colleges of Bihar, who were not parties in the writ proceedings, be added as party respondents in the LPAs. They were, accordingly, added as respondents. Notices have been issued and all have appeared to assist the Court. Some have chosen to file counter affidavits. Rejoinders have been filed and the pleadings being complete, with consent of all parties, the LPAs were taken up for final disposal at this stage itself.

2. For the sake of record, we may note, that in the writ petition, that is CWJC No. 2317 of 2006 as filed by Dr. (Smt) Shanno Gupta, Dr. Umesh Chandra Sinha, Dr. Ram Adhar Singh and Dr. Mahendra Prasad Singh were respondents No. 6, 7 and 5 respectively. In the LPA from the aforesaid writ petition, Dr. Mahendra Prasad Singh who was respondent No. 5 filed the appeal being Letters Patent Appeal No. 757 of 2012 and in these appellate proceedings, Dr. (Smt) Shanoo Gupta is respondent No. 7, Dr. Umesh Chandra Sinha is respondent No. 5, Dr. Ram Adhar Singh is respondent No. 6. The newly added respondents are Dr. Ganesh Prasad Gupta (respondent No. 8), Dr. Shri Bhagwan Singh (respondent No. 9), Dr. Sampurnanand Tiwary (respondent No. 10) and Dr. Vijay Shankar Dubey (respondent No. 11).

3. Similarly, CWJC No. 9885 of 2006 was filed by Dr. Birendra Kumar Singh who has now filed the present LPA No. 759 of 2012. In the writ proceedings, Dr. Mahendra Prasad Singh was respondent No. 5 and Dr. Umesh Chandra Singh was respondent No. 6. At the appellate stage, Dr. Mahendra Prasad Singh is respondent No. 5, Dr. Umesh Chandra Sinha is respondent No. 6 and the newly added appellants are Dr. Ganesh Prasad Gupta (respondent No. 7), Dr. Shri Bhagwan Singh (respondent No. 8), Dr. Sampurnanand Tiwary (respondent No. 9), Dr. Vijay Shankar Dubey (respondent No. 10) and Dr. Ram Adhar Singh (respondent No. 11).

4. Thus, all the Teachers, who are in the Pharmacology Department in Ayurvedic Colleges, are now parties to these proceedings, except Dr. Jay Prakash Narayan Singh, Dr. Tej Narayan Chaubey and Dr. Vijay Nand Pandey. The reason is that

they were always in the teaching cadre and their entry in the cadre was on 10.01.1985, 01.06.1986 and 01.06.1986 respectively. None of these three possess Post Graduate (PG) qualification and they are teaching under graduate students. No one is in dispute with them nor do they have any dispute with others.

5. It may be noted here that the Central Council for Indigenous Medicine constituted under Indian Medicine Central Council Act, 1970 had laid down in 1986, for the first time, that for Teachers, having PG qualification in the subject of teaching was desirable but in 1989, it was made compulsory meaning thereby that after 1989, no person could be recruited and/or admitted to the teaching post in Indian Medicine unless he had a PG qualification in the teaching subject. However, an exception was made that Teachers, who had already been recruited prior to 1989 without PG qualification, would continue as such but would not be eligible for promotions any further. No one has chosen to challenge or dispute these positions including the seniority being given as Lecturer to the aforesaid three persons and, as such, they have not been made parties to the writ proceedings, because nothing that is said, would in any manner effect them adversely. Their seniority is not under challenge.

6. Having heard the various counsels for various parties at length over a long period, to us, the legal issue is simple. It relates to the interpretation of the Government Circular dated 15.12.2004, whereby the Ayurvedic Medical Officers, who were in Government Health Service and had been deputed as Lecturers were regularized in the teaching cadre but while doing so, Government provided that the inter se seniority would be determined with respect to the date when they joined as Lecturers and took charge as Lecturers. This has raised serious grievances inasmuch as it is pointed out that in the same transaction, several persons were deputed as Lecturers. Depending upon the knowledge of the order of deputation and convenience, they joined the post on different dates. Then to alter seniority on this fortuitous circumstance would be grossly arbitrary if not discriminatory. Equally in issue would be as to what would be the Rule for determining inter se seniority keeping in view the Government Circular dated 26.08.1972 and whether the learned Single Judge was right in referring to a particular Rule [Rule 3(i)(c)] as the relevant Rule or would other Rules be to be considered as well. In fairness to the learned counsels who argued the case before us, all this would depend first on the basic facts in relation to each individual because, as we would show, depending upon the facts, the applicability of the Rules would change. Therefore, we have decided first to note relevant facts in respect of each of the contesting Teachers, but, before noticing the individual facts, there is some other common facts relevant that need to be noted.

7. It is not in dispute that pursuant to Government Resolution dated 19.06.1991, terms and conditions for appointment, promotion and posting including eligibility, criteria were laid out. This was in relation to Ayurvedic Medicine in Ayurvedic

Medical Colleges. The important consideration therein is that all appointments to the post of Lecturers would be made directly through the Bihar Public Service Commission (BPSC) and only those persons who had PG qualification, in the required subject, would be considered for selection and appointment. Thus, appointment to the post of Lecturer in Ayurvedic Medicine was only through direct recruitment.

8. It appears that in this State, there were certain private Ayurvedic Medical Colleges. In or around 1985, pursuant to a policy decision of the Government, they were all taken over and became Government Colleges. There were Lecturers who had been working in those Colleges from before. After due enquiry, their services were recognized from various dates. This is relevant so far as the three doctors whose names we have noted earlier, namely, Dr. Jay Prakash Narayan Singh, Dr. Tej Narayan Chaubey and Dr. Vijay Nand Pandey. They were Lecturers in taken over Colleges and their service in the teaching cadre was taken from the dates as noticed earlier. As they were already in service prior to 1989, they continued to be Teachers notwithstanding that they never acquired PG qualifications as noted earlier.

9. It appears that there was great shortage of Teachers in all Government Ayurvedic Colleges. The Central Council for Indigenous Medicine, as usual, was threatening the Government, in respect of lack of infrastructure including the teaching infrastructure. Accordingly, it appears that on 16.05.1997, a notified decision was taken by the Government that, as filling up of vacancies through BPSC in the teaching cadre in Government Ayurvedic Colleges would take a substantial time, all the doctors, who were working as Ayurvedic Medical Officers, in the Government Health Service and had PG qualifications and were willing to join teaching post in Government Colleges, would be deputed as Lecturers in Government Ayurvedic Colleges as such. In this Resolution itself, it was stated that, those who refused to join, within the time stipulated for joining would not be considered in future for being posted as Lecturers. This contained a list of 27 doctors. It may be noted that it contained the name of Dr. Vijay Shankar Dubey, who was posted as Herbarium Officer in the Government Ayurvedic College, Patna and was shown as transferred as Lecturer, Pharmacology in PG Department of Government College at Patna itself. Five other doctors were also in the list with which we are concerned and they are Dr. (Smt) Shanoo Gupta, Dr. Umesh Chandra Sinha, Dr. Ram Adhar Singh, Dr. Ganesh Prasad Gupta and Dr. Mahendra Prasad Singh. This notification was circulated under Memo No. 333 dated 16.05.1997.

10. Thereafter, pursuant to the aforesaid policy decision and in furtherance to the Government decision as contained in Memo No. 333 dated 16.05.1997, on 19.06.1997, some more persons were shifted from the post of Ayurvedic Medical Officers to teaching posts in Government Hospital. In this list, there were five persons. We are concerned only with Dr. Birendra Kumar Singh and Dr. Ganesh Prasad Gupta, whose earlier notification was modified, as to the place of posting.

Accordingly these persons continued to perform duties of Lecturers, being on deputation, from the Health Service Cadre to the teaching cadre. It goes without saying that their substantive appointment was in the Health Service, being on deputation to the teaching cadre, maintaining their lien in Health Service.

11. Apparently, this arrangement was not thought to be proper nor solving the problem permanently. Accordingly, the Government took a decision on 13.12.2004 to supersede the earlier terms and conditions of recruitment/appointment of Teachers in Government Colleges in a limited aspect. They modified the earlier Resolution of 19.06.1991 to the extent, that considering the emergent situation for appointment to the post of Lecturers in Ayurvedic Colleges, the selection and recommendation of BPSC would not be necessary. Having thus relaxed the Rules in relation to procedure for direct recruitment to the teaching post in indigenous medicine in Government Colleges on 15.12.2004, the Government then issued a notification which was virtually an appointment cum gradation list in respect of the Ayurvedic doctors in Government colleges. This Resolution clearly stipulated that all the Ayurvedic Medical Officers, who were hitherto on deputation as Lecturers in Government Ayurvedic Medical Colleges, are regularized and deemed to be appointed as Lecturers from the date of assumption of charge. This part clearly predicates transfer of service from Health Service cadre to teaching cadre. Lien, thus, stood extinguished and they became permanently absorbed in the teaching cadre. The second part of this notification is what is virtually up for challenge. It provides, that their inter se seniority, would be determined with respect to the date on which they assumed charge as Lecturers, upon deputation. Various dates in that respect was given. In this Resolution, the seniority was determined in the following order that is Dr. Mahendra Prasad Singh, Dr. Umesh Chandra Sinha, Dr. Ram Adhar Singh, Dr. (Smt) Shanoo Gupta, Dr. Ganesh Prasad Gupta and Dr. Birendra Kumar Singh. This is what brought people to this Court by filing the writ petitions and, in particular, Dr. (Smt) Shanoo Gupta and Dr. Birendra Kumar Singh. If we refer to the dates, we would find that the seniority has been settled by the date when allegedly they assumed charge upon deputation.

12. Now we may refer to the general rule of seniority. In absence of statutory Rules as framed by the Government for determination of inter se seniority in various service cadres, the Government of Bihar in the Department of Personnel laid out certain general principles and procedure for fixation of inter se seniority in service cadre on 26th of August, 1972. The relevant Rule was Rule 3 and the relevant part is being quoted hereunder.

"3. Based on precedent and Government circulars issued from time to time, well recognized principles for fixation of inter se seniority are -

(i) Existing seniority rules at -Where officers are recruited by Promotion by direct appointment at the same time

(a) the promoted officers shall take precedence over the officers directly

recruited.

Note.--The expression "at the same time" means "in the same transactions". The word "transaction " refers to the decision of the competent authority whereby it is decided to fill in a certain number of posts "by direct appointment" and others "by promotion" out of given total. On account of procedural delays actual appointments may take place in stages or on different dates. Nevertheless all such appointments are to be construed as belonging to the same transaction because of the decision having been taken on the same date, for filling up the vacancies.

(b) Promoted officers shall keep the position inter se which they held in the service from which they have been promoted.

(c) Seniority of direct recruits shall be according to their respective position as recorded by the competent authority at the time of their first appointment - Ad hoc earlier appointment to the post is not to be considered for determining inter se seniority.

(ii) Where officers serving within the department but in different posts are recruited at the same time by direct appointment, their inter se seniority will be determined according to sub-para (iv) below, irrespective of the date of their joining the posts to which they are appointed.

(iii) Where an incumbent is transferred from one service to another on his own request, services rendered by him in the previous posts shall not count for seniority. But in case such transfer follows a policy decision taken by Government, his services in the previous post shall count for seniority.

(iv) Where officers are promoted to a service at the same time but from different services, their inter se seniority is fixed according to the following principles -

(a) Persons promoted from gazetted ranks to another gazetted rank shall rank senior to persons promoted to that gazetted service at the same time from non-gazetted ranks.

(b) Where persons are promoted from different services at the same time their inter se seniority shall be determined according to the order of merit fixed by the Selection Board or the Public Service Commission as the case may be.

(c) Where no such order of merit is fixed persons who had drawn higher pay, or pay in a higher scale in the lower posts from which they are promoted shall rank senior to another persons which they are promoted shall rank senior to another persons who had drawn lesser pay, or pay in lower scale. In case the pay scales are identical persons who had drawn higher pay shall rank higher. If two such persons had been drawing pay at the same stage in the identical time scale or two pay at the same stage in the identical time scale of two different service their seniority on promotion shall be determined according to age."

13. It may be noted here that after the doctors were regularized in teaching

cadre on 28.06.2006, a tentative gradation list including that of Pharmacology Department was published. This was followed by a seniority list that was published on 09.11.2010. These were under challenge before this Court. Then pursuant to the directions of the learned Single Judge in the two writ petitions, as noted above, on 06.08.2013, another gradation list has been prepared which has again been challenged in these appellate proceedings.

14. Now we may come to the facts in relation to the individuals. So far as the three doctors are concerned that is Dr. Jai Prakash Narayan Singh, Dr. Tej Narayan Chaube and Dr. Vijay Nand Pandey, there is no dispute and the facts are already noted.

15. We may now come to Dr. Mahendra Prasad Singh. He was appointed as Ayurvedic Medical Officer on 26.07.1994 through BPSC. By notification dated 30.12.1994, he was favoured with transfer to Patna Ayurvedic Medical College, Patna on the vacant post of a Lecturer and intriguingly, to facilitate him in completing his PG. By way of abandoned caution, this notification itself made it clear that his this teaching experience would not be taken into consideration for any purpose. He completed his PG Course in September, 1996. By the first notification No. 333 dated 16.05.1997, he was formerly deputed as Lecturer in the said College in Pharmacology Department itself and by virtue of notification dated 15.12.2004, he stands regularized as Lecturer with effect from 16.05.1997. We may also take note of a fact that he is in the undergraduate Department and has been promoted as Reader on 06.06.2007.

16. We will not go into the controversy with regard to the promotion as a Reader or seniority as a Reader because that would be required to be re-determined in due course by the State Government. We are concerned only with regard to the inter se seniority as Lecturer.

17. A controversy has been raised as to whether and when he took charge as a Lecturer because that would, in view of the facts noticed above, be relevant for determining his seniority. Suffice to say that he was transferred to the vacant post of Lecturer in 1994 itself, thereafter he started teaching as Lecturer but without PG qualification. When notification No. 333 was issued on 16.05.1997 formalizing his deputation as Lecturer, in the said very College, in the said very Department, in our view, there was no requirement to take charge, because he was already there as a Lecturer and undisputedly had already cleared PG qualification in 1996 itself. We will not get in hyper technicalities of joining, taking charge or otherwise, in view of the fact that Dr. Mahendra Prasad Singh had been posted on the vacant post of Lecturer in course whereof he got PG qualification and continued on that post which was a teaching post of a Lecturer and then his deputation was formalized as such by notification No. 333 dated 16.05.1997 to where he was already working as a Lecturer. Thus, no gainsay that he was posted and he assumed charge as such on 16.05.1997.

18. Now we may come to Dr. Umesh Chandra Sinha. So far as he is concerned,

first through BPSC examinations, he joined as Ayurvedic Medical Officer in the Welfare Department of the Government in the year, 1989. While working in the Welfare Department, he got selected as Ayurvedic Medical Officer in the Health Department again through BPSC and was appointed as such in the Health Department on 26.07.1994, where he joined on 29.06.1995, after being relieved from the Welfare Department. While he was in the Welfare Department itself, in or about August, 1993, he had acquired PG qualification. It appears as he had already been in Government service in the Welfare Department, prior to being selected and appointed as Ayurvedic Medical Officer in the Health Department, he was given pay protection upon his appointment in the Health Department. It is by notification No. 333 dated 16.05.1997, he was deputed as Lecturer in Pharmacology in the Government Ayurvedic College where he took charge on 31.05.1997. He stands regularized as Lecturer by notification dated 15.12.2004 with effect from 31.05.1997. It may be noted that because of the pay protection, he received upon his appointment as AMO in the Health Services from Welfare Department, he receives a higher remuneration than his immediate colleagues. He is teaching in the undergraduate Department and though not relevant, he has been appointed as Reader with effect from 06.06.2007.

19. Now we may consider the fact of Dr. (Smt) Shanno Gupta. So far as Dr. (Smt) Shanoo Gupta is concerned, she was a PG in Ayurvedic Medical Science in Pharmacology in the year, 1994 itself, when she was selected through BPSC for appointment as Ayurvedic Medical Officer by notification dated 26.07.1994. It is by notification No. 333 dated 16.05.1997 that she was deputed as Lecturer at Government Ayurvedic College, Begusarai. There is a controversy with regard to assumption of charge. She states that she had given joining on 29.05.1997 but it is contended by others that she was relieved to join as Lecturer on 02.06.1997 and she took charge on 03.06.1997. It is submitted by contenders that it is this date, that is 03.06.1997, that is relevant. On her behalf, it is submitted that the whole criteria of seniority being determined from the date of taking over of charge, itself being irrational, this date is of no relevance. The only date of relevance would be 16.05.1997 when by Government orders, she was deputed in the same transaction with others. Contenders also state that as per notification No. 333 dated 16.05.1997, persons were required to join by 31.05.1997 but as Dr. (Smt) Shanoo Gupta took charge as Lecturer thereafter on 03.06.1997, that would be the date of her joining. Learned counsel for Dr. (Smt) Shanoo Gupta, in our view, rightly submits, what was required of the notification dated 16.05.1997 was she must join by 31.05.1997. Accordingly, she joined on 29.05.1997 and formally took charge on 03.06.1997. Thus, she was within the time of joining as stipulated in the said notification. Again to this, there is objection. It is said that she could not have joined at another place without handing over charge at the parent place and once she joined at another place, she ought to have taken charge. We are unable to accept this and further we would show that this is irrelevant. She is presently Lecturer in undergraduate Department at Begusarai.

20. It may be noted here that Dr. (Smt) Shanoo Gupta, Dr. Mahendra Prasad

Singh, Dr. Umesh Chandra Sinha, Dr. Ganesh Prasad Gupta, Dr. Ram Adhar Singh were all appointed as Ayurvedic Medical Officer by the same notification through BPSC and the seniority of Dr. (Smt) Shanoo Gupta was No. 1 in the merit list. It is on basis of this, that she claimed that the seniority amongst persons coming from AMO to teaching cadre would be maintained, irrespective of joining as if they were transferred, posted and absorbed as such, in the same transaction. We have to consider this aspect.

21. Now, we may come to Dr. Ganesh Prasad Gupta. He was appointed as AMO on 26.07.1994 having already acquired PG qualification in the year, 1993. It is by notification No. 333 dated 16.05.1997, he was deputed as Lecturer at Ayurvedic Medical College, Bhagalpur but he did not join. Subsequently, by notification No. 414 dated 19.06.1997, he was deputed being AMO to be Lecturer at Government Ayurvedic College, Patna, where he joined on 21.06.1997 and he stands regularized and absorbed as Lecturer by notification dated 15.12.2004 with effect from 21.06.1997. He is teaching in undergraduate Department.

22. Next, we may consider the facts in relation to Dr. Birendra Kumar Singh. He having already acquired PG degree was selected through BPSC for appointment as Ayurvedic Medical Officer by notification dated 30.12.1995. He was, thus, undisputedly junior to Dr. (Smt) Shanoo Gupta, Dr. Umesh Chandra Sinha, Dr. Mahendra Prasad Singh and others who had joined in 1994 as AMO. He was deputed as Lecturer by notification No. 414 dated 19.06.1997 where he joined on 27.06.1997 and stands regularized with effect from 27.06.1997 by notification dated 15.12.2004. He is also working as Lecturer at Government Ayurvedic College, Patna in the Undergraduate Department.

23. Then we come to Dr. Ram Adhar Singh. He was also, through BPSC, selected and appointed as Ayurvedic Medical Officer vide notification dated 26.07.1994 and joined on 29.07.1994 having already acquired PG qualification in the year 1993. By notification No. 333 dated 16.05.1997, he was deputed as Lecturer where he took charge on 02.06.1997. He was regularized vide notification dated 15.12.2004 with effect from 02.06.1997 and he is presently working as Lecturer in PG Department. Contenders contend that he having joined on 02.06.1997, after the cut off date that is 31.05.1997, he would lose his seniority in the parent cadre of AMO which he would not carry to this cadre. In our view, this would be irrelevant in view of what we would decide later.

24. Now we may come to Dr. Shri Bhagwan Singh. He was appointed through BPSC as Ayurvedic Medical Officer by notification dated 19.03.1987 where he joined on 23.03.1987. While working as AMO, he got his PG degree in Ayurvedic Medical Science. BPSC issued Advertisement No. 5 of 2001 for appointment of Lecturers in Ayurvedic Medical Colleges. This, as noted earlier, was open to PGs only to seek direct recruitment to teaching cadre. Dr. Shri Bhagwan Singh, accordingly, applied in 2001 and was selected through BPSC but the appointment letter was issued by the State Government on 18.06.2005 and he joined as Lecturer in Government Ayurvedic College, Patna on 24.06.2005. It is contended

on his behalf that his seniority in the cadre of Ayurvedic Medical Officer carries over when inter se seniority of Lecturers is to be decided amongst officers who were earlier working as AMO. We have difficulty in accepting this submission. The reason is simple. Pursuant to policy decision of the Government, he was not deputed as Lecturer from AMO. Again, pursuant to policy decision of the Government, those AMOs deputed as Lecturers, were all absorbed and appointed as Lecturer. Dr. Shri Bhagwan Singh did not take the said route, though he was an AMO in 1987, because as deputations were being considered in the year 1997, he was not holding PG degree, he was not and could not be considered in that transaction. It is subsequently in the year 2000, he got his PG qualification. Thereafter, no one was deputed as Lecturer. The only avenue to come to teaching line was independent BPSC examination. Therefore, his entry in the cadre of Lecturer would only be when he was first appointed as Lecturer through BPSC and he would not carry his seniority as an AMO with him because he, out of his own volition, chose to join through the process of BPSC examination. Dr. Shri Bhagwan Singh appears to be a class in himself. He would not be in the same transaction for consideration as the other AMOs who were brought in 1997 on deputation, firstly because he was not qualified as such in 1997 and secondly people, who were brought in 1997 pursuant to a policy of the Government dated 15.12.2004, were regularized and absorbed in the cadre with effect from 1997 itself. Thus, Dr. Shri Bhagwan Singh entered the cadre through BPSC for the first time in the year 2005. He cannot claim seniority in any circumstance over people who were brought in the cadre in the year, 1997.

25. In fairness to the learned counsel for Dr. Shri Bhagwan Singh, we must notice one argument at this stage. He submitted that a decision was taken on 16.08.2001 in the Department of Indigenous Medicine wherein it was, inter alia, decided that all the doctors on deputation in Ayurvedic Colleges be regularized on 50% of the posts and remaining 50% of the posts be filled up by direct recruits through BPSC. He submits that it is pursuant to this that Dr. Shri Bhagwan Singh appeared in the examination pursuant to Advertisement No. 5 of 2001 conducted by BPSC and qualified though was ultimately appointed on 18.06.2005. He would be in the same transaction in respect of the other doctors who had been deputed and then regularized. We are unable to accept this for two reasons. Firstly, it is not a governmental decision. It is only a departmental decision. This decision of the Department was ultimately formalized only in 2004 whereafter the doctors who had been on deputation since 1997 and had the eligibility were regularized with effect from the date they took charge on deputation. The second reason is that a department could not take a decision on its own to relax Rules of recruitment. It had to be a decision of the Government which means it had to go through Cabinet and formalized accordingly. That is how in 2004, Government Resolution was framed but this departmental decision of 16.08.2001 did not even go to the Cabinet much less to the Governor. It may be noted that the relevant part, on which reliance has been placed by Dr. Shri Bhagwan Singh, does not predicate that more persons be recruited and deputed,

rather what this decision predicates is that persons having the eligibility who have been deputed should be regularized after relaxing the recruitment Rules in this regard. Let it be noted that earlier the recruitment Rules specifically laid down that Lecturers would be recruited through BPSC. There was no other mode of recruitment. This was statutorily relaxed in the year 2004, as noted earlier and it is thereafter, that their deputations were regularized, from the time they took charge as such. This is the distinction, between other doctors and Dr. Shri Bhagwan Singh. By retrospective regularization in the cadre of Lecturers, subject to eligibility, the other doctors would be deemed to have entered the cadre, when they were so deputed in 1997 but admittedly Dr. Shri Bhagwan Singh enters the cadre through BPSC examination which appointment is done only in the year, 2005. The two transactions, thus, that is bringing the doctors on deputation in 1997 and regularizing them in the year, 2004 with retrospective effect from 1997 cannot be said to be same transaction with Shri Bhagwan Singh who got his PG degree in 2000 and who sat in the BPSC examination in the year, 2001 and was ultimately appointed only in 2005. They were two separate transactions.

26. Now we may come to the case of Dr. Sampurnanand Tiwary. His case is different from the two groups already discussed above. There is no dispute that Dr. Tiwary was appointed as a Lecturer in the year, 1981 in a private Ayurvedic College at Bhagalpur. The College was taken over by the State Government with effect from 10.01.1985. By State Government notification dated 20.05.1997, his service was recognized and he was absorbed as a Lecturer in the said College with effect from 10.01.1985 itself. It may be noticed here that in the year, 1986, the Central Council for Indigenous Medicine amended the Rules, providing the desirability of PG degree for a Lecturer, which ultimately in 1989 was made compulsory. Dr. Sampurnanand Tiwary was, on 10.01.1985 a non-PG Teacher but in terms of the 1989 Resolution, he could continue as a Lecturer. It appears, he obtained Ph D degree in 2006 from Kameshwar Singh Sanskrit University, Darbhanga, which was also conducting certain courses in relation to Indigenous Medicine. As there was cloud, in respect of the validity of this Ph D, he decided to play safe and then obtained a PG degree in Pharmacology from Rajasthan Ayurvedic University, Jodhpur on 21.09.2010. He would contend that his case being different and he being a valid Lecturer from 10.01.1985, his seniority ought to be determined accordingly. It may be noticed that he is presently posted as a Lecturer in the PG Department. In fairness to learned counsel Mr. Vinay Krishna Tripathi appearing for Dr. Tiwary, it must be noted that a writ petition has been filed by him being CWJC No. 2688 of 2011 claiming promotion to the post of Reader and Professor with consequential benefits which is separately pending. We would not delve upon those issues accordingly.

27. On behalf of Dr. Ram Adhar Singh, it is submitted that Dr. Sampurnanand Tiwary came to PG Department from Under Graduate Department only in 2012. His seniority would be, accordingly, reckoned. We are sorry we cannot accept such a contention. Seniority or the gradation list is in reference to a cadre. There are no separate cadres for undergraduate or PG Teachers. A Lecturer can be

assigned to teach undergraduates or PG.

28. Now we come to the fourth category that is Dr. Vijay Shankar Dubey. He was appointed as Udhyan Nirichak (Herbarium Inspector) in Bihar Government Ayurvedic College, Patna in the year, 1983. In 1990, he was made Resident Medical Officer in the said College which is not a teaching post of Lecturer. In 1996, he obtained PG degree in Indigenous Medicine. It is by notification No. 333 dated 16.05.1997, he was transferred (not deputed) from the post of Udhyan Padadhikari (Herbarium Officer) to Lecturer in the PG Department in Bihar Ayurvedic College, Patna. It may be noted that there has been no order for regularization of his services as Lecturer because, as noted above, he was transferred to the post of Lecturer itself on 16.05.1997 and he joined and took charge as Lecturer on 17.05.1997 and he had the basic qualification and he was in the College itself. We have already noted above that as he was already in the College, there was no necessity to taking charge. He is presently working in the PG Department now as a Reader having been so promoted on 22.03.2006.

29. Thus, there are four categories of Lecturers with which we are concerned. The first are those who were Ayurvedic Medical Officers in the Health Services. They were deputed as Lecturers pursuant to a common decision taken, the decision being dated 16.05.1997. The second category would be those Ayurvedic Medical Officers who lacked the basic educational qualification, that is PG, but were brought in and deputed and later acquired the eligibility. The third would be those who came through BPSC and became Lecturers and the fourth would be Lecturers who were already in private Medical Colleges, which were taken over and their services recognized as such by the Government.

30. Now to the principles of inter se seniority. If we could understand the State, they state that first as per decision of the Government dated 15.12.2004, the inter se seniority would be determined on basis of the date of taking of charge. The learned Single Judge disapproved it and we approve the learned Single Judge. Nothing could be more arbitrary than this. It is contended and rightly so on behalf of the doctors cum Lecturers, that once, pursuant to a policy decision taken on 16.05.1997, doctors were selected and deputed from Health Service to Lecturers, all such persons would come to be deputed in the same transaction. The expression "same transaction" has been explained by this Court on more than one occasion. It has been noticed by this Court in judgment, namely, Hem Kant Roy Vs. The Government of Bihar and Others, (2013) 2 PLJR 316 which noticed the case of Bishundeo Mahto v. State of Bihar & Others, 1982 BBCJ 45 (FB). In effect, what is meant is that the action is taken pursuant to a singular decision, though, it is implemented at different times, because of various other reasons. That being so, we are unable to accept the contention on behalf of the State that though, several doctors were deputed by a singular order dated 16.05.1997 to the Ayurvedic Colleges or by later notification dated 19.06.1997 pursuant to the same policy decision, they would not constitute same transaction. Specifying the date of joining as relevant for determining seniority

would be grossly arbitrary. It would be dependent upon fortuitous circumstances. A person who comes to know of notification and is available near the College would join immediately. Another who does come to know of the notification but is far away from the College would join later. Their seniority could not be altered by reason of this alone. They were all deputed by the same notification. It would be one transaction and their seniority would not be affected or changed by the date of joining. Similar is the case of persons who were deputed by notification dated 19.06.1997. This is also in pursuant to the same transaction. Thus, we have, this one group of AMO being deputed en masse as Lecturers and then being absorbed as Lecturers. What would be the seniority? In such an event, if certain group of people from one service are brought in to another service pursuant to the decision of the Government, then it is well established that their inter se seniority in the earlier cadre would be maintained. That cannot be altered merely by reason of date of joining.

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

32. Now we come to the second category, that is, who were already in private Medical Colleges and those Colleges were taken over. Their length of service for the purposes of seniority in the cadre of Lecturer would be determined from the date their services as a Lecturer, was recognized by the Government. This would cover the case of Dr. Jay Prakash Narayan Singh, Dr. Tej Narayan Chaubey, Dr. Vijayanand Pandey and Dr. Sampurnanand Tiwary. Here, we may note that so far as Dr. Sampurnanand Tiwary is concerned, he acquired PG qualification only on 21.09.2010 though working as Lecturer since 1985. This would be relevant when his case for further promotion to Reader and/or Professor is taken up in his individual writ application. Here, it appears all these four are recognized as Lecturers by the State virtually from the same date 10.01.1985. Wherever there would be a tie, that is the date of service being the same, as per the Rules of 1972 noted above, age would determine seniority subject to other conditions being same. A reference to the 1972 guiding principle would show that there are different factors which could alter or determine the seniority, one of them being pay in the same pay scale and the other, the age. In this connection, we may also refer to the 1972 Rules and, in particular, Rule 3(iv)(c), as quoted above. Those will determine their inter se seniority.

33. Now, we come to the third category that is Dr. Shri Bhagwan Singh and his inter se seniority. He claims that he was AMO and having come from that as Lecturer, he would carry his inter se seniority. We regret our inability to accept this. The reason is simple. He did not choose the same route as other AMOs. He did not choose that route for the simple reason that when other doctors, in 1997, were deputed, they already had PG degrees. He did not have PG degree till the

year, 2000. He could thus not even be considered for Lectureship before 2000. Therefore, when BPSC issued advertisement for direct recruitment in 2001, he applied and was selected. That being a new appointment through BPSC, he would not carry his original seniority much less seniority comparable to other AMOs. His entry in the cadre is when he was formally appointed that is with effect from 2005. He cannot maintain his inter se seniority with other AMO as such.

34. Now we come to the fourth category, that is, of Dr. Vijay Shankar Dubey. According to him, he was in a teaching post of Udhyan Nirichak (Herbarium Inspector) since 1983 in Government Ayurvedic College at Patna. He should be treated as a Lecturer. We are unable to accept this because not all teachers are Lecturers. Demonstrators are also Teachers but they are not Lecturers. Annexure H has been filed in one of the counter affidavits clearly bringing out the situation. State Government itself has pointed out in respect of Dr. Vijay Shankar Dubey that unless he obtains PG qualification, he will not be considered for Lecturer. As a matter of fact, it is only in 1996 that he got the PG qualification and, accordingly, it is by notification No. 333 dated 16.05.1997 that he was transferred as Lecturer but if one look to Annexure H of the year, 1992 in respect of him, the Government clearly indicated that once he obtains PG qualification, this post would be transformed to that of a Lecturer. Thus, we hold that effectively he became qualified, to be a Lecturer, upon obtaining PG qualification in 1996 but became a Lecturer only with effect from 16.05.1997. Again, the question of inter se seniority as between him and the others who came to be deputed by the same notification, would arise. Here, what would be determining factor would be on that day who was in the higher pay scale. In other words, Rule 3(iv)(c) of the 1972 Rules would govern.

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

36. Those who came into the cadre of Teachers (Lecturers) through any other route, their seniority would be from the time they were qualified to be Lecturers and were posted as such by the Government and Rule 3(i)(c) of the 1972 Rules would have no application to such cases. They would not carry their seniority of AMO.

37. Those who were Lecturers from before, notwithstanding that they were non PG, but their services as Lecturers being recognized before the change in Rules prescribing PG qualification, their seniority would be from the date of their recognition as Lecturers.

38. With these directions, modifications and clarifications, it would be for the

Government to revise the gradation lists including that which was prepared during pendency of these LPAs. This should be done at the earliest, preferably within two months from today. Needless to repeat that we have advisedly not delved upon the questions with regard to the promotion of the litigants from the post of Lecturers to the post of Readers and/or Professors which would in any case be dependent upon inter se seniority in the grade of Lecturers and other relevant considerations.

39. With these directions and observations, these Letter Patent Appeals are disposed of.

Rajendra Kumar Mishra, J.

I agree.