
(2008) 12 JH CK 0012
In the Jharkhand High Court

Debabrata Dasgupta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Indian Medical Council Act, 1966 — Section 33

Citation : (2009) 1 JCR 281 : (2009) 5 SLR 251

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—A controversy which was presumed to have been resolved by an order of this Court passed on 16.04.2004 in an earlier writ application vide C.W.J.C. No. 2014 of 1997 (R) has resurfaced once again in the instant writ application filed by the petitioner. The controversy is on the petitioner's claim for his promotion to the post of Associate Professor on the ground that he does possess the requisite qualification for such promotion and his claim which he has been making ever since 1983, has been wrongly denied to him.

2. Facts of the petitioner's case in brief is that he was initially appointed as a tutor in the department of Biochemistry on 03.09.1977 in the Mahatma Gandhi Memorial Medical College, Jamshedpur. Such appointment was given to him on the ground that he has possessed the requisite qualification i.e. a Post Graduate Degree in Biochemistry. By a notification dated 23.01.1979 issued by the Department of Health, Government of Bihar, the post of lecturer was divided into two grades. The first grade known as Assistant Professor (Senior Grade) and the second known as Associate Professor (Senior Grade). As per the petitioner's contention, at the relevant time, the requisite criteria for promotion to the grade of Assistant Professor was that the candidate should have at least six points i.e. three points for post graduate degree and three points for three years teaching experience as tutor (one point for each year). For promotion to the grade of Associate Professor, the requisite criteria was that the candidate should have

acquired nine points i.e. three points for the post graduate degree and six points for teaching experience as teacher. The petitioner having acquired eight points, he was interviewed on 18.01.1983. The petitioner was granted promotion to the post of Assistant Professor on 05.07.1983. Though by 04.09.1983 he had acquired nine points but his case for promotion to the post of Associate Professor was not promptly considered. However, after over seven years i.e. 22.06.1990, by which time the petitioner had acquired about 15 points, he was called to face an interview for selection by way of promotion to the post of Associate Professor. Though he had faced the interview on 06.09.1990 but he was not granted promotion. On the contrary, he was called upon to produce documents to show that he possessed a Ph.D degree in Biochemistry on the ground that such degree was necessary for the promotion to the post of Associate Professor. Claiming that the insistence of the respondents that the petitioner should possess a Ph.D. degree in Biochemistry was baseless, arbitrary and against the eligibility criteria under the then existing rules, the petitioner had challenged the stand taken by the respondent by filing a writ petition before this Court vide C.W.J.C. No. 2014 of 1997 (R). The respondents contested the petitioner's claim by taking a stand that according to the 'Teachers Eligibility Qualifications, 1998' a mandatory Rule was made that in the departments including the department of Biochemistry, a nonmedical candidate may be promoted subject to the condition that he had a Ph.D. degree in the subject concerned and any appointment could be made only with a prior approval of the Medical Council of India. Since the petitioner did not possess the Ph.D. degree as per the requisite criteria, his claim for his promotion to the post of Associate Professor could not be accepted. After hearing the parties, this Court while disposing of the writ application, had observed as follows:

Upon perusal of the aforementioned Eligibility Qualification, 1998, which has been brought on record by Annexure 'A', it is evident that it is prospective and not retrospective, inasmuch as Regulation 1 (2) reads as follows:

They shall come into force on the date of their publication in the official gazette

The date of publication in the official gazette as disclosed at the top is '5th December, 1988'. In other words, this became effective and functional with effect from 05.12.1998, but in the year 1983, when the Petitioner became eligible, these regulations were not even in existence and the criteria which governed at that time were the 6 (six) points and 9 (nine) points referred to specifically at paragraphs 6 & 7 respectively of the Writ Petition and which have been noted above. It is now well settled that a Regulation or a Statute coming later in the day cannot take away accrued/vested rights. The qualification of 1998 being specific to the effect that it will come into force on and from 1998 cannot be allowed to be given retrospective operation and to that extent now in the year 2004 or any day after 1983, the Respondents cannot be allowed to say that the Petitioner is not eligible because he does not have Ph.D. qualification. This Ph.D. qualification was not the criteria at the time when the Petitioner

became eligible. For the foregoing reasons, this Court is satisfied that a prima facie case for promotion of the Petitioner to the post of Associate Professor (Senior Grade) with effect from 04.09.1983 has been made out.

While allowing the writ application, this Court had directed the petitioner to file a short representation before the concerned respondents bringing on record all the documents which have been appended to the writ application, together with a copy of the order and a corresponding direction was given to the Committee to take an appropriate decision on the petitioner's representation within four months from the date of receipt of the representation. This Court had observed that if, however, the Committee is of the opinion that for one reason or the other, the petitioner is not entitled then in that event they will be required to pass a reasoned order in accordance with law within the same period.

3. Pursuant to the above order, the petitioner filed his representation before the concerned authorities of the respondents. The respondents thereafter condescended to grant promotion to the petitioner to the post of Associate Professor with effect from 05.07.1988 though declaring that such promotion was conditional subject to the approval of the Medical Council of India. Being dissatisfied and aggrieved with the order of conditional promotion, the petitioner has filed the present writ application for quashing the notification dated 16.06.2004 (Annexure-3) under which the conditional promotion was given to him and with a further prayer for commanding upon the respondents to grant him promotion to the post of Assistant Professor with effect from 04.09.1983 and consequent upon such promotion to the post of Assistant Professor, to grant him further promotion to the post of Associate Professor with effect from 04.09.1987 the date on which he purportedly became eligible and entitled for such promotion. During the pendency of this writ application, the respondents issued a further notification (Annexure-15) whereby the conditional promotion granted to the petitioner to the post of Associate Professor was cancelled and the petitioner was reverted to the post of Assistant Professor. The petitioner filed an interlocutory application bringing the aforesaid facts regarding the subsequent developments. His prayer for amending his original writ application to incorporate the facts relating to the subsequent developments and also to include a further prayer for quashing the Annexures 9 and 15 was allowed by the order of this Court. While allowing the prayer of the petitioner, this Court had directed that status quo as on the date of order i.e. 20.11.2006 should be maintained till the disposal of the writ application.

4. On the ground that despite the knowledge of the aforesaid order of status quo, the respondents transferred and posted Opposite Party No. 5 as Associate Professor in the Department of Biochemistry who joined the said post on 06.07.2007 and assumed the charge of H.O.D. even without the charge being handed over to him, the petitioner filed a Contempt Petition before this Court vide Contempt Case (Civil) No. 655 of 2007. The respondents had filed their show cause replies in the contempt petition by reiterating their earlier stand as

taken in the counter affidavit filed in the writ application and stating that the petitioner is a non medical (Non M.B.B.S.) in the department of Biochemistry posted in the M.G.M. Medical College, Jamshedpur and possesses a post graduate degree only in Biochemistry. Promotion to the post of Associate Professor was granted to him vide Notification dated 16.06.2004 conditionally in anticipation of the approval of the Medical Council of India. Subsequently on receipt of non-approval of the M.C.I., the promotion was withdrawn vide the impugned Notification dated 26.09.2006 and accordingly the petitioner was reverted to the post of Assistant Professor as per Annexure-15 (impugned). The respondents have further sought to explain that the substantive post of the petitioner was that of Assistant Professor and by virtue of his being senior most teacher, he was discharging the work of Head of the Department though the said post is not a substantive post. Subsequently one Dr. Laxman Lal was transferred from the P.M.C., Dhanbad to M.G.M. Medical College, Jamshedpur vide Notification dated 10.04.2007 (Annexure-2 to the contempt application). Dr. Laxman Lal joined his post of Associate Professor in the M.G.M. Medical College and he being senior to the Assistant Professor, he was made H.O.D. by the orders of the Principal, M.G.M. Medical College, Jamshedpur. It is further sought to be explained that position of the petitioner as Assistant Professor was maintained as status quo and the same was not disturbed by the respondents and in view of the aforesaid facts and circumstances, the petitioner cannot claim that the respondents have committed any act of contempt of the lawful order passed by this Court.

5. Annexure-B filed with the counter affidavit of the respondents is the purported ?reasoned order? by which the petitioner?s claim for his promotion to the post of Associate Professor has been rejected, on the following grounds:

(i) As per M.C.I. Regulation on 1971, Doctorate Degree was preferable for non-medical teachers for the promotion to the next higher post of Associate Professor and five years teaching experience as Assistant Professor was also required for this.

(ii) Above regulation was amended in 1983 itself and Doctorate Degree was made ESSENTIAL for further promotion to the post of Associate Professor to nonmedical teachers in Biochemistry.

(iii) At the end of five years i.e. 05.07.1988, Mr. Dasgupta was promoted to the post of Assistant Professor with effect from 05.07.1983 and at the end of five years i.e. on 05.07.1988 he had five years of teaching experience but did not possess the Doctorate Degree in the subject Biochemistry.

(iv) At the end of five years i.e. on 05.07.1988, Mr. Dasgupta attained five years of teaching experience but did not possess Doctorate Degree in the subject of Biochemistry. After thorough consideration, the claim of Mr. Dasgupta was disposed of by issuing notification No. 156(2) dated 16.06.2004 in favour of Mr. Dasgupta by promoting him to the post of Associate Professor with effect from

05.07.1988 i.e. after five years of experience as Associate Professor on the condition that the same will be affected if he is not found eligible by the M.C.I. as the Government has to follow M.C.I. Rules and regulations.

(v) In his application Mr. Dasgupta has made his claim on the basis of 1997 Rules of M.C.I. and has mentioned that as per this Rule, 'M.Sc. is requisite qualification for the promotion to the post of Professor/ Associate Professor'. As there exists no such rules in 1977, the claim of Mr. Dasgupta, which is against the M.C.I. Rules of 1983 is rejected.

6. The point on which the controversy revolves is on the claim of the respondents that the M.C.I. Regulation of 1971 was amended in 1983 itself and doctorate degree was made essential for promotion to the post of Associate Professor of non-medical teachers in Biochemistry. The petitioner has challenged the above contention by stating that no such amendment in the regulation was brought in the year 1983 by which the possession of a doctorate degree was made essential and mandatory. Learned Counsel for the petitioner refers to in this context to the M.C.I. Regulations 1983 (Annexure-12) which are Regulations prescribed by the Medical Council of India u/s 33 of the Medical Council Act, 1966 and approved by the Government of India vide notification dated 05.06.1971, regarding the qualifications required for appointment of a person to the post of Teachers and Visiting Physicians/Surgeon etc. in medical colleges and attached hospitals for under graduate and post graduate teaching. Referring to the requirement of special academic qualification and teaching experience as prescribed in the aforesaid rules relating to the department of Biochemistry, learned Counsel would explain that though in respect of the post of Professor/ Associate Professor the prescribed academic qualification was a doctorate degree in addition to the post graduate degree in Biochemistry but non-medical teachers in Biochemistry were exempted from this criteria in as much as it was stated that nonmedical teachers in Biochemistry should preferably have a doctorate in the subject. Learned Counsel explains that by the exemption in respect of non-medical teachers, it was not required of the petitioner, being a non-medical teacher, to possess a doctorate degree in the subject of Biochemistry for making him eligible for promotion to the post of Associate Professor.

7. Having gone through the above referred Rules of 1971 which continued to remain applicable even till 1983, it is manifest that the requirement of possession of a doctorate degree in the subject of Biochemistry in the case on non-medical teachers was only a recommendation and not a mandate. The requirement was much later made mandatory by the amendment in the regulations in 1998. As noted above, while passing its order in the earlier writ application, this Court had observed that the mandate, as contained in Amended Rule of 1998, cannot be made applicable with retrospective effect in the case of the petitioner to hold him unqualified for his promotion to the post of Associate Professor on account of his not possessing a doctorate degree in the subject of Biochemistry. However, it also appears from the aforesaid order that this Court

was equally conscious of the fact that though the possession of the doctorate degree was not a mandatory provision in the earlier Rules but by way of recommendation, it was stipulated that candidates who had possessed the doctorate degree should be given preference. The inference, therefore, is that in the matter of selection of candidates for their promotion to the higher post of Associate Professor and above, preference should be given to candidates who possessed the doctorate degree and in such view of the matter, the rules give a discretion to the concerned authorities to apply the guideline of giving preference to candidates who possess the doctorate degree. The petitioner has claimed that teachers junior to him were granted promotion to the post of Associate Professor who, to the petitioner's knowledge, did not possess the Ph.D. degree. This claim has been denied and disputed by the respondents in their counter affidavit by explaining that all such teachers who were granted promotion, did possess the Ph.D. degree at the relevant time. It is apparent, therefore, that while reconsidering the petitioner's representation, pursuant to the order of this Court passed in the earlier writ application, the respondents have merely exercised their discretion in not giving preference to the petitioner over the other candidates persuaded by the fact that the petitioner did not possess Ph.D. degree. This Court while remanding the petitioner's matter to the Selection Committee on the previous occasion, had only directed the Selection Committee to reconsider the petitioner's case in the light of the observations recorded in the order leaving the matter to the entire discretion of the Selection Committee and to pass an appropriate order assigning reasons. The petitioner has not pointed out any arbitrariness in the 'order' of the Selection Committee, which is a reasoned order. Even if the Rules of 1983 did not impose a mandate but it had left total discretion upon the Selection Committee to give preference to those teachers who possessed a Ph.D. degree. The promotion of the petitioner to the post of Associate Professor was admittedly made pursuant to the order of this Court in the earlier writ application but with a rider that such promotion is provisional and subject to the approval of the Selection Committee of the Medical Council of India. The Selection Committee in its discretion having not approved the promotion granted to the petitioner, his provisional promotion was, therefore, cancelled and he had, as a consequence thereto, reverted to his substantive post of Assistant Professor.

8. In the light of the above discussions, I do not find any merit in this application. Accordingly, this writ application is dismissed.

9. The interim order of status quo stands vacated.