
(2002) 07 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2309 of 2002

Dr. Ajay Shankar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 07 JH CK 0063

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; V. Shivnath and A.B. Mahato, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by the petitioner for issuance of appropriate writ(s)/order(s)/direction(s) or a writ in the nature of certiorari for quashing part of the Notification, contained in Memo No. 1/Estb-19/2001-36/2002 dated 3rd April, 2002 issued under the signature of the Deputy Secretary, Health Medical Education and Family Welfare Department, Jharkhand, Ranchi, whereby the petitioner has been transferred and posted from the post of Associate Professor, R.M.C.H., Ranchi to the post of Professor, M.G.M. Medical College, Jamshedpur in the Department of Skin and Sexually Transmitted Disease (Skin & STD, for short).

Further prayer has been made by the petitioner to allow him to continue on the post of Associate Professor, Rajendra Medical College, Ranchi till he is being regularly promoted to the post of Professor in the Department of Skin & STD and be allowed the total salary of Associate Professor.

2. The case of the petitioner is that he is working as an Associate Professor in the Rajendra Medical College, Ranchi since promoted vide Notification No. 149(70) dated 14th May, 1997. It is alleged that though he has been so promoted as Associate Professor in May, 1997 has not been paid the scale of pay of Associate Professor, but is Getting salary of the post of Assistant Professor.

3. In the aforesaid background, the grievance of the petitioner is that the respondents without giving any regular promotion, transferred him and posted him against the next higher post of Professor in the Department of Skin & STD in M.G.M. Medical College, Jamshedpur, vide impugned Notification dated 3rd April, 2002.

4. The counsel for the petitioner submitted that the Notification dated 3rd May, 2002 and the conditions made therein are contrary to the public policy, harsh and against the statutory rule framed in the year 1997 in respect to teaching cadre. The Rajendra Medical College, Ranchi to be made an autonomous body for which an ordinance prepared, known as "Rajendra Institute of Medical Science Ordinance, 2002". It has been passed on 21st March, 2002 and published by the Government Press, Jharkhand, Ranchi. However, it has not been made clear as to whether the said Ordinance notified in the Gazette and given effect or not.

5. A Caveat No. 98 of 2002 has been preferred by one Dr. Shyam Sunder Choudhary to implead him as party to save his interest. It was pleaded that as per some directions of High Court in a PIL. (C.W.J.C. No. 3981 of 2001 and in view of the fact that the Medical Council of India has given ultimatum to de-recognise Medical Colleges on failure to fill up teaching posts, the impugned Notification No. 36(2) dated 3rd April, 2002 issued after giving promotion to the petitioner to the post of Professor and posted him in M.G.M. College, Jamshedpur. It is stated that by another Notification No. 35(2) dated 3rd April, 2002, said Dr. Shyam Sunder Choudhary has been posted as Associate Professor in the Department of Skin & STD in Rajendra Medical College, Ranchi.

In this background. Dr. Shyam Sunder Choudhary was impleaded as respondent No. 5 and he was also heard.

6. At one stage, the respondent No. 5 raised the question of legality and propriety of appointment of petitioner Dr. Ajay Shankar Prasad as Assistant Professor as was made in the year 1990. Such submission as was advanced on behalf of respondent No. 5 raising question of legality and propriety of appointment of petitioner as Assistant Professor was rejected by this Court's order dated 8th May, 2002, as the appointment was made in the year 1990, the present case relates to transfer and the respondents cannot be allowed to question the legality and propriety of appointment in the writ petition.

7. Curiously, the respondents State failed to answer certain questions raised by the petitioner. It is stated that working arrangement has been made in the present case. In another case of W.P.(S) No. 3010 of 2001, Dr. Usha Rani v State of Bihar, the High Court has held that the incumbent would be entitled to payment of salary from the date of regular promotion.

8. From the notifications issued by the State Government, from time to time, it would be evident that the State Government, all the time made ad hoc arrangement. Vide Notification No. 149, dated 14th May, 1997, the petitioner was not granted promotion to the post of Associate Professor, but giving

reference of a case, C.W.J.C. No. 6815 of 1994, Dr. Arun Kumar Sinha v. State of Bihar, the petitioner was posted against the higher post of Associate Professor in his own scale of pay of the post of Assistant Professor. Such posting was also made showing ground that the College otherwise would be de-recongised by the Medical Council of India. After such one ad hoc arrangement by posting the petitioner against the higher post of Associate Professor in May, 1997, after about five years, again working arrangement made by posting the petitioner against the next higher post of Professor, vide notification dated 3rd April, 2002.

9. It is, not in dispute that the post of Professor as per 1997 Rule is to be filled up by direct recruitment and not by promotion. The State Government has also not made clear as to what will be the effect of the "Rajendra Institute of Medical Science Ordinance, 2002" stated to have been passed on 21st March, 2002. It is not clear whether the teaching doctors posted in the Rajendra Medical College after the Ordinance of 2002, can be transferred to another Medical College or not, if Rajendra Medical College is given the status of an autonomous College.

10. In any case, as the petitioner does not intend to hold the charge of higher post of Professor, till he is regularly promoted as Associate Professor and then Professor, it is not desirable for the State to post him against the higher post of Professor, as made vide Notification No. 36(2), dated 3rd April, 2002.

11. It is also desirable for the State to decide as to what will be the fate of teaching doctors, if the Ordinance of 2002, stated to have been passed on 21st March, 2002, is given effect. Such matter requires consideration and decision by the State authorities, at the first instance.

12. This Court has taken into consideration the fact that Dr. Shyam Sunder Choudhary has merely been given the charge of the higher post of Associate Professor, vide another notification No. 35 dated 3rd April, 2002. It has not been made clear as to whether he has been given charge of the post against which the petitioner was posted as Associate Professor in Rajendra Medical College, Ranchi or not. However, the Court has taken into consideration the statement made by the counsel for the respondent No. 5 on 13th May, 2002 that the respondent No. 5 was appointed as Assistant Professor in the year 1994 against a higher post of Associate Professor in Rajendra Medical College, Ranchi.

If that be so, the Notification No. 35 dated 3rd April, 2002 issued in respect to 5th respondent can be given effect by allowing him to act as an Associate Professor against which he was already appointed as Assistant Professor, as was stated before this Court.

13. For the reasons aforesaid, the Notification No. 36 of 2002 dated 3rd April, 2002 is set aside so far as it relates to the petitioner.

14. The case is remitted to the State to determine the issue as to whether the Ordinance of 2002, as referred above, has been given effect or not and, if so, then what will be status of petitioner and others who were posted and working as

teachers in Rajendra Medical College as on 21st March, 2002, the date on which the Ordinance was passed.

15. The writ petition stands disposed of.