

(2011) 07 PAT CK 0165

In the Patna High Court

Case No : LPA No's. 368 and 417 of 2009

Dr. Ashok Kumar Vatsyayan and Another

APPELLANT

Vs

The State of Bihar and Others
 Dr. Gandhi Jha and
Others Vs Dr. Ashok Kumar Vatsyayan and Others

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2012) 1 PLJR 810

Hon'ble Judges : T. Meena Kumari, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Sanjeet Kumar Singh, Patanjali Rishi in 368; Mr. Rajendra Prasad Singh in 417, M/s Devendra Kumar Sinha, in 368 Alok Kr. Rahi and Mr. Kundan Bahadur Singh in 417 State, for the Appellant; Amit Prakash Respondent No. 5 (in 368), Mr. Jitendra Kishore Verma Respondent Nos. 5 and 15 and Mr. Binodanand Mishra, Respondent Nos. 7 and 11 (in 417), for the Respondent

Final Decision : Allowed

Judgement

1. The present appeal arises out of the common order dated 9.2.2009 passed in C.W.J.C. No. 4959 of 1997 wherein Annexure-6 issued by the Government is sought to be quashed. It was the case of the appellants, who are the petitioners in the writ petition that the resolution dated 20.6.1996 issued by the State Government has been directed to be given retrospective effect by the learned Single Judge, as a result of which the unofficial respondents have become seniors to the appellant for the post of Assistant Professors even though they are not eligible to hold such posts in the capacity; they, are holding the present post.

2. The learned Single Judge having heard both sides disposed off the writ petition observing that the resolution as contained in Memo No. 176(17) dated 20.6.1996 (Annexure-6 to the writ petition) is in complete violation of the orders passed by this court in C:W.J.C. No. 2647 of 1996. But however, having held so the learned Single Judge directed that the unofficial respondents should be given

the benefit with retrospective effect. The learned Single Judge further held that the policy which is beneficial to remove anomaly framed by the Govt. itself, even if adopted with retrospective effect cannot be held to be illegal.

3. Learned counsel appearing on behalf of the appellants has contended that by virtue of the retrospective effect, as has been held by the learned Single Judge, is not the intention on the part of the policy makers. The appellants are prejudicially affected for the reason that the respondent will come on the post of Associate Professor even without adopting the process of selection.

4. The learned counsel appearing on behalf of the State has contended that because of the stagnation in the post of Professor of Anaesthesia a policy has to be initiated by the State Government giving guidelines for effecting the promotion in the Department of Anaesthesia. Hence, the learned Single Judge is perfectly right in holding that the benefit of promotion should be given retrospectively.

5. The learned counsel appearing on behalf of the respondent has contended that as there was a lot of stagnation among the Associate Professors in the matter of promotion, a policy had to be adopted and resolution has been issued by the Government. It has also been contended that the State has brought the rule with effect from 15.5.1997 governing the promotions of the doctors.

6. It is undisputed fact that all the appellants and the unofficial respondents are the doctors belonging to the Department of Anaesthesia and some of them are the Associate Professors and some others are Assistant Professors. The controversy arose with regard to the effect of the retrospectivity of the promotion policy dated 20.6.1996.

7. In absence of any intention on the part of the Govt. to give benefit of the policy with retrospective effect, we are of the opinion that this Court cannot direct that benefit of such policy should be given retrospectively as this is not the intention of the policy makers. In the absence of any such intention in the said policy for giving the promotion with retrospective effect, we are of the opinion that the learned Single Judge has erred in holding that there is no illegality in effecting the promotion retrospectively by which the policy has the effect of such decision i.e., the person who already retired are to be considered if there is retrospectivity of the guidelines as contained in the memo dated 20.6.1996 because it will allow the respondent-State to open the Pandora box with regard to the promotion of the doctors who are holding such posts.

8. In view of above, we are of the opinion that the order of learned Single Judge with reference to effecting the promotion with retrospective effect has to be set aside. Accordingly, it is set aside. However, having heard all the parties, we are of the opinion that in the interest of justice it would suffice if a direction is issued to the respondent-State to consider the cases of the doctors who are in service on 20.6.1996 in their respective posts by giving effect to their promotion as per the eligibility criteria and as per the guidelines contained in the policy dated

20.6.1996 prospectively.

9. We also make it clear that as the rules came into force on 14.5.1997 the promotion of these persons and also other doctors who have not come to this Court, should be considered as per the existing rules.

10. With the aforesaid observations the order of learned Single Judge is modified and appeal is accordingly allowed to the extent modified above. However, we reject the cases of the appellants in L.P.A. No. 417 of 2009, who are all retired doctors and not in service on 20.6.1996. They had filed the appeal with liberty of this court. The record shows that leave of this Court has already been granted to them.