
(2000) 02 PAT CK 0137
In the Patna High Court
Case No : C.W.J.C. No. 863 of 1999

Dr. Jaganmaya Bhattacharya

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2000) 2 PLJR 230

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

Bench : Single Bench

Judgement

S.J. Mukhopadhaya, J.—The Petitioner, an Associate Professor, Department of Bio Chemistry, posted in Jawahar Lal Nehru Medical College, Bhagalpur, has preferred this writ petition for direction on the Respondents to promote him to the post of Professor, Department of Bio Chemistry. He has also challenged the advertisement issued on 18th December '98, as contained in Annexure-5, so far as it relates to appointment to the post of Professor, Department of Bio Chemistry.

2. According to the Petitioner, one Dr. D.N. Singh, junior to him, as Associate Professor and has been promoted to the higher post of Professor, vide Notification dated 28th June, 1997, but no such order has been issued in respect of Petitioner.

3. Counsel for the Petitioner submits that the question of promotion earlier considered in 1990, but in spite of submission of option by the Associate Professors, no formal order of promotion has been issued.

4. In connection with other case, it came to the notice of this Court that the State Government, vide Notification dated 21st May, 1997, created Teaching Cadre under Proviso to Article 309 of the Constitution of India.

5. In pursuance of said Rule, all the posts of Professors are to be filled up by direct recruitment.

6. In the circumstances, I find no illegality in the advertisement dated 18th December, 1998 (Annexure-5), so far it relates to appointment to the post of Professor of the Department.

7. So far as promotion of Petitioner is concerned, in view of 1997 Rules, no such direction can be issued, though the Petitioner can apply for his being appointed by way of direct recruitment to the post of Professor.

8. So far Dr. D.N. Singh is concerned, he being not a party in the present writ petition, I am also not inclined to decide as to whether the Petitioner is senior to said Dr. D.N. Singh or not.

9. This apart, I find that the order dated 28th June, 1997, by which Dr. D.N. Singh has been made Professor, Department of Bio Chemistry, Leheriasarai, the same does not amount to promotion to higher post, but was made Incharge of higher post by way of stop gap arrangement.

10. In the facts and circumstances, instead of interfering with the order, I direct the Respondents to fill up the post of Professor, Department of Bio Chemistry, which post is now being held by a person by way of ad hoc arrangement, on an early date, preferably within a period of six months from the date of receipt/production of a copy of this order.

11. In case the posts are not filled up on regular basis and the authorities resort to ad hoc arrangement, they will consider the case of Petitioner for such higher post, if junior(s) is/are found to have posted against such higher post.

12. The Petitioner will produce a copy of this order before the Commissioner-cum-Secretary, Health Department, who will ensure compliance.

13. The writ petition stands disposed of with the aforesaid observations and directions.