

(2024) 09 JH CK 0052
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4638 Of 2023

Dr. Kiran Trivedi

APPELLANT

Vs

State Of Jharkhand `

RESPONDENT

Date of Decision : 24-09-2024

Acts Referred:

Constitution of India, 1950 — Article 14
RIMS Act, 2002 — Section 31, 32
RIMS Rules, 2002 — Rule 11

Citation : (2024) 09 JH CK 0052

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Manoj Tandon, Siddharth Ranjan, Neha Bhardwaj, Adamya Kerketta, Ankita, J. F. Toppo, Ajit Kumar, Dr. Ashok Kumar Singh

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. The instant writ application has been preferred by the petitioner for the following reliefs:

“(i) For a direction commanding upon the respondents in particular the respondent Nos.2 and 3 to modify the Office Memorandum contained in Memo No. 203 dated 30.05.2023 by making necessary correction in the nomenclature of the promoted post and the post of ‘Additional Professor’ be corrected as “Professor”.

(ii) To hold and declare that since there is no post of Additional Professor available at RIMS in the Department of Obstetrics and Gynecology, the petitioner is entitled for promotion from the post of Associate Professor to the post of Professor directly, as has been done in the past also by the RIMS which is evident from the Office Order contained in Memo No. 7372/RIMS, Ranchi dated 23.10.2017.

(iii) For any other appropriate relief or reliefs to which the petitioner is found to be entitled in the facts and circumstances of this case as also to do the conscionable justice to the petitioner.”

2. The brief facts of the case as disclosed in the instant application are that the petitioner was initially appointed on the post of Registrar for which appointment letter was issued on 23.06.2005. She joined the post of Registrar in Obstetrics and Gynecology Department. The petitioner remained blemish free and she became eligible for promotion from the post of Registrar to the post of Assistant Professor in the pay-scale of Rs.10,000-15,200/- on the date of joining. She was further promoted from the post of Assistant Professor to the post of Associate Professor with effect from 01.07.2016 which is evident from office order dated 07.03.2017 in which the name of this petitioner appears at serial no.26 and, accordingly, promotion was granted to this petitioner to the post of Associate Professor in the Department of Obstetrics and Gynecology.

3. Learned counsel for the petitioner submits that the respondent-Rajendra Institute of Medical Sciences (In short RIMS) considered the case of promotion of eligible doctors from the post of Associate Professor to the post of Professor directly in view of the fact that there was no post of Additional Professor available in RIMS. The said decision was taken on 12.10.2017 as is evident from the decision of constituted committee. The Director by virtue of decision dated 14.04.2017, placed the matter before the Departmental Promotion Committee in which it was specifically mentioned that the actual date of promotion would be 01.07.2017. Thereafter, several doctors were promoted from the post of Associate Professor to the post of Professor directly which is apparent from the office order as contained in Memo No. 7372/RIMS Ranchi dated 23.10.2017.

4. The case of the petitioner is that she was not considered; however, she was finally promoted from the post of Associate Professor to the post of Additional Professor with effect from 01.07.2019 as contained in Memo No. 203 dated 30.05.2023. Though the petitioner was not satisfied with her promotion from the date she was promoted, she filed a representation on 19.07.2023 requesting the Director, RIMS to do the needful and correct the nomenclature of the promoted post from Additional Professor to Professor; however, the same was not done.

Learned counsel further draws attention of this Court towards the regulation which is mentioned in para 17 of the writ application and submits that the petitioner was having all aforesaid qualification and experience to hold the post of Professor. He further submits that the qualification and experience prescribed for Additional Professor is one and the same as that of Professor.

5. Relying upon the aforesaid submission Mr. Tandon submits that since there was no post of Additional Professor available in the RIMS; the respondent-RIMS was duty bound to place the petitioner on the post of Professor as was done earlier in the year, 2017 with respect to several other doctors who were similarly situated. Learned counsel reiterated that when there is no post of Additional

Professor available in RIMS, the petitioner is entitled for promotion from the post of Associate Professor to the post of Professor directly and the respondent nos.2 and 3 are duty bound to make necessary correction in office memorandum dated 30.05.2023 and the post of Additional Professor is required to be corrected as Professor as was done in the past also by RIMS by office order contained in Memo No. 7372 of 2023 dated 23.10.2017.

6. In reply to the aforesaid submission, Dr. A. K. Singh, learned counsel appearing for the respondent-RIMS made following submissions:

(i) The Department of Health, Medical Education and Family Welfare, Government of Jharkhand in exercise of powers under section 32 of RIMS Act, 2002 notified the RIMS Regulation, 2014 vide notification dated 08-09-2014.

(ii) Schedule IV of the said notification contemplates the Assessment Promotion Scheme for the medical faculty of RIMS, Ranchi.

(iii) The Assessment Promotion Scheme of RIMS, Ranchi is on the similar lines of promotion scheme of AIIMS, New Delhi.

(iv) As per the said scheme, 75% of Associate Professors with 3 years of service will be considered for promotion as Additional Professors each year without linkage to the vacancies in the Grade of Additional Professor.

(v) The promotions under Assessment Promotion Scheme are granted considering the particular percentage of total number of faculty members entitled for promotion after completion of particular period of service. The scheme doesn't suggest that the promotions are to be granted considering the vacancies of the sanctioned promotional posts.

(vi) As per the scheme, the promotions are granted without linkage to vacancies. The person appointed against the post of Assistant Professor, shall carry forward the said post of Assistant Professor till his retirement and the said post of Assistant Professor gets vacant only after the retirement of the occupant of the said post.

(vii) In view of the Assessment Promotion Scheme, to get promoted as Additional Professor, it is not required to have a sanctioned post of Additional Professor.

7. Learned counsel further submits that as per the Assessment Promotion Scheme of RIMS, Regulation 2014, it is not required to create any post for granting promotion under the said scheme in the promotional post. The promotions under Assessment Promotion Scheme are granted considering the particular percentage of total number of faculty members entitled for promotion after completion of particular period of service. The scheme doesn't suggest that the promotions are to be granted considering the vacancies of the sanctioned promotional posts.

8. It has been submitted that the said grant of promotions of the year, 2017 doesn't create any right of the petitioners to be granted promotion in the same

line as the grant of earlier promotions are not in accordance with the Regulation 2014. At that time, there was no Professor in thirteen Departments and to maintain the UG and PG recognition of RIMS, the said promotion to the post of Professor was granted. He submits that the office memorandum contained in Memo No. 203 dated 30-05-2023 does not require any corrections as the impugned office memorandum is in accordance with the Regulation 2014.

Relying upon the aforesaid, Dr. Singh submits that an illegality made earlier cannot take a place of precedent and perpetuate further. In other words, illegality cannot perpetuate and the earlier office order which was passed on the recommendation of 5-member Committee was non-est in the eye of law for two reasons viz. firstly, the Governing Body is the competent authority to take any decision with regard to any issue and Governing Body does not constitute only the Chairman; rather Governing Body constitutes full body and secondly, the Committee which recommended for promotion in the year, 2017 itself indicates that three of the doctors who were promoted in year, 2017 were also member of the said Committee which itself goes to show that there has to be prejudice in the mind of the Committee members.

9. Having heard learned counsel for the parties and after going through the respective affidavits and the documents annexed therein it appears that the previous promotion which was granted is not legal as per RIMS Regulation, 2014 and hence cannot form the basis of the prayers contained in the instant writ petition.

From perusal of RIMS Act, 2002 it appears that Section 31 stipulates that the State Government may make rules after consultation with the Governing Body. It is a settled proposition of law that promotion is not a fundamental right. It is a statutory right which can be considered in light of relevant statutory provisions only. Thus, it would be appropriate to refer the relevant statutory provisions of RIMS Act, 2002 and RIMS Rules, 2002 which read as under:

“RIMS Act, 2002

Section 31: Section 31 of RIMS Act, 2002 provides that the State Government may make Rules after consultation with the Governing Body of RIMS. Under Section 31(2)(III) of this Act these Rules may provide for the powers and function of the Chairman of RIMS.

Section 32: Under Section 32 of the RIMS Act, 2002, the Governing Body of RIMS may make Regulation after obtaining prior approval from the State Government. Under Section 32(1)VI these Regulation may provide for the powers and functions of the Chairman of the Governing Body of RIMS.

RIMS Rules, 2002

Rule No. 11: In view of the provisions contained under Rule-11 all sanctioned posts of teaching cadre can be filled up through open advertisement by the Governing Body of RIMS on the basis of recommendations of Permanent

Selection Committee.”

Thus, sanctioned posts of teaching cadre i.e. Assistant Professor, Associate Professor, Additional Professor and Professor can be filled up only through direct appointment on the basis of open advertisement and not through promotion. As a corollary, sanctioned posts in teaching cadre are not required for promotion to the next higher grade.

At this stage itself it is also necessary to examine the RIMS Regulation, 2014, which reads as under:

“RIMS Regulation, 2014

Regulation No. 4: Under Regulation No. 4 of RIMS Regulations, 2014 the Chairman of the Governing Body of RIMS has been vested with certain powers with regard to calling the meeting of Governing Body, approval of agenda to be placed before G.B., presiding over the meeting of the G.B. and giving an easting vote in case of tie during voting etc.

Regulation No. 11: Under the provisions contained in Regulation No.11 (1) of RIMS Regulations, 2014 the assessment promotion of teachers in RIMS is to be done as per the provisions contained in Schedule III, IV, V, VI and XI. Schedule IV provides for the Assessment Promotion Scheme.”

Thus, in view of the statutory provisions, it can safely be held that the Chairman of Governing Body of RIMS has no powers to take any decision with regard to appointment and promotion of teachers/members of teaching cadre.

10. A bare perusal of the Assessment Promotion Scheme shows that all the promotions envisaged under this scheme are to be given “each year without linkage to the vacancies in the grade”. This means that all the promotions foreseen herein are to be given without any consideration of the availability of posts and vacancies in the next higher grade to which a person is to be promoted. In case of in-situ promotion envisaged under this scheme, the post on which a person is appointed itself gets upgraded to the next higher grade. Thus, there is no requirement of availability of a sanctioned vacant post in the next higher grade. Since the post on which the person is originally appointed gets upgraded; there is no vacancy in that grade to be filled up through fresh appointment on that post.

In case of in-situ promotion without linkage to the vacancies when the person so promoted retires or resigns, a vacancy is created in the grade and on the post on which he was originally appointed not in the promotional post which he held on account of this in-situ promotion without linkage to vacancies. This post held originally by the incumbent now becomes available to be filled up as per the procedure established by law.

Similarly, in case of in-situ promotion without linkage to vacancies the promotion does not occupy and fill up the sanctioned vacant post of the higher grade to

which he is promoted. Those posts remain available to be filled up as per the procedure established by law. The person can hold this post even if there is no sanctioned post in the next higher grade.

11. In the instant case it applies to the petitioner holding and occupying the unsanctioned post of Additional Professor in the Department of Obstetrics and Gynecology. When the petitioner was promoted from the post of Assistant Professor to Associate Professor this was a case of in-situ promotion without linkage to vacancies. In case of promotion of the petitioner from the post of Assistant Professor to that of Associate Professor there was no consideration of availability of vacancies in the rank of sanctioned posts of Associate Professor.

She was promoted as Associate Professor by virtue of upgradation of the post of Assistant Professor originally held by her to the rank of Associate Professor. Since the petitioner was promoted as Associate Professor by upgradation of the post of Assistant Professor on which she was originally appointed, no vacancy was created in the rank of Assistant Professor to be filled up by direct appointment through open advertisement as per Rule No. 11 of RIMS Rules, 2002. No such fresh appointment was made, since no vacancy was created in the rank of Assistant Professor.

12. At the cost of repetition, since the petitioner was promoted as Associate Professor without linkage to vacancies, she did not occupy any of the sanctioned vacant posts of Associate Professor in the Department of Obstetrics and Gynecology. These sanctioned vacant posts in this Department and for that matter in all the Departments in RIMS remained available to be filled up by direct appointment through open advertisement.

Accordingly, these sanctioned vacant posts in all grades have now been advertised to be filled up through direct appointment through Advertisement Nos. 521 dated 13.03.2024 and 522 dated 13.03.2024. As stated hereinabove, in the past the petitioner has been granted in-situ promotion without linkage to vacancies in the grade of Additional Professor vide office Memorandum No. RIMS/De/Admn./No. 179 dated 06.05.2023.

13. Having regard to the aforesaid discussions, it is evidently clear that there is no need of availability of sanctioned posts in the rank of Additional Professor in RIMS in case of in-situ promotion without linkage to vacancies in any Department including the Department of Obstetrics and Gynecology.

Thus, the petitioner cannot be granted promotion directly to the rank of Professor on account of non-availability of sanctioned posts of Additional Professor in the Department of Obstetrics and Gynecology.

14. So far as promotions granted to eleven Associate Professors directly to the rank of Professor vide Memo No. 7372/ RIMS Ranchi dated 23.10.2017 (Annexure-7 to the writ petition) is concerned; it is held that the same was not legal as per RIMS Regulation, 2014 due to the following reasons:

(i) The Chairman of Governing Body of RIMS has no power and authority to grant any promotion to a teacher in RIMS, more so in violation of the provisions contained in Clause 11 r/w Schedule-IV of RIMS Regulation, 2014.

(ii) Even the Governing Body of RIMS has no power and authority to grant any promotion to a teacher in RIMS in derogation of the provisions contained in Regulation No. 11 r/w Schedule-IV of RIMS Regulations, 2014 in any situation whatsoever.

(iii) Though the Governing Body is the competent authority to take any decision with regard to any issue but the Governing Body does not constitute only Chairman; rather Governing Body constitutes full body and secondly, the Committee which recommended for promotion in the year, 2017 itself indicates that three of the doctors who were promoted in year, 2017 were also member of the said Committee.

15. In view of the foregoing observations, it clearly transpires that the illegality committed earlier still persists. Article 14 of the Constitution of India does not envisage negative equality. It is a settled proposition of law that an illegality cannot be allowed to be perpetuated [refer, "Kulwinder Pal Singh & Anr. V. State of Punjab & Ors." reported in (2016) 6 SCC 532].

16. Having regard to the aforesaid discussion, no relief can be granted to the petitioner and, accordingly, the instant writ application stands dismissed. However, it is made clear that since it has been held hereinabove that the promotion granted earlier to some of the Doctors from Associate Professors to the rank of Professor vide Memo No. 7372/ RIMS Ranchi dated 23.10.2017; was not legal; accordingly, the Governing Body of Respondent-RIMS would be at liberty to undo the illegality committed earlier in accordance with law and applicable Rules and Regulations and following the principles of natural justice.