

**(2013) 07 JH CK 0052**  
**In the Jharkhand High Court**  
**Case No : WP (S) No. 1971 of 2005**

Dr. Maria Madhu Bara

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 05-07-2013

**Acts Referred:**

**Citation :** (2013) 4 JLJR 241

**Hon'ble Judges :** S. Chandrashekha, J

**Bench :** Single Bench

**Advocate :** A.K. Das, for the Appellant; Saket Upadhyay for the State and Delip Jerath and Abhinash Kumar for the Respondent No. 6, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Chandrashekha, J.—The petitioner has approached this Court with the following prayers:--

For Issuance of appropriate writ/order/direction for quashing the notification as contained in memo No. 139(2), dated 31.5.2004 as corrected vide notification No. 157(2), dated 16.6.2004 issued by Health Department and Family Welfare Department, Government of Jharkhand, whereby and whereunder the respondent No. 6 has been promoted from the post of Medical Officer to the post of Senior Resident/Lecturer with effect from 1.5.2004; and for further issuance of writ/order/direction, directing the concerned respondents-authorities to make appointment of Senior Resident/Lecturer in the Department of Gynecology from the panel prepared pursuant to advertisement No. PR/1915 (Health-70) 04-05, dated 30.9.04 as corrected being P.R. No. 2232 (Health-84)/04-05 considering the case of the petitioner and also for issuance of any other appropriate writ/order/direction.

The brief facts of the case are that, the petitioner was appointed as Medical Officer on 10.6.1997 whereas, respondent No. 6 was appointed as Medical Officer on 7.11.1990. The petitioner was transferred to the Additional Primary Health

Centre, Ghorabandha on 30th June, 1998 and then she was transferred to M.G.M. Medical College & Hospital, Jamshedpur on 24.9.2003. The respondent No. 6 was transferred to Sub-Divisional Hospital, Seraikella on 30th November, 2000 and then she was transferred to M.G.M. Medical College & Hospital, Jamshedpur on 1.3.2003. The respondent No. 6 was posted as Assistant Professor on 8.4.2003. It is stated that respondent No. 6 was granted regular promotion on the post of Senior Resident w.e.f. 1.5.2004. An advertisement was issued on 30th September, 2004 and applications were invited for the appointment on the post of Senior Resident, Tutor, Assistant Professor etc. It is the case of the petitioner that there were seven vacancies and her name finds place at serial No. 9 in the panel, however instead of appointing her, the respondent No. 6 was appointed.

2. A counter-affidavit has been filed on behalf of State (respondent No. 2) in which it has been stated:--

17. That, with regard to the statements made in paragraph-14 of the writ application, it is stated and submitted that the respondent No. 6 was posted to the post of Sr. Resident much before the start of this selection process and she was initially posted as Assistant Professor and subsequently on detection of the fact that she was not eligible for the said post, she was posted against lower post of Sr. Resident w.e.f. 1.5.2004 which was vacant and for which she was eligible and qualified.

3. A counter-affidavit has also been filed on behalf of respondent No. 6 justifying her appointment on the post of Senior Resident.

4. Heard learned counsel for the parties and perused the documents on record.

5. Learned counsel appearing for the petitioner has submitted that as per Bihar (now Jharkhand) Medical Education Service Cadre and its Cadre Post Appointment Rules, 1997, no appointment can be made without following procedure prescribed therein. He has further submitted that pursuant to advertisement dated 30th September, 2004, the petitioner has applied however, respondents appointed six persons out of seven vacancies and respondent No. 6 was illegally adjusted against the seventh vacancy on which the petitioner should have been appointed.

6. Learned counsel appearing for the State supported the stand taken in the counter-affidavit.

7. Learned counsel appearing for the respondent No. 6 has stated that admittedly the respondent No. 6 is senior to the petitioner and she was appointed/promoted on the said post even prior to the issuance of advertisement therefore, it cannot be contended by the petitioner that she was appointed against the vacancy for which advertisement dated 30th September, 2004 was issued. A perusal of documents on record would clearly indicate that the petitioner made representation to the authorities on 23.7.2004 in which she

made request to the authorities for her appointment on the post of Lecturer/ Senior Resident as her husband was also working there. Before filing this writ petition, no representation was made before the authorities taking the plea which has been taken in the present writ petition. Therefore, I am of the view that on this score alone, this writ petition deserves to be dismissed. Moreover, a consideration of materials on record would disclose that State has taken a specific stand that when it was found that respondent No. 6 was wrongly promoted on the post of Assistant Professor, she was reverted on a lower post i.e. post of Senior Resident. The date of promotion of respondent No. 6 is prior to the date on which the advertisement was issued, in which the petitioner also participated and her name finds place at serial No. 9. In any event, when according to the petitioner there were only 7 vacancies, the petitioner could not have been appointed pursuant to the advertisement dated 30th September, 2004 as her name was placed at serial No. 9 in the panel. The respondent No. 6 was appointed/promoted on the post of Senior Resident prior to the advertisement dated 30th September, 2004 therefore, I find no merit in the writ petition. Accordingly, the writ petition is dismissed.