
(1996) 09 PAT CK 0052
In the Patna High Court
Case No : C.W.J.C. No. 1521 of 1996

Dr. (Mrs.) Ranjana Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Citation : (1996) 2 PLJR 683

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Sudhir Kumar Katriar, Narendra Kumar and Sanjeev Ranjan, for the Appellant; Shashi Bhushan Kumar, Ram Balak Matho and Shivendra Kishore, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. By this writ application the Petitioner has prayed for quashing the order dated 19-1-1996, as contained in Annexure-4, by which she has been posted on promotion as Associate Professor in the department of Micro-biology. S.K.M. College, Muzaffarpur and also for issuance of a writ of mandamus commanding upon the Respondents to post the Petitioner in P.M.C.H., Patna as Associate Professor, Department of Micro-Biology, according to merit-cum-choice.

3. Learned Counsel appearing on behalf of the Petitioner submitted that the Petitioner was the senior most doctor in the panel of Assistant Professors, Micro-biology, as contained in Annexure-1 to the writ application and pursuant to letter dated 11-9-1991, as contained in Annexure-2, she had exercised her option for her posting on promotion as Associate Professor, Micro-biology, in P.M.C.H., Patna.

4. It is further submitted that the Petitioner had become eligible for promotion to the post of Associate Professor, Micro-biology, on 17-9-1992 but she was not posted on the promotional post despite the post being vacant and ultimately vide impugned order as contained in Annexure-4, she has been posted on the post of

Associate Professor, Micro-biology, in S.K.M. College, Muzaffarpur, ignoring her seniority and option exercised by her for her posting on promotion in P.M.C.H., Patna.

5. It is further submitted that Respondent No. 5, Dr. Shankar Prakash, being a junior most in the panel of Assistant Professors of the department of Microbiology, has been posted on the post of Associate Professor, Micro-biology, in P.M.C.H., Patna, contrary to the circulars and decisions of the State Government and also contrary to the decisions of this Court as well as of the Supreme Court.

6. Mr. Sudhir Kumar Katriar, learned Counsel appearing on behalf of the Petitioner, submitted that since the Petitioner was seniormost in the panel of Assistant Professors, Micro-biology, and she had become eligible for promotion in the year 1992 itself and since she had exercised her option for her posting in P.M.C.H., Patna, she could have been posted in P.M.C.H., Patna, on the post of Associate Professor as the Petitioner was the seniormost in pane of Assistant Professors, Micro-biology, and she had exercised her option for her posting in P.M.C.H., Patna.

7. In this case, two sets of counter-affidavits have been filed-one on behalf of the Respondent State and the other on behalf of Respondent No. 5.

The counter-affidavit filed on behalf of the Respondent State is not comprehensive and it has merely been stated therein that since the post of Associate Professor, Micro-biology, had fallen vacant in S.K.M. College, Muzaffarpur, the Petitioner was posted in that very Medical College as against a clear cut vacancy, which as stated above has fallen vacant in the year 1990. It has also been stated in the counter-affidavit of the Respondent State that since the vacancy in P.M.C.H., Patna, was a resulting vacancy after the promotion of one Dr. Ramjee Prasad on the post of Professor in the department of Microbiology and since there was no clear cut vacancy for accommodating the seniormost candidate as per merit-cum-choice, the Petitioner was posted as against the clear cut vacancy, which was available in S.K.M. College, Muzaffarpur.

8. Mr. Ram Balak Mahto, learned senior counsel appearing on behalf of Respondent No. 5, submitted that as per the merit-cum-choice the Petitioner has rightly been posted as against the clear cut vacancy, which was available in S.K.M. College, Muzaffarpur. He further submitted that the Petitioner could not have been posted on the post of Associate Professor, Micro-biology, in P.M.C.H., Patna as there was no clear cut vacancy and there was a resultant vacancy after the promotion of one Dr. Ramjee Prasad on the post of Professor in the Department of Micro-biology. In this view of the matter, Mr. Mahto, learned Counsel appearing on behalf of Respondent No. 5, submitted that Respondent No. 5 was posted as against the resultant vacancy in P.M.C.H., Patna.

9. Mr. Mahto, learned Counsel appearing on behalf of Respondent No. 5, had also tried to impress upon me that there was a clear cut vacancy of Associate

Professor, Micro-biology, in S.K.M. College, Muzaffarpur, and according to merit-cum-choice the Petitioner has rightly been posted there and she cannot make a grievance against the position of Respondent No. 5, in P.M.C.H., Patna.

10. The facts that the petitioner was seniormost in the panel of Assistant Professors, Micro-biology, and she had exercised her option for her posting on promotional post in P.M.C.H., Patna, are admitted. It is settled that a doctor should be posted on the promotional post strictly according to merit-cum-choice. In this context, it would be pertinent to mention here that this very question, which has arisen for consideration in this case, was settled by this Court in the case of Dr. Smt. Manju Banker v. The State of Bihar and Ors., 1991 (1) PLJR 663, wherein this Court has held that as per the policy of the State Government for posting on promotion against a vacancy, one has to be posted in a place of choice on the basis of seniority-cum-choice of the eligible candidates. The judgment of this Court in the case of Dr. (Smt.) Manju Banker (supra) has been approved and Affirmed by the Supreme Court as reported in 1991(1) PLJR (S.C.) 74. Recently, a learned single Judge of this Court, while disposing of bunch of writ applications, being C.W.J.C. No. 5372 of 1996 [Dr. (Smt.) Krishna Choudhary and Anr. v. State of Bihar and Ors.] and its analogous cases, has held that the posting on promotional post must be done strictly, according to seniority-cum-choice of the eligible candidates. This Court in Dr. (Smt.) Krishna Choudhary (supra) has also held as follows:

...I would like to clarify that no teacher although eligible for promotion but junior to those who had given choice for posting at a particular place on promotion, can be posted against such place....

11. In the case at hand, it is admitted that the Petitioner was the seniormost in the panel of Assistant Professors, Microbiology and she had opted for her posting on promotional post in P.M.C.H., Patna, as per the choice asked for by the department concerned. It is also admitted that when the Petitioner had become eligible for the promotional post in the year 1992 itself, Respondent No. 5 was not eligible and he became eligible only in the year 1994. It is also admitted that while passing the order dated 19-1-1996, as contained in Annexure-4, the post of Associate Professor, Micro-biology, was vacant in P.M.C.H., Patna and also in S.K.M. College, Muzaffarpur. In view of these admitted positions the Petitioner would have been posted on the promotional post, of Associate Professor, Microbiology, in P.M.C.H., Patna, according to seniority-cum-choice, as per the decision of this Court and also of the apex Court, as referred to above.

12. It appears to me that a pretext has been taken by the State Government and also by Respondent No. 5 in the counter-affidavit that since there was a resultant vacancy of Associate Professor in P.M.C.H., Patna, on account of promotion of one Dr. Ramjee Pd. to the post of Professor in the department of Micro-biology the Petitioner could not have been posted in P.M.C.H., Patna as she was to be posted as against a clear cut vacancy, which was available in S.K.M. College, Muzaffarpur. The submission made on behalf of the Respondent State and also

Respondent No. 5 in this context does not stand to reasoning as to when a post of Associate Professor, Micro-biology, was vacant in S.K.M. College, Muzaffarpur, right from 1990, why the Petitioner, who had become eligible for her promotion on the post of Associate Professor, Microbiology, was not posted in S.K.M. College, Muzaffarpur.

13. Mr. Ram Balak Mahto, learned senior counsel appearing on behalf of Respondent No. 5, in this context submitted that since the Petitioner had given choice only for her posting in P.M.C.H, Patna, she could not have been posted on promotional post in S.K.M. College, Muzaffarpur, and when the matter was considered afresh to promote the Petitioner and other-eligible candidates in the year 1996, the order as contained in Annexure-4 was passed posting the Petitioner on promotional post as against a clear cut vacancy and not against a resultant vacancy in P.M.C.H., Patna.

14. I am at a loss to understand as to why the Petitioner was not posted against the clear cut vacancy on the promotional post in S.K.M. College, Muzaffarpur, on account of her option exercised, when she had become eligible in the year 1992 itself and how she has been posted on the promotional post in that very Medical College itself vide impugned order dated 19-1-1996 as contained in Annexure-4, ignoring her seniority-cum-choice.

15. In my opinion, once the Petitioner was not given the promotional post, which had fallen vacant in S.K.M. College, Muzaffarpur, she by no reasoning could have been posted there again on promotional post in view of her seniority-cum-choice.

16. As it has been held by this Court in the case of Dr. (Smt.) Krishna Choudhary and Ors. (supra) as noticed above that no teacher although eligible for promotion but junior to those who had given choice for posting at a particular place on promotion can be posted against such place, Respondent No. 5, being the juniormost in the panel of Assistant Professors, Micro-biology, could not have been posted in P.M.C.H., Patna, on the post of Associate Professor, Micro-biology, as against the claim of the Petitioner, who rank senior to him and had exercised her choice of her posting in P.M.C.H., Patna.

17. In the above view of the matter, I find no force in the submissions of learned Counsel appearing on behalf of Respondent No. 5 and Respondent State.

18. Taking into consideration the submissions made on behalf of the parties and law laid down by the apex Court as referred to above, I am constrained to hold that the impugned order, as contained in Annexure-4 is not sustainable in law.

19. In the result, this application is allowed and the order impugned, as contained in Annexure-4, so far as the same relates to the Petitioner, vis-a-vis, Respondent No. 5, is hereby quashed. The authorities concerned are directed to pass a fresh notification posting the Petitioner, vis-a-vis, Respondent No. 5 on the promotional post of Associate Professor, Micro-biology, in the light of the observations made above and strictly according to the decisions of this Court as

also the apex Court as indicated above.

20. In the facts and circumstances of the case, however there shall be no order as to costs.