

(1996) 11 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 5157 of 1996

Dr. (Mrs.) Suraiya Nasrat

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-1996

Acts Referred:

Citation : (1997) 1 PLJR 293

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

Bench : Single Bench

Advocate : B.P. Pandey, Ashok Kr. Mishra and Anjani Kumar Choudhary, for the Appellant; Rameshwar Prasad and Shashi Bhushan Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner has challenged the notification dated 16th March, 1996 by which she has been posted as Civil Assistant Surgeon, Primary Health Centre, Imamganj, Gaya.

2. The main grievance of the Petitioner is that she having been appointed as a teacher in the Bihar Health Service and as she was functioning against the post of Lecturer (Physiology), now known as Associate Professor (Physiology), she should have been given posting, on her return from foreign against such teaching post and not against a non-teaching post, particularly, when the non-teaching post against which the Petitioner has been posted is a post with lower scale of pay.

3. The brief fact of the case shows that the Petitioner was initially appointed in the Bihar Health Service in the year, 1966. Subsequently, she was appointed as Demonstrator, a teaching post in Darbhanga Medical College. The Petitioner was thereafter promoted to the higher post of Lecturer (Physiology). It is stated that while the Petitioner was so performing her duties against a teaching post of Lecturer, she was sent on deputation to the Foreign Service in the Government of Iran, vide one order, contained in letter No. 3996 (3) dated 9th November, 1977,

having obtained permission from the State Government. Admittedly, the Petitioner remained out of India for a long period. In the meantime, different steps were taken against the Petitioner, but such facts are not relevant for the present. Admittedly, the Petitioner returned back in the country and gave her joining, which was accepted by the Respondents on 15th February 1983. However, no specific posting order being issued for years together. Thereafter the Petitioner moved before this Court in C.W.J.C. 12318 of 1992. A Bench of this Court disposed of the said writ petition on 4th April, 1994, directed the Respondents to provide posting in favour of the Petitioner. Thereafter, the Respondents have come out with the impugned order dated 16th March, 1996, posting the Petitioner against the post of Civil Assistant Surgeon.

4. As stated above, the grievance of the Petitioner is that she should have been posted against teaching post equivalent to that of the post of Lecturer. According to the Petitioner, the post of Lecturer is now known as Associate Professor in the Medical College.

5. According to the learned Advocate General, the cadre of members of Bihar Health Services, including those who are in the teaching posts, being a common cadre, the Petitioner can be posted against one or other teaching or non-teaching post. It is submitted that the Petitioner remained out of service, on deputation, for a pretty long period, she has been given posting against the post of Civil Assistant Surgeon which, in no way, affects the Petitioner in the matter of seniority. However it is accepted that the teaching post in the Bihar Health Service are to be filled up by way of appointments, but after selection, which is a mode of appointment by way of transfer. In normal course, the teachers are not being sent back to non-teaching post without their consent.

6. In view of that fact that the teachers of Health Department being appointed after following the procedure of appointment and selection and are not reverted back to the non-teaching post without their consent, and further taking into account that the scale of post of Lecturer, a little bit higher than that of the post of Civil Assistant Surgeon the impugned notification dated 16th March, 1996 is set aside.

7. The Respondents are directed to reconsider the case of the Petitioner for posting against a teaching post. They will take into note the designation of Petitioner as Lecturer, when she left India and find out as to what is the present nomenclature of such post. If it is known as Assistant Professor and/or Associate Professor the Petitioner should be given posting against such equivalent post of Lecturer (Physiology). In case, the Respondents find any difficulty in giving posting in favour of the Petitioner against such post there being no such post vacant for the present, they will communicate such decision to the Petitioner, so that the Petitioner may give her option for posting against any one or other equivalent post. Such final decision is to be taken by the Respondents-State within a period of two months from the date of receipt/production of a copy of this order.

8. Till such final decision is taken a post of the equivalent rank of Lecturer (Physiology), if vacant, in any of the Medical College(s) or falls vacant in the meantime, the same shall be kept vacant for the Petitioner.
9. It is needless to say that after reposting of the Petitioner and on joining of the Petitioner, she will be getting her due salary and arrears of salary, if any in accordance with law.
10. The writ petition stands allowed with the aforementioned observations and directions.
11. Let a copy of this order be handed over to the counsel for the Respondents.