
(2006) 04 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 14237 of 2004

Dr. Ranjit Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Citation : (2006) 3 PLJR 14

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : M.K. Sinha, for the Appellant; J.C. to AAG II, for the Respondent

Judgement

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

2. The petitioner by this writ application, prays for issuance of direction upon the respondents to make payment of his due salary for the post of Assistant Professor in the Department of Microbiology with effect from 14.5.1997 to 28.2.2002.

3. It is submitted by learned Counsel for the petitioner that by virtue of the order dated 14.5.1997 as contained in Annexure 1, several persons along with the petitioner were promoted on the post of Associate Professor as stop gap arrangement in compliance of this Court's order passed in C.W.J.C. No. 6815 of 1994 and also in view of the ultimatum given by the Medical Council of India to withdraw recognition. The petitioner worked on the post of Associate Professor in Microbiology discipline and thereafter he superannuated with effect from 28.2.2002. It is further submitted that similarly situated persons who were also promoted by stop gap arrangement on the post of Associate Professors have been given the benefit of promotional scale by notification issued vide memo No. 367(17) dated 22.10.2005 as contained in Annexure 4 to the supplementary affidavit whereas the claim of the petitioner is being negated on untenable grounds.

4. A counter affidavit has been filed on behalf of the respondents. In paragraph

12 of the counter affidavit, it is stated that the case of the petitioner is under consideration and necessary sanction has been sought for the cost of Associate Professor, Microbiology.

5. Today when the matter was taken up for admission, J.C. to AAG II submitted that the petitioner since was not promoted against the sanctioned post of Associate Professor in Microbiology, he would not be entitled for the benefit of promotional scale.

6. On plain reading of Annexure 1, it appears that the petitioner and other persons were promoted as Associate Professors on ad hoc basis in their own scale in compliance of this Court's order in C.W.J.C. No. 6815 of 1994 and in the light of the ultimatum of the Medical Council of India to withdraw recognition. There is no satisfactory explanation given in the counter affidavit as to under what circumstances, the other persons who were also promoted on ad hoc basis as Associate Professor in different department in their own payscale, were granted benefits of promotional scale subsequently or even after their superannuation.

7. Since the petitioner was given promotion on ad hoc basis in the like manner others were given the benefit of scale, in my opinion, the same cannot be denied to the petitioner on the maxim "Two equals cannot be treated unequally".

8. Grant of promotion even on ad hoc basis presupposes the factum of existence of sanctioned post. The benefit which was extended to other persons who were also promoted on the post of Associate Professor in their own scale, is also admissible to the petitioner and the same cannot be denied.

9. From the pleadings of the state, it appears that just to appease the Medical Council of India and to show compliance of this Court's direction, as referred to above, several persons were promoted on the post of Associate Professors in their own scale. This type of concept is quite unknown to law and the same cannot be given due sanction by the court of law.

10. Regard being had to the facts and circumstances of the case, respondent authorities are directed to give the benefits of promotional scale to the petitioner as claimed by him with effect from 14.5.1997 to 28.2.2002 within a period of three months from the date of receipt/production of a copy of this order.

11. With this direction/observation, this application is disposed of.