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**(2005) 07 PAT CK 0009**  
**In the Patna High Court**  
**Case No : CWJC No. 1850 of 2000**

Dr. Shyam Bihari Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 25-07-2005

**Acts Referred:**

**Citation :** (2005) 4 PLJR 180

**Hon'ble Judges :** Navin Sinha, J

**Bench :** Single Bench

**Advocate :** Indu Shekhar Prasad Sinha, Girindra Mohan Thakur, Shashi Nath Jha, Kumar Malendu and Ujjwal Kr. Sinha, for the Appellant;

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## Judgement

Navin Sinha, J.

Order dt. 05.07.2005

1. Heard Learned Counsel for the petitioner and the learned Counsel for the State. The claim of the petitioner in the present writ application is for promotion to the post of Reader with effect from 7.7.1980 and to that of the post of Professor from 7.7.1985 in the Kaya Chikitsa Department (Department of Indigenous Medicines), Ayurvedic College, Patna.

2. The grievance of the petitioner would be that notwithstanding the fact that the petitioner was at serial 42 of the final gradation list published on 19.2.1997 and one Dr. Deb Brat Narayan Singh was placed at serial No. 65 the respondents have proceeded to grant the status of Reader and Professor to said Dr. Singh ignoring the claim of the petitioner.

3. Earlier a counter affidavit was filed on behalf of the respondents which would state that in the Department of Kaya Chikitsa there were only two posts of Reader at Ayurvedic College, Patna and one in Begusarai. One of the post was for reserved category and that as per the seniority list Dr. Deb Brat Narayan Singh was senior to the petitioner and therefore he had been given promotion on the

post of Reader on 14.9.2004. The counter affidavit would be silent with regard to the assertion of the petitioner vide Annexure 5, the final gradation list, that the petitioner was admittedly senior to Dr. Deb Brat Narayan Singh.

4. Learned Counsel for the petitioner files a reply to the supplementary counter affidavit today. It is submitted therein that consequent to the promotion of one Dr. Chandra Mohan Mishra to the post of Professor with effect from 6.5.1997 by an order of 1.4.1999 the vacancy of Reader became available with effect from the retrospective date after 6.5.1997 and the claim of the petitioner for promotion to the post of Reader and consequently to the post of Professor has to be decided on that basis. Said Dr. Chandra Mohan Mishra by an order dated 15.9.1999 was appointed as Principal of Yatindra Narayan Astang Ayurvedic Mahavidyalaya, Bhagalpur and therefore the vacancy of Professor also became available from the said date. The petitioner is stated to have superannuated on 31.8.2000.

5. In view of the fact that the petitioner has placed fresh facts in the reply to the supplementary counter affidavit this Court considers it appropriate to grant the respondents one last opportunity to meet the contentions of the petitioner as noticed above for grant of promotion to the post of Reader and consequently to the post of Professor which he claims has been wrongly denied to him in his service career, by filing fresh additional counter affidavit within a period of two weeks. List this mater thereafter within first five cases.

Order dt. 25.7.2005

1. Heard Learned Counsel for the petitioner and the learned Counsel for the State. In pursuance of the previous order a supplementary counter affidavit has been filed on behalf of the respondents.

2. The order dated 5.7.2005 would be detailed in its contents and therefore the Court would not re-record the facts today. Suffice it to say that the respondents in their supplementary counter affidavit more particularly in para 4 have admitted the validity of the seniority list of 19.2.1997 at Annexure 5 to the writ application. The position stands now beyond controversy that the petitioner is senior to the said Dr. Deb Brat Narayan Singh. This issue no longer need to detain the Court with regard to the claim of the petitioner for appointment on the post of Reader and consequently the post of Professor.

3. Though the claim of the petitioner originally was for appointment on the post of Reader with effect from 7.7.1980 and to that of Professor from 7.7.1985 the petitioner has clearly brought on record materials that it would be beyond controversy, a fact not disputed in the supplementary counter affidavit, that the post of Reader became available with effect from 6.5.1997 in pursuance of the order dated 1.4.1999 in respect of Dr.Chandra Mohan Mishra who by an order dated 15.9.1999 was accordingly promoted as Professor also, thus the vacancy being available for consideration of the claim of the petitioner.

4. In the facts and circumstances, this Court would now require the respondents to consider the case of the petitioner for promotion to the post of Reader and consequently to the post of Professor within a period of eight weeks from the date of receipt/production of a copy of this order. The petitioner is stated to have superannuated on 31.8.2000. It goes without saying that the petitioner would automatically be entitled to all consequential benefits in pursuance of such consideration of his case by the respondents. The writ application accordingly stands disposed-off with the observations indicated above.