
(2000) 02 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 2565 of 1998

Dr. (Smt.) Anjana Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Citation : (2000) 2 PLJR 272

Hon'ble Judges : B.P. Singh, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : Devendra Kumar Sinha and Kumar Alok, for the Appellant; V.N. Sinha, Ashish Anshu, Ram Balak Mahto, Pushkar Narain Shahi, Ashutosh Singh No. 1 and Dharendra Kumar (Munna), for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh and A.K. Ganguly, JJ.—The Petitioner has filed the instant writ petition for quashing the memo No. 72 (17)/SW dated 16.3.1998 (Annexure-5), whereby Respondent No. 5 has been posted as Resident in the Department of Gynecology and Obstetrics in the Patna Medical College and Hospital, Patna. The Petitioner has prayed that after quashing the aforesaid memo, the Petitioner should be posted against the said post.

2. A few facts, not in dispute, may be noticed:

In the Year, 1992 an advertisement was issued inviting applications from eligible candidates for their selection and appointment as Resident in various medical colleges of Bihar. The post of Resident was a tenure post of three years duration. The Petitioner as well as Respondent No. 5 applied pursuant to the said advertisement, and a panel was prepared some time in the year, 1994. The Petitioner was placed at Serial No. 14 of the panel while Respondent No. 5 was placed at Serial No. 18. One Abha Rani Sinha was placed at the top of the panel. The State took time and ultimately it was in the year, 1996 that the selected candidates were appointed as Resident in the different medical colleges of Bihar.

3. It is not in dispute that according to the norms and the terms of the advertisement, since Abha Rani Sinha had secured highest number of points, her preference for being posted in the Patna Medical College and Hospital was accepted and she was appointed as Resident in the Patna Medical College and Hospital. The Petitioner as well as Respondent No. 5 had given their first preference for the same college, namely, Patna Medical College and Hospital, but since they were lower down in the panel they could not get the posting of their first choice, and were ultimately posted in different Colleges. The Petitioner was posted in Nalanda Medical College and Hospital at Patna, while Respondent No. 5 was posted in Jawaharlal Nehru Memorial Medical College and Hospital at Bhagalpur.

4. It appears that Abha Rani Sinha, who was posted in the Patna Medical College and Hospital, was transferred to S.K.M. Medical College, Muzaffarpur on her own request. Consequent upon her transfer, the post of resident in the Patna Medical College and Hospital fell vacant. Against the said post Respondent No. 5 has been posted by issuance of the impugned notification Annexure-5 dated 16.3.1998. Before issuance of Annexure-5 Respondent No. 5 had been posted at Gardanigabh Hospital at Patna (a non teaching hospital) by notification Annexure-3 dated 31.12.1997.

5. Counsel for the Petitioner submitted before us that since the post held by Smt. Abha Rani Sinha fell vacant on account of her transfer to Muzaffarpur, that vancancy should have been filled up by posting the Petitioner in the Patna Medical College and Hospital, since she was higher in the panel as compared to the Respondent No. 5. It is submitted that since the norms and the terms of the advertisement provided that the preference given by the person higher in the panel shall be accepted in the matter of posting, the Petitioner had a better claim to the post of Resident in the Patna Medical College and Hospital than Respondent No. 5.

6. No rule or circular has been brought to our notice which provides that in the matter of transfer preference of the candidate is of any significance. No doubt, at the time of initial selection, the norms did provide that preference given by the person securing more points will be accepted, if more than one candidate gave preference for the same post. It is, however, significant here that the process of selection came to an end when the posts were filled up in the year 1996. It is no one's case that the terms of the advertisement or the norms were not adhered to. After selection and posting of the candidates in the year 1996, the advertisement exhausted itself, and thus no reliance can be placed upon the said advertisement for the purpose of future transfers and postings.

7. In the instant case, after the initial selection, a vacancy occurred in the Patna Medical College and Hospital and the same has been filled up by transfer of Respondent No. 5 to the Patna Medical College and Hospital presumably on the basis that her husband was also posted in Patna Medical College and Hospital. This transfer was made in view of the Government's policy decision that where

the husband and wife both are members of any State service, they shall be posted at the same place as far as practicable.

8. There is another aspect of the matter so far as the Petitioner is concerned. She is already posted at Patna, though in a different Medical College. Respondent No. 5, on the other hand, was initially posted at Bhagalpur, but on account of personal reasons she sought transfer to Patna. She was initially transferred to Gardanibagh Hospital and later to the Patna Medical College and Hospital. We find nothing illegal or unreasonable in the action of the Government in transferring Respondent No. 5 to the Patna Medical College and Hospital, nor do we find that any right of the Petitioner has been violated in doing so. The Petitioner cannot claim as a matter of right that she should be transferred to the Patna Medical College and Hospital, since the advertisement has no significance after the process of selection has been worked out in terms of the advertisement. For future transfer and posting the advertisement can have no significance. No other ground has been urged to assail the impugned order.

9. In these circumstances, we find no merit in this writ petition and the same is therefore, dismissed.