
(2008) 09 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 83 of 2003

Dr. (Smt.) Hirabai Atmaram Borker	Vs	APPELLANT
State of Goa		RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Citation : (2008) 09 BOM CK 0080

Hon'ble Judges : S.C. Dharmadhikari, J;N.A. Britto, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; S.R. Rivonkar, Government Advocate, for the Respondent

Judgement

S.C. Dharmadhikari, J.—The petitioner is appearing in person and seeks the following relief:

To direct Respondent No. 1 to promote the Petitioner as Associate Professor in Psychiatry at the Institute of Psychiatry & Human Behaviour w.e.f. 15.1.99-deemed date of promotion of the Petitioner to be promoted as Associate Professor at I.P.H.B.

2. It is undisputed that the Petitioner joined as Associate Professor in Psychiatry at the Institute of Psychiatry on 15.1.96.

3. The petitioner worked as Assistant Professor in Psychiatry for 7 years and one month and it was her case that as per the Recruitment Rules, she is eligible to be promoted as Associate Professor from 15.1.1999. The petitioner's eligibility being undisputed by the respondent, it is her grievance that the promotion should have been effected from 15.1.1999.

4. In the writ petition, there is no averment with regard to creation or existence of the post nor any vacancy therein.

5. The respondent filed an affidavit of the Special Secretary (Health), Public Health Department, Government of Goa, Panaji and the deponent states that the

petitioner was appointed as Medical Officer in 1984 on ad hoc basis and thereafter, as Assistant Professor in Institute of Psychiatry and Human Behaviour.

6. However, it is contended in para 8 of the affidavit that on 20.8.2002, the Government sanctioned 2 post of Associate Professor in the pay scale mentioned in the order and, therefore, the petitioner is not entitled to be promoted as Associate Professor with effect from 15.1.1999 (15th January, 1998).

7. Immediately, after the post was created in the year 2002, promotional exercise was undertaken and it is not disputed before us that on 28.3.03, on the recommendations of Goa Public Service Commission, the petitioner and one Dr. (Smt.) Maria Yvonne D'Silva Pereira have been appointed as Associate Professor in the newly created posts.

8. It is also not disputed before us that subsequent to the filing of the writ petition, once again promotional exercise was undertaken to the higher post of Professor in Psychiatry and the Goa Public Service Commission recommended to the Government that the petitioner be appointed to the promotional post.

9. By order dated 24.11.2006, the Petitioner has been so appointed and now she is holding charge of the promotional post of Professor in Psychiatry under this order. However, the petitioner brings herself to our notice a Memorandum dated 5.6.2006 circulating therewith a tentative seniority list of Associate Professor, Assistant Professor and Lecturers in the Institute of Psychiatry and Human Behaviour, Bambolim and the seniority list shows that the petitioner is at serial No. 1.

10. The Petitioner states that the seniority has since been finalised.

11. The subsisting grievance, according to the petitioner, is that although she has been promoted as Associate Professor with effect from 28.3.2003 and the promotional exercise may have been completed in 2002- 03, but the post was vacant since 1999 and, therefore, she is eligible for being promoted with effect from 15.1.1999. She relies upon a letter dated 16.4.2002 addressed by the Under Secretary (Health) to the Director/Dean, I.P.H.B., Bambolim, which is on the subject of one post of Associate Professor in the I.P.H.B. which is vacant and additionally 2 more posts sought to be filled as per the requirement of MCI (Medical Council of India) for 100 seats of Degree/Diploma Courses. The letter requests the Dean to intimate the names of the incumbents holding the post of Assistant Professor/Lecturer/Assistant Lecturers and since when they are holding the said post on regular basis.

12. In our view, a perusal of this letter does not, in any manner, carries the case of the petitioner any further. If the post itself was not existing and creation is in the year 2002, then, reliance cannot be placed upon the letter of 16.4.02. In fact, recommendations to create such a post have been pending since 1989 as is clear from Exhibit P-3 which is relied upon by the petitioner herself and the recommendations were because the MCI sought the details and unless the posts

are filled in, the MCI would not give the necessary approvals/recommendations. These are recommendations after MCI Inspection and in that behalf the petitioner herself pointed out a letter of 10.4.2002 on the subject of proposals for MCI recognition of postgraduate degree/diploma courses at Psychiatry, IPHB.

13. In our view, having been promoted as Associate Professor and further as Professor, there is no subsisting grievance of the petitioner. The grievances as projected in the petition have been redressed and once it is placed on record that the post itself was created in 2002, we cannot proceed on the basis that the post remained unfilled although it was created way back in the year 1999. We also cannot proceed and hold that the post was vacant only on the basis of the communication dated 16.4.2002, when other documents do not substantiate this fact. The petitioner's request to promote her from 15.1.1999 cannot be acceded to. Admittedly, the petitioner has gained promotion to higher post and has now been appointed as Professor. In such circumstances, we do not see any reason to grant any relief in this petition as all grievances stand redressed in the light of the developments noted above. The petition is disposed off accordingly. No costs.