

(2003) 03 PAT CK 0089
In the Patna High Court
Case No : L.P.A. No. 220 of 2003

Dr. Tarun Kishore Jain and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Citation : (2003) 2 PLJR 826

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, for the Appellant; S.K. Ghose, for State, for the Respondent

Final Decision : Dismissed

Judgement

1. These Letters Patent Appeals arise out of a common judgment and order dated 10.2.2003 passed in C.W.J.C. No. 12302 of 2002 and other analogous cases. The question involved is similar and, as such, they have been heard together and are being disposed of by a common order.

2. The Appellants were tutors. They were aggrieved by memo No. 729(17) dated 17.9.2002 of the Health, Medical Education and Family Welfare Department, to the extent of posting of tutor in Physiology and Preventive Social Medicine (PSM) Department in different Medical Colleges and consequential repatriation of the Appellants from the post to the Health Service Cadre on the ground of lack of Post Graduate qualification in the concerned subjects, i.e., Physiology and Preventive Social Medicine (PSM). They challenged the said order in the writ petitions. The writ petitions were dismissed by a common judgment and order considering in details the grievance of the Appellants. The said judgment and order have been challenged in these Letters Patent Appeals.

3. Learned Counsel for the Appellants contended that the Appellants exercised options for Medical Education Service Cadre and, as such, they became the members of the teaching cadre i.e., Bihar Medical Education Service Cadre and

they cannot be repatriated or transferred to any other cadre without their consent.

4. It would not be out of place to mention that the posts of tutors are available only in non-clinical subjects such as Physiology and Preventive Social Medicine where there are no posts of Residents and Registrars. From the MCI regulation it appears that the post of tutor has been treated at par with the Demonstrator, Resident and Registrar. The post of tutor exists only in non-clinical subject and the post of Registrar and Resident exists only in clinical subject. There is no corresponding post of Registrar/Resident in non-clinical subject. The post of tutor is treated as equivalent to the post of lecturer for which the promotional post is Assistant Professor. The minimum qualification prescribed is Post Graduate degree in the concerned subject for promotion to the post of Assistant Professor which the Appellants admittedly do not possess. The continuation of non-Post Graduate Doctors on the post of tutors has given rise to a serious anomaly, blocking the way of promotion on the post of Assistant/Associate Professor as they do not possess the required qualifications for promotion. Thus, taking into consideration this aspect of the matter the order was passed repatriating the Appellants as indicated above. This aspect has been considered in the judgment under appeal and the submission of the learned Counsel for the Appellants has been negatived. We find nothing wrong in the order impugned on the aforesaid aspect of the matter.

5. Learned Counsel for the Appellants next contended that the Appellants are entitled to remain in clinical side as they were working as tutors for long time. It is to be reiterated again that they were not holding the qualification for promotional posts i.e., the Post Graduate degree and were blocking the way of promotion of eligible candidates in teaching side. The aforesaid aspect of the matter was also considered in details in the judgment under appeal and the submission of the learned Counsel for the Appellants was negatived. We find no reason to disagree with the finding arrived at in the judgment under appeal.

6. Thus, on consideration as discussed above, we find neither substance in the submissions of the learned Counsel for the Appellants nor any merit in these appeals.

7. Thus, these Letters Patent Appeals are dismissed.