
(2020) 12 JH CK 0170
In the Jharkhand High Court
Case No : Writ Petition (C) No. 6691 Of 2019

Dr. Tulsi Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-12-2020

Acts Referred:

Rajendra Institute Of Medical Sciences Act, 2002 — Section 29
Executive Business Rule, 2016 — Rule 12, 15, 35

Citation : (2020) 12 JH CK 0170

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Dr. Ashok Kumar Singh, Shadab Bin Haque

Final Decision : Disposed Of

Judgement

Heard Mr. Rajendra Krishna, learned counsel for the petitioner, Mr. Shadab Bin Haque, learned counsel for respondents-State and Dr. Ashok Kumar

Singh, learned counsel for the respondents-RIMS.

This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due

to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

The petitioner has preferred this writ petition for quashing the order 31.12.2018 contained in Annexure-8. Further prayer is made for to shift the date

of retrospective promotion of the petitioner on the post of Professor FMT from 05.11.2003 to 31.08.1997. Prayer for consequential benefit has also

been made.

The petitioner was appointed on 26.06.1981 as Medical Officer and in the year 1984, the petitioner was posted as Tutor in Pharmacology Department

in Darbhanga Medical College in the erstwhile State of Bihar. On 01.01.1985, the petitioner was transferred and posted as Tutor in Forensic Medicine

in M.G.M. Medical College, Jamshedpur. The petitioner was given promotion on the post of Assistant Professor, Forensic Medicine w.e.f.

31.08.1988. The petitioner was transferred and posted to RMCH, Ranchi as Assistant Professor, Forensic Medicine, Ranchi. As per M.C.I. Rules, an

Assistant Professor is entitled to be promoted in the next higher post after completion of four years. In that view of the matter, the petitioner was

provided promotion on the post of Assistant Professor, Forensic Medicines w.e.f. 31.08.1993. After completion of four years, the petitioner was

required to be promoted on the next higher post as Professor in view of M.C.I. Rules as well as Promotion Rules notified in the year 1990 and 1997.

After such promotion, the petitioner completed four years on 31.08.1997. The cadre rules framed in the year 1997 also adopted the M.C.I. Rules

regarding promotion to the higher post. The petitioner filed several representation for rectifying the earlier order of promotion on the post of Professor

giving him promotion w.e.f. 31.08.1997 not from 05.11.2003. The petitioner's claim for promotion on the post of Professor in the FMT Department

w.e.f. 31.08.1997 has been rejected on the ground that in the year 1997 there was only one sanctioned post against which one Dr. K.P. Srivastava

was working there. Aggrieved with this, the petitioner has preferred this writ petition.

Mr. Rajendra Krishna, learned counsel for the petitioner assailed the impugned order on the ground that the Department of Health vide notification

dated 27.05.2004 has rectified the number of sanctioned posts in RIMS/RMCH by modifying Annexure-A which also contains number of sanctioned

post of teachers (doctors) in RMCH/RIMS. While rectifying aforesaid notification, it has been stated that the correct number of sanctioned posts

were not incorporated in Annexure-A, therefore, ""Annexure-1"" is being issued which will replace Annexure-A showing the correct number of

sanctioned posts at the time of creation of RMCH which was converted to RIMS under the RIMS Act, 2002. By way of referring the said

notification, he submitted that three sanctioned posts of Professor in FMT

Department at the time of establishment of RMCH was there and that is why notification dated 27.05.2004 has been issued. He further submitted that the said notification has not been withdrawn neither by the RIMS nor by the Department of Health, Government of Jharkhand. He submitted that many doctors were given retrospective promotions on various higher teaching posts considering the number of posts as enclosed at Annexure-1. By way of example, he referred the total number of posts of Professor in Pathology at Annexure-A was shown as two, which subsequently was enhanced in Annexure-1 as five and in the year 2007, three persons namely Dr. Manoj Kumar Rai, Dr. Trilochan Singh and Dr. Ramesh Kumar Shrivastava were promoted as Professor w.e.f. 15.07.2000. He further submitted that in the year 2000, one Dr. Parida was already working as Professor in the Department of Pathology, therefore altogether four doctors have been given retrospective promotion on the post of Professor in the Department of Pathology w.e.f. 2000. In the Medicine Department, earlier sanctioned posts was shown as three which subsequently changed to five in view of Annexure-1 of the said notification that is why five Professors were working in the Medicine Department of RIMS. He submitted that nothing was done and the petitioner has been compelled to move before this Court in W.P.(S) No.4078 of 2010 whereby the writ petition was disposed of directing the petitioner to file fresh representation annexing the relevant documents and direction was issued to the authority to consider the case of the petitioner and pass reasoned order. Pursuant to that the impugned order has been passed whereby the claim of the petitioner for promotion w.e.f. 31.08.1997 has been rejected.

Per contra, Dr. Ashok Kumar Singh, learned counsel for the respondents-RIMS submitted that in view of Rule 12, 15, 35 of Executive Business Rule, the post was to be created and sanctioned by the State Government which is not reflected from the notification dated 27.05.2004. He submitted that medical council has no power. He further submitted that in view of Rule 29 of RIMS Act, 2002, the State has got limited power. He also submitted that even accepting that certain persons were given promotion, negative equality cannot apply. He submitted that the petitioner has got no right of promotion, only the consideration can be made that too by the RIMS. He further submitted that the case of the petitioner is fit to be rejected on the

ground of delay and laches. He relied in the case of Chennai Metropolitan Water Supply and Sewerage Board & Others Versus T.T. Murali Babu

reported in 2014(4) SCC 108; C. Jacob Versus Director of Geology and Mining & Another reported in (2008) 10 SCC 115; U.P. Jal Nigam &

Another Versus Jaswant Singh & Another reported in (2006) 11 SCC 464; Dr. Arun Kumar Singh Versus Rajendra Institute of Medical Sciences &

Others reported in 2019(2) JBCJ 9 HC. On these grounds, he submitted that the writ petitioner is fit to be dismissed.

Mr. Shadab Bin Haque, learned counsel for respondents-State submitted that the RIMS is an autonomous body. The role of State Government is

limited. He submitted that pursuant to the direction of this Court dated 28.09.2020, supplementary counter affidavit has been filed whereby it has been

stated that the Medical Officers in the year 2004 in RIMS at Ranchi, has been ordered to promote the Medical Officers on the post mentioned in

Annexure-A enclosed with notification no.101(2) dated 08.04.2004 which was amended by the department vide notification no.137(2) dated

27.05.2004 which got substituted by the details of post in Annexure-1 and such posts have not been duly created in terms of Jharkhand Executive

Rules, 2000. He further submitted that in para 8 of the supplementary counter affidavit it has been stated that as per the information received from the

Director, only one post of Professor was sanctioned in the year 1995. He submitted that only one post is there.

On the basis of above submission of learned counsel appearing for the parties, the Court has gone through the materials on record. The notification

dated 27.05.2004 contained in Annexure-4 clearly suggests that at the time of establishment of Rajendra Medical College in view of prescribed

criteria, the sanctioned post has been shown as Annexure-A. It has also stated that due to typographical error, M.C.I. recommendation for the post of

Post Graduate Diploma Course were not incorporated that is why Annexure-A has been replaced with Annexure-1. On perusal of Annexure-A of the

said notification, it is crystal clear that the post of Professor in the FMT Department, two posts have been sanctioned. In other Departments,

sanctioned posts were indicated as Annexure-A. On perusal of Annexure-1, it transpires that sanctioned post for Professor in FMT Department

shown as Annexure-3 and rest of the Department as also the sanctioned post is shown, thus the notification has been issued by the Secretary,

Department of Health, Medical Education and Family Welfare, Government of Jharkhand dated 27.05.2004. In view of fact that the impugned order has been passed by the Secretary of the same Department whereby it has been stated that only one post in FMT Department was shown that is why the petitioner has been provided promotion w.e.f. 05.11.2003. Since two Secretaries for the same Department were contradicting the statement of each other, the Court by order dated 28.09.2020 directed the respondent no.2-Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand to file personal affidavit. Pursuant to that order, respondent no.2 has filed supplementary counter affidavit wherein in para 6, it has been admitted that in view of notification no.137(2) dated 27.05.2004, the promotion have been provided. The details of Annexure-A which got substituted by Annexure-1. Thus, the Secretary in the supplementary counter affidavit has admitted this position that pursuant to that notification, the promotion has been provided to the Doctors on the sanctioned posts. However, in the next paragraph it has been stated that the Director, RIMS has informed that there is only one post of Professor in FMT Department in the year 1995. Thus, the notification no.137(2) dated 27.05.2004 has not been denied in complete words by the respondent no.2. The notification dated 27.05.2004 has been issued by the Secretary and in view of Annexure of that document, several persons have been promoted on the post of Professor in different Departments of the RIMS, the description of which is disclosed in paragraph no.17, 18 and 19 of the writ petition which have not been denied either by the RIMS or by the Government of Jharkhand. There is no pleading that notification dated 27.05.2004 is not issued by the Government of Jharkhand. In view of the fact that document is there to suggest that there were at least two posts sanctioned in the FMT Department. So far not passing the said sanctioned post in terms of Jharkhand Executive Rules, 2000 is concerned, it appears to be taken only for sake of opposing the prayer of the petitioner. In the notification dated 27.05.2004, it is stated that at the time of establishment of Rajendra Institute of Medical Sciences that posts were there. Thus, there is no occasion of passing the same in terms of Jharkhand Executive Rules, 2000 as sanction was already there at the time of establishment of RIMS. In view of Section 29 of RIMS Act, 2002, the Government having pervasive control.

The argument of Dr. Ashok Kumar Singh, learned counsel for the respondents-RIMS with regard to Executive Business Rules, 2000 is not tenable in

view of the fact that for the first time this has been argued orally. There is no pleading to that effect in the counter affidavit. This is not the contention

for rejecting the claim of the petitioner in the impugned order also. It is well settled principle that the ground cannot be supplemented by way of filing

counter affidavit which is not the ground in passing the impugned order. Reference in this regard may be made in the case of ""Mohinder Singh Gill v.

Chief Election Commissioner"" reported in (1978)1 SCC 405. Paragraph no.8 of the said judgment is reproduced hereinbelow:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the

reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning

may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the

observations of Bose, J. in Gordhandas Bhanji. ""Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of

explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public

orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are

addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

RIMS has referred the matter to the State Government for appropriate decision on the above mentioned claimed of the petitioner which has been

disclosed in para 10 of the counter affidavit of the RIMS. The delay ground argued by Dr. Ashok Kumar Singh, learned counsel for the respondents-

RIMS is not tenable in view of fact that the petitioner has earlier approached this Court in W.P.(S) No.4078 of 2010 which was disposed of vide order

dated 19.09.2018 with direction to file representation and thereafter the impugned order has been passed on 31.12.2018 and the writ petition has been

field on 06.12.2019. The judgment required to be considered in view of the facts and circumstances of each case. In view of these aspects of the

matter, the judgment relied by Dr. Ashok Kumar Singh, learned counsel for the respondents-RIMS on the ground of delay and laches are not helping

the respondent-RIMS. The notification dated 08.04.2004 contained in Annexure-A to the counter affidavit of respondent no.2, the rule was suspended

at least for certain period that is why the Government has acted for several administrative regulations of the RIMS. In the impugned order dated

31.12.2018, it has also been recorded that notification no.137(2) dated 27.05.2004, three posts were sanctioned post of Professor in the FMT

Department. However, it has been further stated therein that by notification dated 24.06.2011 sanction is not there.

In view of the admitted position, the said document cannot be doubted and the ground of rejection of claim of the petitioner does not sound good.

Accordingly, the part of the impugned order whereby claim of the petitioner has been rejected is quashed. The matter is remitted back to the

respondent no.2 to consider the case of the petitioner afresh within a period of eight weeks from the date of receipt/production of a copy of this order

considering that in view of notification dated 27.05.2004, Doctors of different Departments have been provided promotion which has been contended

in paragraph nos.17, 18 and 19 of the writ petition and not rebutted by the respondents and there is no reason why the said documents will not apply in

the case of the petitioner.

With the above observation and direction, the writ petition stands disposed of.