

(2006) 11 PAT CK 0008
In the Patna High Court

N.K. Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Citation : (2006) 11 PAT CK 0008

Judgement

Mridula Mishra, J.—Common grievance of petitioners in all these writ application relate to inter changeability from super speciality to parent speciality department. Petitioners are mainly aggrieved by the action of the respondents/ Department of Health and Medical Education the State of Bihar of giving ad-hoc/ working arrangement promotion to doctors appointed against sanctioned post of super speciality to the posts of parent speciality namely general surgery and general medicine. Besides that the petitioners have also challenged their inter-se seniority with private respondents in their writ applications and their specific prayer is to quash such notifications by which such respondents have been promoted on ad-hoc/working professor, Professor in parent speciality, although working in super speciality department. Question of law set out in these writ petitions demonstrate that the nature of writ petitions are not confined to the adjudication of issues for dispute in between the petitioners and the private respondents inter-Se only but also involve common interest of doctors in the teaching stream as a whole, particularly those who are continuing in super speciality unit as part of the cadre of the parent department petitioners have raised wider issues of wide implication involving interest of doctors in teaching cadre as a whole, as such all these writ applications are being taken together and disposed of by a common order.

2. Prior to 1997 there used to be only one cadre of doctors either working in general hospitals or working against teaching posts of medical colleges, known as State Health Cadre. Before separation of cadre appointment on teaching posts in Medical Colleges of State were made through executive instructions. Entry in medical colleges on teaching posts were through appointments against the posts of Resident/Registrar/ tutor. In this context the direction of this Hon''ble court in

Dr. Rita Sinha and Another Vs. State of Bihar and Others, was strictly being followed. In spite of the direction of the High Court and the guidelines to the government to advertise the vacancies on annual basis advertisement for the junior teaching post were not published annually. This gave reason for intervention of the High Court directing the Government of Bihar to frame rule for appointment/promotion and deciding seniority of doctors working on teaching posts. In exercise of power under proviso to Article 309 of the Constitution of India in the year 1997 Bihar Medical Education (Service Cadre and recruitment of its cadre post) rule 1997 was framed (hereinafter referred as 1997 rules).

3. In terms of Rule 5 of 1997 rules, the nomenclature of the post of residents/Registrar were changed as lecturer. Incumbent holding the post of Registrar on 21.5.1997 were deemed to be holding the post of lecturer. Rule 8 dealt with appointments/promotions on different teaching post in the medical colleges. Entry point in the teaching cadre was the post of lecturer. The post of Assistant Professor was senior teaching post and promotional post of lecturer. In terms of rules the appointment on the post of lecturer in Medical Education Cadre were done through competitive examination conducted by the Bihar Public Service Commission inviting applications on requisition from health department. A lecturer having four years teaching experience in a particular faculty on the basis of his seniority-cum-teaching experience and research work is deemed to be eligible for promotion on the post of Assistant Professor. For promotion as Associate Professor five years teaching experience as Assistant Professor, seniority and research work is the requisite qualification. The post of Professor was not the promotional post from Associate Professor. The vacancies of the professor's post was needed to be advertised on All India basis and any one having five years experience as Associate Professor fulfilling requisite qualification fixed by the M.C.I. could be selected/appointed on the post of Professor.

4. Rule 1997 provided direct appointment to the post of Professor in the Medical College, through Bihar Public Service Commission. Because of this provision in the Rule, post of Professors, were not being filled by making regular promotion as such Rule was amended vide Notification No. 211(17) dated 22.11.2003. This amendment provided one time working arrangement promotion to different teaching posts including that of post of Professor with certain conditions and one of them was that demand of regularisation of such promotion shall not be accepted.

5. 1997 Rule was further amended vide Notification No. 185 (17) dated 22.3.2004 whereby old Rule of direct appointment on the post of Professor, on the basis of seniority cum eligibility criterion was detected.

6. Rule 8 of 1997 rules was amended on two occasions. Original rule 8 was amended firstly by notification no. 211 (171) dated 2.11.2003. By this amendment vacant post in the teaching cadre if not filled due to procedural delay or for any reason could be filled by giving ad-hoc promotion to any eligible

doctors on the basis of merit cum seniority, in his own pay scale. On recommendation of the departmental promotion committee (D.P.C.), In case such candidates are not available then the post can be filled on contractual basis. Such ad-hop promotion can be given to any one on one time basis only. This amendment was introduced because of the threat of derecognition by the M.C.I. Subsequently by No. 186 (17) dated 22.3.2004 again Rule 8 was amended. which indicated that the promotions given on adhoc basis in own Jay scale to any one. will be valid till decision of promotion is taken on regular basis. Rule 10 prescribes that the inter-se seniority of teachers posted in super speciality unit and the parent department is to be decided from common panel reckoning their seniority from the entry point and not from the date of their posting in super speciality unit, until a super speciality is not developed and converted into full fledged separate department. Super speciality will be under the control of parent speciality.

7. The arbitrary and erroneous exercise of power in the garb of Rule 8 and 10 is the subject matter of dispute in present writ applications.

8. Following are the admitted facts:

(i) The petitioners have not challenged the Bihar Medical Teaching Cadre rules 1997 as well as any amended rules thereof.

(ii) Rule 8 (2) of 1997 rule pertaining to promotion in the teaching cadre and amended vide notification dated 22.3.2004 has also not been challenged in any of the writ petitions. At present amended rule 8(2) regulates promotions.

(iii) There are some super specialties which are not recognised as super speciality under Medical Council of India Regulations and admittedly they are part of parent department.

(iv) The promotional post of Assistant Professor, Associate Professor and Professor have not been created in all super specialties department on the line of M.C.I. regulations in all Medical colleges of Bihar.

(v) Assistant Professor/Associate Professor/Professors working in super speciality department have also been regularly imparting instructions in parent department like general surgery and general medicine.

9. Counsel for the petitioners have challenged the inter changeability of teachers from super speciality to the parent department. Their Contention is that a teacher appointed in super speciality cannot be deemed to possess the requisite teaching experience in any other subject then the subject in which they are trained and having requisite qualification only on account of the fact that the super speciality is a genus of parent department. Interchangeability of teachers from super speciality to parent department, cannot be allowed for this reason only.

10. Medical Council of India Constituted under M.C.I. Act 1956 regulates medical

education in the country acting u/s 33 of the M.C.I. Act. M.C.I. has framed regulations laying down minimum qualification For the post of Assistant Professor/ Associate Professor and Professor. In the regulation qualification for general surgery is M.S. and its super specialties is M.C.I. For general medicine requisite qualification is M.D. and D.M. for super specialties. For the post of Associate Professor Surgery, five years Teaching experience as Assistant Professor in general surgery is required and in case of super speciality five years teaching experience as Assistant. Professor in the Super speciality department is required. This shows that completely two different sets of requisite qualification have been provided for appointment/promotion in the parent as well as super speciality departments. Two departments are entirely different for all practical purposes as such inter change ability cannot be allowed. It has also been submitted that prior to enactment of 1997 rules separate panels used to be prepared for appointment against different post, in different subjects. Separate panel was prepared for parent department like general surgery and general medicine and separate panels were prepared for super speciality units. Under no circumstance a doctor selected for particular subject could be appointed for different subjects. Appointment to higher post of Associate Professor and Professor could be made only from amongst Assistant Professor and Associate Professor respectively in that particular subject. This practice was followed in Medical Colleges of the State for very long time only after enactment of Medical Cadre Rule 1997 Procedure for appointments against teaching posts have undergone changes. I Now appointment can be done in terms of rule and not otherwise. Earlier advertisements were issued inviting applications for preparation of panel for appointment on junior teaching post which clearly indicated eligibility! criteria for different subjects including parent and super speciality. Panels were also prepared subject wise and no common panel was prepared. Doctors selected on the basis of merit in particular subject was not appointed against same post in different subjects. Doctor appointed in a particular subjects at the entry level was considered for promotion in that very subjects and not for other subjects. While making appointment/promotion on teaching posts rule contained in regulation of M.C.I. and Rule 8 of Medical Teaching Cadre Rules are suppose to be strictly followed. Subsequently the practice has developed by which for appointment/promotion combined effect of Rule 8 and Rule 10 is being practiced. Though Rule 8 and rule 10 have entirely two different areas of their application but by allowing inter changeability in between the parent and super speciality in the matters of appointment/promotion the State Government is violating the specific provisions under rule 8 of the teaching cadre.

11. Rule 8 provides for compartmentalized horizontal promotion.

12. Counsel for the petitioner has relied on the decision in the case of Dr. N.C. Singhal Vs. Union of India (UOI) and Others, The Supreme Court in this decision has held that "It is difficult to provide promotional avenue by way of general seniority list interpreting different speciality category-wise cadre or grade-wise. If

such general seniority list including the persons belonging to different speciality is drawn up for the purpose of promotion it might lead to starting result because the need may be of promotional post in speciality and the man at the top of the seniority list may not belong to that speciality but may belong to different speciality."

13. Counsel appearing for private respondents controverting this line of argument have submitted that the writ petitions itself is not maintainable in view of the fact that the teaching cadre Rule 1997 has not been challenged. Such argument has no substance specially when Rule 8(2) of 1997 rules has undergone amendment. vide Notification dated 22.3.2004. After such amendment there cannot be compartmentalize or horizontal promotion. There is no conflict in between rule 8 and rule 10. The scheme under rule 10 will apply so long the super speciality departments are not fully developed and there is no amendment in the present rule. This has been decided in Dr. Vinay Karak's case by this Hon'ble Court which is final. It has also been submitted that being a social welfare State, the State is obliged to provide promotional avenues to all its employees. Teachers working in the super speciality units, not fully developed are also needed to be given promotional avenues. considering the fact that super speciality units have not been fully developed on the line of M.C.I. regulation i.e. three tier posts of Assistant, Professor, Associate Professor and Professor, there is no promotional avenues for such teachers. Fundamental right to promotional prospect and duty to provide avenues by the State cannot be ignored. Under the present 1997 rule the interpretation of Rule 8 and 10 cannot be given in the manner as submitted by the petitioners. Such a narrow interpretation is violative of human rights as well as the fundamental rights of the teachers working in super speciality. Reliance has been placed on reported cases like Bihar Rajya Zila Parishad Abhiyantra Seva Sangh and Others Vs. State of Bihar and Others, O. Konavalov Vs. Commander, Coast Guard Region and Others, Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, Gaurav Jain Vs. Union of India and others, In the aforesaid cases issues settled are that the right to promotion being basic human rights is a part of right to development. State is obliged to provide promotional avenues, as right of development is an obligation under universal declaration of human rights, fundamental rights and directive principle of the State policy.

14. Counsel for the State to meet these arguments have stated that rule 8(2) cannot be read independent of rule 10, till there is non availability of fully developed super speciality departments. There is no chance that immediately super speciality departments will be created fully independent and developed, considering the financial status of the State after bifurcation and dearth of qualified teachers of super speciality. Counsel for the State has stated that Rule 10 is there to substantiate present arrangement of granting promotion to teachers working in super specialities. Such promotions are legal and valid in terms of 1997 rules as well as the decision of this Court in Dr. Vinay Karak's case.

15. It is not in dispute that the general medicine and general surgery are two separate genus but under each genus there are numerous specialities. Admittedly the Medical Education in medical colleges in the country is regulated by the M.C.I. constituted under Indian Medical Council Act, 1956, M.C.I, has framed rules with a view to lay down standard for medical education which are mandatory and some of them are obligatory. The medical profession has developed branch wise experts. specialize knowledge referable generally to number of post in which human autonomy is divisible. General medicine and general surgery are two separate genus, but under each one there are numerous speciality and intensive study and research is needed for being qualified for these specialities. Contention of the petitioners that inter change from one speciality to other speciality is not permissible because it is contrary to mandatory regulation framed by M.C.I. Rule is not in consonance with 1997 rules which is not under challenge.

16. On consideration of entire materials it is obvious that super speciality unit are under the control of parent department as per rule 10 of 1997 rules. This rule is statutory in nature and till the date it has not been amended inter changeability is the Rule. Rule 10 recognizes two parent department i.e. general medicine and general surgery and their super speciality units like nephrology, cardiology, gastro micrology, neuro surgery, plastic surgery, pediatric surgery, urology and hand and micro surgery as one department for the purposes of deciding inter-se-seniority and Promotions. There cannot be any other interpretation of Rule 8 and Rule 10 of 1997 Rule. Rule 10 if transitory in nature, unless the State government fully develops super speciality unit as per the M.C.I. Rules inter changeability cannot be held to be violative of petitioners right. Teachers working in super speciality as well as the parent unit are entitled for promotional avenues which is provided under rule 10 of 1997 rules. The dispute relating to inter-se seniority of teachers posted in super speciality unit vis-a-vis teachers- in parent department has already been settled in Vinay Karak case considering the fact that Super Speciality units in all medical colleges have not fully developed. In Vinay Karak's case it has been held that the promotion/ appointments to the higher post to be made from the next lower post on the basis of 1997 rules, any doctors in super speciality department will be treated to be member of parent department. Assistant Professor working against super speciality post will be eligible for promotion to the post of Associate professor, even if it is the post in parent department. The dispute of inter changeability and inter- se seniority, has already been decided, it has rightly been objected by Respondents that petitioners have no cause, of action to re-agitate the same.

17. Second limb of argument of the petitioners is that Rule 8 being specific rule regarding promotion, will have over riding effect over rule 10 in the matters of promotion. Rule 8 will have to be given effect in the matters of promotion ignoring rule 10.

18. Counsel for the petitioners have submitted that Rule 8 deals with the

appointment and promotion, Rule 8(1) provides the mode as to how the appointments will be made on the post of Tutor/Assistant professor, Associate professor and professor. Rule 8(2) deals with the necessary qualification/seniority for promotion from one post to another post. So far rule 10 is concerned it is general in nature and words used indicate that it provides for inter department seniority. Rule 8 and 10 have entirely different areas of operation and its provisions cannot be mixed up and misinterpreted for giving promotion to super specialities on posts of parent specialty. Rule 10 is not meant for ignoring and violating positive direction contained in Rule 8 simply because a speciality department comes within the parent department, specially. when entry into both the departments are through different doors, independent of each other crossing different experience criteria. Subsequently at the will of state and against the M.C.I. Rule promotion cannot be decided treating them of one cadre at higher stage of promotion. Reliance has been placed on the case of Smt. Laxmi Devi Vs. Sethani Mukand Kanwar and Others, Kailash Chandra and Another Vs. Mukundi Lal and Others, The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another, and in the case of Bal Chand Bansal Vs. Union of India (UOI) and Ors,

19. Counsel for Respondents have stated that the argument advanced is not substantiated from rule 8 and 10 of 1997 rules. Rule 8 after amendment vide dated 23.3.2004 does not talk of promotion in other subjects concerned but the amended Rule 8(2) simply says that the post of Associate Professor and Professor are promotional and the same shall be filled up on the basis of qualification and teaching experience prescribed by the M.C.I. Whole argument of the petitioners is based on the unamended Rule 8 knowing fully well that rule 8 has been amended vide notification dated 23.3.2004 and the same has never been challenged.

20. There is no conflict in between rule 8 and rule 10 particularly considering the nature of scheme of rule 10 and the words used therein. Rule 10 is very specific that it will be applied only during interregnum period, so long super speciality departments are not fully developed. Admittedly super speciality departments have not been established till now While reading or interpreting the statute it is always safe to have an eye on the object and purpose of the statute for which it is enacted. According to Black stone, the most fair and rational method for interpreting statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context the subject matter the effect and consequences or the spirit and reason of law. In the present context the most probable object and purpose for legislating Rule 8 and 10 is the existing status of the parent and super speciality units which is still not fully developed as per M.C.I. Rule in all Medical Colleges of Bihar. Rule 10 being temporary in nature has been enacted just to meet this situation. In the present scenario there can be only one interpretation that rule 8 and 10 are inter-linked related to promotion/ seniority purposes so far it relates to appointment/ promotion in parent/super speciality department. Both Rule 8 and 10 will have to be read together for -giving proper and natural effect to the object for which they

have been enacted.

21. Third limb of argument of the petitioners is that though the petitioners were appointed as Assistant Professor/ Associate Professor against duly sanctioned post in the department of surgery and Medicine and each one of them is eligible to be promoted to the next promotional post of Associate Professor/ Professor, but due to apathetic attitude of respondent authorities regular promotion in Medical institutions in the State of Bihar has not been under taken for the last almost ten years. Promotion only on ad-hoc/ working arrangement basis are being made. Teachers are made incharge Associate professors, incharge Professor in their own pay scale of Assistant Professor. Due to such ad-hoc/ working arrangement promotion the doctors working on a teaching post of medical colleges are not being given the benefits accruing out of such promotion and are being prejudiced.

22. The question of ad-hocism raised by the petitioners have not been disputed even by the private respondents. Both the petitioners as well as respondents have stated that such adhocism and ad-hoc promotion in own pay scale is unreasonable and unconstitutional. The Respondent State in I.A. No. 5843 of 2005 filed for vacating the order of interim stay dated 4.7.2005 has admitted the adhocism but reason assigned for such adhoc orders of promotion is threat of derecognition of medical colleges by the M.C.I. in case the posts are lying vacant. It has also been stated that considering such threat 1997 rules was amended by notification No. 211(17) dated 24.3.2003 as well by notification No. 185 (17) dated 22.3.2004. On Account of such amendments adhoc promotion is being given to eligible doctors on one time basis considering merit-cum- seniority and the Reservation policy of the government.

23. There is no dispute that all promotions and appointments on the teaching posts in the medical institution of Bihar have to be made according; to rule 8(2) of 1997 rules. Due to emergent exigency to make appointments the rule has been amended to facilitate adhoc appointment but as per the amended rules also such adhoc promotion are valid till the date permanent promotions are not being made. Rules were amended in the year 2003 and 2034 till the date permanent promotion is not being made by the State respondents. As per the amended rule such adhoc promotion can be given to any one at onetime basis only but the pleadings in the writ application indicate that the teachers are being promoted from the post of Assistant Professor to the Post of associated Professor as well as from the post of Associate Professor to the post of Professor on adhoc basis in clear violation of even the amended rules.

24. Defence taken by the State that the adhoc promotions have been given because of the threat of derecognition has again clothed the government with power to relax he recruitment rules. It is settled law that once the statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the executive instruction cannot and should not supplant the law, but can only supplement the

law. Teaching cadre rules 1997 have been made in exercise of power under Article 309 of the Constitution of India and the rules so made do not expressly give the power to the State to make adhoc appointment/promotion on regular basis. Even under the amended rules this is only the stop gap arrangement. Such adhoc appointment/ promotion cannot be made on substantive basis. Such adhoc appointment and: promotion should be re placed expeditiously by appointment/ promotion made on regular basis under the statutory provisions. The Apex Court in the case of J. & K. Public Service Commission v. AIR 1964 S.C.1808 has held "Back door ad hoc appointment at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity. Every eligible person not necessarily be fit to be appointed to a posit or office under the State, selection according to rules by a property constituted commission and Fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments.

25. In this view all adhoc appointments/promotions made by the State Government in the Department of Health cannot be held in accordance with the rules. They are de hors the rules. The respondents State will have to reconsider , review all such adhoc/working arrangement/ promotions and to make them in accordance with the rules. Such exercise must be done by the respondent State in all cases of adhoc appointments as soon as possible. This exercise must start forthwith and be completed within three months of this order. The State Government in its counter affidavit has stated that the government has already undertaken such exercise. Considering such statement it is probable that prior to the time schedule fixed by this order regular promotions as per the rule will be made by the respondent State.

26. Last limb of argument relates to the responsibility of the State to develop super speciality and consequently to remove obstacle in promotion of the teachers in parent department as well as the super speciality.

27. Article 246 of the Constitution of India deals with the subject matter of laws made by the parliament and legislature of the State, in the respective subjects enumerated in Union list, state list and concurrent list of 7th schedule conclusively and exclusively. Entry 66 of Union list deals with the co-ordination and determination of standard in institution, for higher education, or research and scientific and technical institution. the parliament in exercise of power under entry 66 has enacted Medical Council of India Act 1956 and the Medical Council of India constituted therein has been entrusted the obligation to regulate the medical education. Entry 6 of the State list deals with Public health and sanitation; hospital and dispensaries am the State legislature is competent to legislate on all these subjects. Similarly entry 41 of the said list deals with the State Public Service and confers exclusive jurisdiction to the State legislature to frame law with regard to public service in the respective State. Entry 25 of the

concurrent list deals with the education including technical education, medical education, and Universities subject to the provisions of entry 63 to 66 or union list. Item 26 of the concurrent list deals with legal, medical and other professions. Thus the scheme of distribution of legislative power under the constitutional scheme, the subject Health Medical education, hospital and service are subject matter of regulation and control by the law enacted by the parliament as well as the State legislature. The power of the State to regulate the service condition of members of State service is exclusive under entry 41 of the State list.

28. The M.C.I. has the jurisdiction and authority to regulate the medical, education in the whole country. The M.C., has framed regulation from time to time to regulate the medical education and every institution imparting medication education is obliged to follow and maintain the standard laid down by the M.C.I. The medical education in the State of Bihar until 1997 was most obscure. In the year 1997 Bihar Medical Education Service cadre rules was enacted. The objective of the enactment was for creating permanent teaching cadre with a desire to bring reform in the medical education in the State of Bihar as well as to improve the condition of medical colleges for adequate treatment of the patient and also for elevating the medical education research technic in the State of Bihar as per the national and international level. Rule 10(2) was framed considering the existing situation prevalent in the medical colleges and provided a scheme for determination of inter-se seniority of teachers in super speciality unit vis-a-vis parent department. The rule was framed as stop gap measure for determination of inter-se seniority by considering the super specialities unit as part of the parent department. This scheme was framed to reduce the hardship of the teachers appointed and posted in super speciality units till these are developed as independent department on the line of M.C.I. regulation. Initially some subjects were taken up for creation of super speciality but for one or other reason instead of creating a super speciality department incomplete and illusionary super speciality units were created. At the time of framing of the rule, neither there was complete teaching strength nor infrastructure. Super speciality units are functioning as part and parcel of the parent department. Till the date, three tier teaching posts as required under MCI regulation have not been created super speciality can not function as independent unit.

29. Admittedly rule 1997 was engrafted with a view to create separate permanent cadre and one of the objective of the rule was to improve the Medical colleges up to the mark. The Idea behind framing of the rule was to develop separate super speciality department but unfortunately even after so many years nothing has been done at the level of the government to make the super speciality units as a complete unit or separate department in terms of rule and as per the expectation of the M.C.I. The State being a welfare State is obliged to create post in super speciality unit on the line of M.C.I. regulation i.e. three tier teaching posts of Professor, Assistant Professor and Associate Professor, State is obliged to create super speciality department by issuing executive instructions

instead of treating the super speciality units as branch of parent department. The State is obliged to make super speciality units fully functional by providing minimum infrastructure i.e. building, necessary equipments, trained medical staff and para medical staffs. It has rightly been submitted by the petitioners as well as the respondents counsel that the right to development is an unalienable human right and the State is obliged to ensure it. The career advancement and promotional prospect plays important role in energizing any service as in removing stagnation. Assured career progress in service is an incentive to an employee and it is also consistent with the mandate of Article 14 and 16 of the Constitution of India. This obligation the State will have to discharge.

30. The submission of the State counsel that the State is already running GIMS as super speciality hospital and the department like nephrology, urology and gastro micro surgery re catering to the need of the public is not an answer to inactiveness on the part of the State. The IGIMS is not a medical college and doctors therein are not guided by the rules and regulations of 1997 Bihar Teaching Cadre Rules. The State Government cannot refuse to develop super speciality department the name of availability of super speciality hospital. Any hospital and the medical college are two different connotations. So far teaching super speciality is concerned, it can be developed only in medical colleges. The requirement of Super speciality department in the medical colleges cannot be negated on the ground of super speciality hospital like IGIMS.

31. The reason assigned in not developing the super speciality in the medical colleges on account of financial constraint is not a reality specially when the State Government itself has taken resolution to develop super speciality hospitals in the state in the larger public interest. Another ground for not developing the Super speciality due to dearth of doctors with requisite qualification is baseless. Every year a good number of doctors with super speciality qualification are leaving the State to another State due to absence of opportunities and absence of super speciality department. These super specialised young doctors are not ready to ruin their career and this is the reason for their exodus. In case the super speciality departments are available in the medical colleges such young doctors would like to serve their own state. The State is under obligation to develop super specialities as part of constitutional obligation as a part of human rights as well as in order to fulfill its duty as Welfare State towards health and medical care for ailing people of this State. In Binay Karak's case also this Court had given time to the State government to create a condition for proper promotional avenues to the doctors working in speciality as well as in the parent department. and accordingly to modify rule. After so many years the State Government has not done anything for developing super speciality. The State has to carry its obligation of developing super speciality department within a Specified period of one year.

I.A. No. 342 of 2006

32. During the pendency of this writ application the department of Health has

issued a resolution contained in Memo No. 17/Court-63/98-22(17) dated 12.1.2006 providing for changes in the mode and manner of filling of teaching post and for determining the seniority inter-se between the teachers posted in the main department and those posted in super speciality department.

33. It has been challenged by the petitioners in C.W.J.C. No. 2688 of 2005. By this resolution Rule 10 of 1997 rule has been amended as per the direction of High Court in Dr. Binay Karak Case. As per this resolution till the date super specialities are not fully developed as per the criteria fixed by the MCI all super speciality will be treated as the unit of parent department. Seniority of Assistant Professor, Associate Professor and Professor working in the parent as well as their super speciality department will be decided treating them as one cadre and their promotion/posting will be made on the basis of the panel of seniority prepared. It has also been mentioned that the Assistant Professor appointed/promoted from the previous panel will be treated senior to the Assistant Professor appointed from the subsequent panel.

34. Inter-se-seniority of the Assistant Professor appointed in the same year in parent as well as super speciality unit will be decided on the basis of the points acquired by them in the panel of that particular year. This resolution has been challenged by the petitioners, on the ground that in order to give benefit to some favourite teachers, the mode and manner of promotion/seniority has been changed, by way of executive instruction, without amending the rule.

35. I find substance in this submission. Since, this resolution is not brought by way of amendment in rule, this is entirely going to promote arbitrariness. Accordingly this resolution is quashed.

C.W.J.C. No. 2688 of 2004

36. There are seven petitioners in this writ application. Petitioner Nos. 1 to 4 were appointed against sanctioned post of Assistant Professor in the department of general surgery and have been made Incharge Associate Professor. Petitioner Nos. 5, 6, and 7 were appointed as Assistant Professor in General Surgery on ad-hoc basis.

37. Initially prayer of the petitioners in writ application was for restraining respondent Nos. 1 to 5 from allowing adhoc/regular promotion to any doctor appointed against the sanctioned post of super speciality, or a post of parent speciality namely general surgery as well as restraining inter changeability from super speciality to parent speciality. Specific prayer was made challenging the promotion of respondent No. 6, from the post of Asstt. Professor Paediatric to Associate Professor General surgery P.M.C.H. on purely working arrangement basis vide notification contained in Memo No. 639(17) dated 5.9.2004

38. During the pendency Dr.Ashok Kumar Singh Assistant. Professor (Kidney Transplant) P.M.C.H. was added as respondent No. 7. He is also aspirant of his promotion to the post of Associate Professor Surgery on the basis of his seniority.

His case is that as per 1997 rule, inter changeability is the rule and he should be promoted to the post of Associate Professor Surgery, since he is working in the super speciality unit which is the part of parent unit of surgery. During the pendency of writ application I.A. No. 4132 of 2005 was filed by the petitioners seeking amendment in their prayer whereby the appointment of respondent No. 6 as Assistant Professor from the date of his appointment in the year 1992 on the basis of 1990 panel was challenged. Respondent No. 6 denied the averment made in the I.A. application stating that this question cannot be raised after so many years of his appointment in view of law laid down by the Hon"ble Supreme Court in the case of Roshan Lal and Ors. v. Air Port Officer and Ors. AIR 1981 S.C. 517 wherein it has been held We are afraid that it is rather late in the date for the petitioner to question the appointment of respondent as air port officer (opposite party). Respondents were appointed as air port officer in the 1975 and the present petition was filed in the year 1978. We do not think that we will be justified in re-opening of the question of legality of the appointment, of respondents as air port officer several years after their appointment."

39. I find that after so many years the appointment of respondent No. 6 in the year 1992 on the post of Assistant. Professor cannot be challenged, as such I. A. is dismissed.

40. On the contrary, Respondent No. 6 has questioned the maintainability of the writ application stating that the petitioners have no locus to maintain this writ application as the relief prayed by the petitioners did not indicate infringement of any personal right rather the nature of the writ application is a public interest litigation. The respondent No. 6 in support of his contention that the writ application was not maintainable at the initial stage itself has placed reliance on Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, In paragraph 8 of the [judgment the Apex Court has held in the following manner:

The first question is whether the appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, dealing with the question of locus standi of the appellant in 1 hat case to file a petition under Article 226 of the Constitution of India in High Court observed:

Article 226 confers a very wide power on the High Court to issue directions and writs the nature mentioned therein for enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking relief thereunder. The article in terms does not describe the classes of persons entitled to apply thereunder, but it is implicit in the exercise of the extraordinary jurisdiction that the relief, asked for must be due to enforce a legal right. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of petitioner himself, though in the case of some writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

41. Relying on the decision, Apex Court held " That "ordinarily" the petitioner who seeks to file an application under Article 226 of the constitution should be one who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest. It can also relate to an interest of trustee. That apart in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has also proprietary or even fiduciary interest in the subject matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the constitution at his instance is, therefore, maintainable.

42. Admittedly both petitioner and respondent 5 and 7 are aggrieved with the action of the State Government, so far administration of affairs relating to adhoc promotions, arbitrary promotion and deciding inter se seniority to give benefit to favorite is petitioners that arbitrary action has increased to such an extent that this Court can not shut its eyes and refuse to interfere on this ground that it is administrative action of the government. In the garb of Rule, all acts of discrimination and favoritism is being done. It is submitted that when there has been a steady decline of public standards or public morals, it is necessary to clear public life even before clearing the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment where such situation arising out the courts should not and can not remain mute and dumb. Since lamentable state of affairs on the part of state of Bihar has been brought to the notice of the court, the court can not shut its eyes from the reality and it must interfere. I

43. In support of this contention decision reported in Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, has been referred, where it has been held The allegations made in the petition discloses a lamentable state of affairs in one of the premier Universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay, University is one of the highest medical degrees was a matter of public interest. Such State of affairs having been brought to the notice of the court, it was the duty of the court to the public that truth and the validity of the allegations made be enquired into. It was in furtherance of public interest that on enquiring into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry can not be avoided if it is necessary and essential for the administration of justice." Reliance was also placed on (1986) 2 S.C. 594 (para 10 page 605).

44. Preliminary objection raised by respondent No. 6 regarding maintainability is not sustainable. Considering the fact that question of public interest is also personal interest of petitioners affecting their promotional rights. So far the Notification No 639(17) dated 5.9.2003 is concerned, it should be reconsidered by the Respondent and in the light of this judgment as well as 1997 rule.

C.W.J.C. No. 10558 of 2004

45. Petitioner of C.W.J.C. No. 10558 of 2004 is at present working on the post of Professor and Head of Medicine, S.K. Medical College, Muzaffarpur. His prayer is to promote/appoint him on the post of Professor, Medicine with retrospective effect i.e. with effect from the date when the post of Professor of medicine fell vacant in S.K. Medical College, Muzaffarpur, on the regular basis, with all consequential benefits.

46. Counter affidavit has been filed on behalf of the State admitting the aim of the petitioner. It has been stated that department has proceeded in the direction and all cases of promotions including petitioners will be decided as per rule in accordance with law. It must be done within three months from the date of this order.

C.W.J.C. No. 11967 of 2004

47. Grievance of petitioner Dr. Sudhir Kumar Thakur Assistant Professor, General Surgery Darbhanga Medical College Hospital is that despite eligibility for the post of Associate Professor in the discipline of General Surgery, he is not being promoted as Associate Professor though the persons junior to him have already been promoted. His prayer is that he should be promoted to the post of Associate Professor General Surgery with effect from 13.12.2003 i.e. the date on which juniors to him have been given promotion.

48. During the pendency of the writ application I.A. No. 1328 of 2005 has been filed challenging the notification contained in Memo No. 86(17) dated 21.2.2005 whereby Dr. J.P.Gupta posted at Ranchi Medical College Hospital as professor Pediatric Surgery has been adjusted against vacant post of Associate Professor General Surgery, P.M.C.H.

49. Counter affidavit has been filed on behalf of the State rejecting the claim of seniority of the petitioner to other Assistant Professors promoted as Associate Professor. It has been submitted that the petitioner's name did not find place in the list of 1993 panel of Assistant Professor. His name has been mentioned in 1994 panel. All other Assistant Professors who have been promoted as Associate Professor, their names were in the list of 1993 panel. They have been promoted to the post of Associate Professor on account of their seniority as well as on the basis of direction of this Court in writ application preferred by them. Respondent State is directed to consider the case of petitioner's promotion on the post of Associate Professor, Surgery, as per 1997 Rule within three months from the date of this order.

C.W.J.C. No. 7090 of 2004

50. Dr. Upendra Prasad Singh has superannuated from service on 31.12.2003 as Professor from P.M.C.H. His prayer is for a direction to make payment of salary of the post of professor and fix his pension as well as other consequential benefits in that scale and for payment of arrears of dues.

51. Petitioner's case is that he was promoted to the post of Professor, Pediatric

Surgery vide Memo No. 148 Patia dated 14.5.1997 and was posted as Professor Pediatric surgery, P.M.C.H. Though he discharged his duty of Professor but was all along paid salary of Associate Professor. Since he has performed his duty of Professor, the petitioner cannot be deprived of the pay of Professor. The petitioner has also challenged the concept of promotion on the basis of working arrangement/adhoc promotion.

52. Counter affidavit has been filed by Addl. Director, Medical Education. Admitting claim of the petitioner, that he was eligible for promotion to the post of professor on the date of his promotion and accordingly promoted on the post of professor Pediatric surgery against a sanctioned vacant post. It has been stated that all adhoc promotion/ promotions on working arrangement basis will be regularised. Petitioner's name is also included in the list for which process has started. Petitioner will be given his arrears of promotional scale. His pension will be fixed, giving benefit of promotional scale. This exercise must be completed within three months of the order and all consequential benefits be paid to the petitioner.

C.W.J.C. No. 871 Of 2004

53. Petitioner Dr. Jaikant Lal Das is aggrieved that although he is senior most Associate Professor in the department of General Medicine at P.M.C.H. respondent No. 7 Dr. Anil Kumar Pandey and respondent No. 8 Dr. Vijay Prakash, junior to him and appointed in Super Speciality Unit of gastroenterology and neurology have been promoted to the post of Professor. He has not been given promotion and still working on the post. of Associate Professor, General Medicine. During the pendency of writ application I.A. No. 3699 of 2004 was filed with a prayer to modify earlier relief on account of subsequent development. In this interlocutory application Notification vide letter No. 508 (17) dated 20.7.2004 has been No. 8 has been declared as Head of the Department, Medicine of P.M.C.H. It has been submitted that inspite of the order of stay granted by this Court to all promotions and appointment, such action amounts to contempt.

54. Petitioners case is that in pursuance of the notification published in the daily news paper with regard to appointment on the post of Assistant. Professor in the department of Medicine, petitioner as well as respondent Nos. 7 and 8 had applied and the panel was prepared for appointment on the post of Assistant Professor, Medicine in that panel respondent No. 7 Anil Kumar Pandey was placed at Sl. No. 21. Respondent, No. 8 Dr. Vijay Prakash was not found fit to be empanelled. Petitioner was at Sl.No.1. Lateron respondent No. 8 was appointed on the post of Assistant Professor in the Super speciality unit of gastroenterology. Respondent No. 7 was appointed as Assistant professor Neurology. This panel was challenged by Dr. Bibhu Priyadarshi in C.W.J.C. No. 6477 of 1996 in which this Hon"ble Court held that the panel has rightly been prepared. This matter went up to the Supreme Court but the order passed by the High Court was affirmed Thereafter the petitioner was promoted and posted as Assistant Professor, Medicine, P.M.c.H. Later on he was promoted to the post of

Associate Professor in the year 1996. In the inter-se seniority list of Associate Professor of General Medicine prepared by the department of Health Education, Government of Bihar vide letter No. 681(17) dated 27.3.2002 respondents are shown junior to the petitioner. Dispute arose in between respondent No. 6 and respondent Nos. 7 and 8 with regard to their seniority. Respondent No. 6 Dr. Lok Nath Sinha was Assistant Professor, General Medicine. Department of Medical Education declared Dr. Lok Nath Sinha senior to Dr. Anil Kumar Pandey in the light of 1997 rules. Petitioner was next to Dr. Lok Nath Sinha and senior to respondent Nos. 7 and 8. On several occasions petitioner has represented for his promotion to the post of Professor but it is not being considered. Respondent Nos. 7 and 8 though junior to him have been promoted to the post of Professor ignoring his claim. It has also been submitted that the Secretary, Department of Health decided that the petitioner being at the top of the seniority list is fit to be appointed on the post of Head of the Department, General Medicine, P.M.G.H. Just when the order was going to be issued on 28.2.2004 strange development took place. The Hon'ble Minister of Mines and Minerals, Government of Bihar on his official pad requested the Minister, Medical Education Department to interfere immediately so that the Secretary should not issue any order in favour of the petitioner. Thereafter the notification vide letter No. 508(17) dated 20.7.2004 was issued declaring respondent No. 8 as Head of the Department of Medicine, P.M.C.H. Petitioner is still working on the post of Associate Professor in General Medicine department of P.M.C.H.

55. Counter affidavit has been filed on behalf of respondent No. 8 stating that the petitioner, respondent Nos. 7 and 8 all are presently holding substantive post of Assistant Professor though they were promoted on adhoc basis to the post of Associate Professor. Respondent Nos. 7 and 8 have already been promoted on the post of Professor but the petitioner is yet to be promoted to the post of Professor even by way of working arrangement. Since the department of medicine as per MCI regulation cannot remain without head of the department, as such rightly he has been declared as Head of the department, medicine. Claim of respondent No. 8 is that the seniority is to be determined on the basis of the joining on the post of Assistant Processor. Since the petitioner has joined on the post of Assistant Processor on 12.10.199) respondent No. 7 on 15.5.1990 and respondent No. 8 has joined on the post of Professor on 8.7.1990. He is senior amongst them as such there is no illegality in the order.

56. I find this interpretation of seniority given by respondent No. 8 is completely in violation of Rule 10(2) of 1997 Rules. Rule 10(2) clearly envisage that in the present circumstance all super speciality unit are under the parent department. Inter-se seniority of teachers in super speciality unit will be on the basis of their seniority in the parent department. The date of appointment in the super speciality will not be a ground for claiming seniority. Admittedly in the panel prepared in the department of medicine the petitioner Dr. Jai Kant Lal Das is senior most which has also been upheld in C.W.J.C. No. 6477 of 1990 and affirmed by the Supreme Court. Petitioner Jai Kant Lal Das gave his joining as

Assistant Professor subsequent to respondent Nos. 7 and 8 on account of continuation of cases in High Court and Supreme Court. Respondent Nos. 7 and 8 gave their joining in the super speciality unit prior to the petitioner but that cannot be a ground for their claim to be senior to the petitioner Jai Cant Lal Das. In this view notification vide letter No. 508(17) dated 20.6.2004 declaring Respondent No. 8 H.O.D. Medicine P.M.C.H. the seniority of petitioner is illegal. This is sufficient ground for quashing the notification and it is quashed. Respondent Nos. 1, 2 and 3 are directed to promote the petitioner to the post of professor Medicine forthwith considering his seniority from the date juniors to him have been promoted to the post of profess Dr. They are further directed to consider the claim of the petitioner, respondent Nos. 7 and 8 for being declared as Head of the department of Medicine on the basis of their seniority as per 1997 rules, without any delay.

C.W.J.C. No. 10897 of 2004

57. Petitioner Dr. Anil Kumar Pandey who is Professor in the department of Urology, P.M.C.H. has prayed for commanding the respondent Nos. 1 to 3 to declare him as Head of the department of Medicine, P.M.C.H. in place of respondent No. 4 Dr. Vijay Prakash considering the fact that the case of Dr. Jai Kant Lal Das, Dr. Anil Kumar Pandey and Dr. Vijay Prakash relating to their inter-se seniority has already been discussed in C.W.J.C. No. 871 of 2004, it is not necessary to go further in detail in this case. The order passed in C.W.J.C. No. 871 of 2004 will govern the case of the petitioner of this writ application.

58. Since petitioners as well as respondents were promoted on substantive posts in regular manner only on the post of Assistant Professor, all subsequent promotion are on the basis of adhoc/working arrangement, basis. The respondents State is directed to decide their inter-se seniority/promotion as per 1997 Rule. The promotions given to the petitioners/ respondents on adhoc basis will not create any right in their favour on account of adhoc /working arrangement promotion. The dispute raised by the petitioners vis-a-vis respondents in all these writ application be decided by the State as per the Rule on the basis of guidelines given in these writ applications.

59. All writ applications are disposed off. Order of stay is vacated. State will decide seniority/promotions as per observation/direction in this matter.