

(2018) 09 PAT CK 0012

In the Patna High Court

Case No : Letters Patent Appeal No.506 of 2013 In Civil Writ Jurisdiction Case
No. 9258 of 2007

State Of Bihar

APPELLANT

Vs

Dr. Indu Bala Sahay

RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Citation : (2018) 09 PAT CK 0012

Hon'ble Judges : Dr. RAVI RANJAN, J;MADHURESH PRASAD, J

Bench : Division Bench

Advocate : Sarvesh Kumar Singh, Sunita Kumari, Purushottam Kumar Jha,
Avanindra Kumar Jha, Jitendra Acharya

Final Decision : Dismissed

Judgement

Heard Counsel for the appellants as well as the private respondent (writ petitioner). The brief background of the case is that as a common practice

the doctors were being made to officiate on higher posts under orders which indicated that their posting on the higher post will be on their own pay

scale. Such was the position in the case of the petitioner also.

Various doctors were subsequently considered by the DPC for grant of promotion to the post on which they had earlier been requested/made to

perform duties. This Court in many cases had allowed the claim of the various doctors, who had been made to officiate from an earlier date, by

granting them the benefit of promotion including the pay scale of the higher post with effect from the date of their officiation. The petitioner also was

claiming that she be granted the benefits of regular promotion on the post of Associate Professor in the Department of Obstetrics and Gynecology

with effect from 12.2.1997 i.e. the date on which she was notified to hold the

higher post of Associate Professor under a working arrangement in her own pay scale. Granting parity to the petitioner with others, similarly situated, learned Single Judge disposed of the petitioner's writ petition. The petitioner's claim was considered to be similar to that decided on 29.7.2011 in CWJC No. 657 of 2008 (Dr. Dharni Kant Isser Vs. State of Bihar & ors).

The case of Dr. Dharni Kant Isser was based on two earlier judgments of this Court, one of which is reported in 2009 (3) PLJR 618, being the case of Dr Vinod Kumar Singh. Another judgment on which the learned Single Judge has placed reliance is the order dated 19.4.2011 passed in CWJC No. 5451 of 2006 (Dr. Ajit Singh & ors vs. State of Bihar & ors). It would be appropriate to consider the order passed in the case of Dr. Vinod Kumar Singh. Para 18 of the judgment passed on his writ petition bearing CWJC No. 7876 of 2004 reads as follows:-

“Considering all these facts, the respondents are directed to regularize the promotion of the petitioner as Associate Professor earlier given on ad hoc basis, salary for the post of Associate Professor with all other consequential benefits be paid to the petitioner and claim of the petitioner for promotion to the post of Professor be considered with other eligible candidates. In case, petitioner is found fit, senior most, he should be allowed promotion to the post of Professor from the date the post fell vacant as he fulfills the requisite qualification and experience. The direction be complied within six weeks from the date of production/communication of the order.”

The learned Single Judge allowed the same benefit to the petitioner in the instant case. It is submitted at the Bar that the benefit of the said judgment has been granted to Dr. Vinod Kumar Singh. It is also submitted by the learned Counsel for the petitioner that Dr. Dharni Kant Isser also has been granted the benefit of higher post on which he was discharging duties on a working arrangement with effect from the date on which the post had become vacant and since the date the petitioner was performing duties thereof. These facts are not disputed or denied by the Counsel for the appellant “State.

The learned Additional Advocate General, however, has submitted that since the judgment in the case of Dr. Ajit Singh has finally been set aside by the Apex Court in the proceeding arising out of SLP (Civil) No. 31027 of 2012,

taken note of hereinabove, the petitioner cannot claim any benefits relying upon the judgment rendered in the case of Dr. Dharni Kant Isser and Dr. Ajit Singh.

The said submission prima facie appears convincing. However, on going through the order of the Apex Court dated 25.8.2015 it is quite clear that in fact Dr. Ajit Singh who was respondent before the Apex Court, had withdrawn his writ petition with liberty to seek appropriate relief if so advised for any relief on the basis of his promotion with effect from 13.12.2003 onwards. The Apex Court has made it clear that the order passed in the SLP is not an expression of opinion on the merits of the proceeding which Dr. Ajit Singh may institute and that the competent court would be free to deal with the same in accordance with law. Perusal of the order dated 25.8.2015 passed by the Apex Court shows that the same has not considered the judgment passed in the case of Dr. Ajit Singh on merits.

This Court would consider it apposite to reproduce the order passed by Apex Court in the case of Dr. Ajit Singh which, apparently is a consent order, wherein "no objection" of the appellant State has been recorded.

"Leave granted. After arguing the matter at considerable length, Mr. Nagendra Rai, learned senior counsel for the respondent submits that the respondent is content with his promotion as Assistant Professor on substantive basis w.e.f. 13.12.2003 and that he would withdraw the writ petition as also the application for amendment in which he had asked for retrospective effect to his promotion from the year 1998. He submits that the order passed by the High Court would, in the light of the withdrawal of the writ petition be set-aside and the matter disposed of reserving liberty for respondent No. 1 to seek appropriate redress in appropriate proceedings before the appropriate Forum for seeking other reliefs, if any, admissible to him on the basis of his promotion taking effect from 13.12.2003.

Learned Counsel for the appellant has no objection to this course being followed. We accordingly allow this appeal, set aside the order passed by the Civil Judge and the Division bench of the High Court and dismiss the writ petition filed by the respondent as withdrawn reserving liberty to respondent No. 1 to seek appropriate redress, if so advised, for any relief on the basis of his promotion w.e.f. 13.12.2003 onwards. We express no opinion on the merits of any such proceedings which the respondent may institute. The

competent court shall be free to deal with the same in accordance with law.

No costs.â??

The judgment of the Apex Court dated 25.8.2015 cannot thus be relied upon by the appellant State to deny the petitioner parity with Dr. Dharni Kant

Isser and Dr. Vinod Kumar Singh, in whose cases the judgment of this Court granting benefits of the higher post from the date of officiation subject to

the incumbent being qualified and post being vacant, has been decided. Otherwise no infirmity has been pointed out in the order of the learned Single

Judge by the Additional Advocate General appearing on behalf of the State. The Letters Patent Appeal is dismissed.