

DR. ANIL KUMAR SINHA
v
THE STATE OF BIHAR AND ORS.

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FEBRUARY 3, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAİK, JJ.]

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Service Law :

Promotion—Assistant Professor in Medical College—Posted as Resident Medical Officer—Government Circular dated 7.9.1973 prohibiting grant of teaching experience to any person who has not worked on regular teaching post—Claim for considering the service rendered as Resident Medical Officer towards his teaching experience for promotion—Rejected by High Court—On appeal, held, not entitled to claim as of right that service rendered as Resident Medical officer to be counted as teaching experience in view of Government Circular dated 7.9.1973—However, since the State Government has granted such benefit to others, direction issued to consider his case in the light of the nature of service rendered by him.

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The appellant was initially appointed as Civil Assistant Surgeon and was thereafter posted as Demonstrator in Physiology Department. Subsequently he was transferred and posted on supernumerary duty as a Medical Officer in Department of Paediatrics. In October 1971, he was posted as a Resident Medical officer in the same Department and continued till April, 1978. On abolition of post of Resident Medical Officer, he was appointed as Registrar and then as Assistant Professor in the Department of Paediatrics. The case of the appellant was that his services rendered as Resident Medical officer from 19.10.1971 till 21.4.1978 should be considered towards his teaching experience for the purpose of appointment as Assistant Professor as well as Associate Professor. The writ petition filed by the appellant was dismissed by the High Court holding that the period of service from October 1971 to April 1978 as Resident Medical officer cannot be counted as teaching experience in view of Government Circular dated 7.9.1973.

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Aggrieved by the order of the High Court, the appellant has preferred the present appeal.

The contention of the appellant was that since he was appointed as

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A Resident Medical Officer prior to 24.11.1971 his case would not be governed by the latter part of the Notification prohibiting grant of teaching experience to any officer who has not worked on a regular teaching post; that the State Government itself on several instances have issued orders granting teaching experience to the employees even in case of retired employees similarly situated.

B

Disposing of the appeal, this Court

C HELD : 1.1. The appellant cannot claim as of right that the services rendered by him for the period 19.10.1977 till 1.4.1978 should be counted as teaching experience in view of the Government Circular dated 7.9.1973. Thus there is no infirmity in the order of High Court. [517-G]

D 1.2. The Government order dated 7.9.1973 clearly indicates that after 24.11.1971, no order for grant of teaching experience to any officer who has not worked on a regular teaching post will be passed. Under the first part of the Notification when a doctor has worked against a non-teaching post and worked against a post created on supernumerary duty then the Government in the Health Department was passing independent orders as to whether the period can be treated as teaching experience. Admittedly no such order has been passed in favour of the appellant prior to 24.11.1971 or even till the date of judgment. In that view of the matter the appellant does not get any benefit under the first part of the Government Circular dated 7.9.1973. Necessarily the embargo contained in the second part of the said Government circular prohibiting the passing of an order for grant of teaching experience after 24.11.1971 would apply. The post against which the appellant had been permitted to work from October 1971 to April 1978 is not a recognised teaching post though the appellant asserts that while working as such he had been teaching the students of the Medical College. [507-D-E-F]

G 2. However in view of the allegation that in several instances the State Government itself have issued orders granting teaching experience to the employees, even in case of retired employee, the State Government is directed to consider the case of the appellant as to whether the services rendered by him for the period 19.10.1971 till 21.4.1978 can be considered towards his experience. This has to be done by considering the cases of others in whose favour such orders have been issued and the nature of services rendered by the appellant. [518-D]

H *Dr. Ram Janma Singh v. State of Bihar*, [1986] Supp. SCC 673 and *Dr.*

Asim Kumar Bose v. Union of India, [1983] 2 SCR 16, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2126 of 1996.

From the Judgment and Order dated 11.9.89 of the Patna High Court in C.W.J.C. No. 7543 of 1988.

A. Sharan, Ambika Pd. Singh, S.P. Sinha, Vishnu Sharma and Neeraj K. Nischal for the Appellant.

Pramod Swarup, Ms. Prerna Swarup and Prashant Chaudhary for the Respondents.

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. This appeal is directed against the judgment dated 11th September, 1989, passed by Patna High Court in Civil Writ Jurisdiction case No. 7543 of 1988. The appellant had filed the Writ Petition for a mandamus to the State to count his services for the period 19.10.1971 to 21.4.1978 as Resident Medical Officer in Durbangha Medical College towards his teaching experience for the purpose of consideration of his appointment as Assistant Professor as well as Associate Professor. The appellant had alleged that he was appointed as a Civil Assistant Surgeon on 7.7.1962 and was thereafter posted as Demonstrator in the Physiology Department at Durbangha Medical College which was a Private Medical College. On 13.1.1971, from the Department of Paediatrics and was posted on supernumerary duty as a Medical Officer in the Department of Paediatrics in the said Medical College. In October 1971 he was posted as a Resident Medical Officer in the same Department of Paediatrics in Darbangha Medical College by order dated 16.10.1971 and he continued as such till April 21, 1978. The Post of Resident Medical Officer on Supernumerary duty stood abolished in different Medical Colleges w.e.f. 22.4.1978. The appellant was then appointed as Registrar in the said Medical College in the Year 1979 and then was appointed as Assistant Professor in the Department of Paediatrics on 28.5.1986 which post he was holding on the date he filed the application in Patna High Court seeking the relief, as already stated. The grievance of the appellant was that if his services rendered as Resident Medical Officer from 19.10.1971 till 21.4.1978 would have been counted as teaching experience then he would have been appointed as Associate Professor and that not having been done his rights under Articles 14 and 16 of the Constitution have been infringed.

- A The State Government took the stand that the post of Resident Medical Officer is not a teaching post and on the other hand it was a post of supernumerary duty and as such, the services rendered against the said post cannot be counted as teaching experience in view of the Circular dated 7.9.1973. It was also contended that the services rendered against a regular teaching post like Registrar can only be counted as teaching experience and
- B that also only for a period of three years. As such no complaint can be made for not taking into account the services rendered by the appellant from October 1971 till April 1978 as Resident Medical Officer towards his teaching experience inasmuch as it is contrary to the Government Circular dated 7.9.1973. The High Court by the impugned judgment construed the aforesaid
- C Government Circular and came to hold that the period of the appellants' services from October 1971 to April 1978 as Resident Medical Officer against the Supernumerary post in the Department of Paediatrics cannot be counted as teaching experience. The High court further came to hold that the said Government Circular dated 7.9.1973 cannot be held to be violative of Articles
- D 14 and 16 of the Constitution. When it was pointed out on behalf of the appellant that the Supreme Court has disposed of a similar matter in a case of *Dr. Ram Janma Singh* - 1986 (Supp.) Supreme Court Cases 673, and has directed that the judgment of the Supreme Court in *Dr. Asim Kumar Bose's* case - (1983) 2 Supreme Court Reports 16, should be followed, the learned Judge of Patna High Court examined the judgment in *Dr. Ram Janma Singh's*
- E case and came to hold that the relevant Government Circular dated 7.9.1973, had not been brought to the notice of Their Lordships in *Ram Janma Singh's* case. To find out whether in *Dr. Ram Janma Singh's* case the Government Circular was actually brought to the notice of the Court or not we called for the records of the said proceedings and on scrutiny we find that the said Circular has not been brought on record. With these findings the Writ Petition
- F having been dismissed the appellant has preferred this appeal.

- The short question that arises for consideration is whether the services rendered by the appellant as Resident Medical Officer in the Department of Paediatrics for the period 19.10.1971 till 21.4.1978 can all be counted as the teaching experience of the appellant? The answer to this question would
- G depend upon the relevant Rules and/or Administrative instructions issued by the Government of Bihar dealing with the service conditions of the doctors in different Colleges and their interpretation. As it appears to us that at the relevant point of time there was no Statutory Rule issued under Proviso to Article 309 of the Constitution or any Act of the Legislature governing the
- H service conditions of the doctors employed in Medical Colleges. In the absence

of any statutory rule it was open for the State Government to regulate service conditions by issuing relevant administrative instructions. The Government Order dated 7.9.1973 is one such instruction dealing with the question of teaching experience of the doctors appointed against different posts in the Medical Colleges. The relevant part of the said Government Order has been extracted in the impugned judgment of the High Court. That order clearly indicates that after 24.11.1971 no order for grant of teaching experience to any officer who has not worked on a regular teaching post will be passed. Mr. Saran, learned counsel appearing for the appellant, however, contended that since the appellant had been appointed as a Resident Medical Officer prior to 24.11.1971, namely, on 16.10.1971, his case will not be governed by the latter part of the Notification which prohibits for an order for grant of teaching experience to any officer who has not worked on a regular teaching post. According to the learned counsel the appellant's case would be covered by the first part of the Notification itself and, therefore, High Court committed an error not treating the period from October 1971 to April 1978 towards the teaching experience of the appellant. We are, however, unable to accept this contention of Mr. Saran, learned counsel appearing for the appellant. Under the first part of the Notification dated 7.9.1973 when a doctor has worked against a non-teaching post and worked against a post created on supernumerary duty then the Government in the Health Department was passing independent orders as to whether the period can be treated as teaching experience. Admittedly no such order has been passed in favour of the appellant prior to 24.11.1971 or even till today. In that view of the matter the appellant does not get any benefit under the first part of the Government Circular dated 7.9.1973. Necessarily the embargo contained in the second part of the said Government Circular prohibiting from passing an order for grant of teaching experience after 24.11.1971 would apply. The post against which the appellant had been permitted to work from October 1971 to April 1978 is not one of the recognised teaching post though the appellant asserts that while working as such he had been teaching the students of the Medical College. We are not required to go into the question and express any opinion thereon, since in our considered opinion the appellant cannot claim as of right that the services rendered by him for the period 19.10.1971 till 1.4.1978 should be counted as teaching experience in view of the Government Circular dated 7.9.1973. Consequently we see no infirmity with the ultimate conclusion of the Division Bench of the High Court requiring our interference in this appeal.

In course of hearing, however, Mr. Saran, learned counsel appearing for the appellant brought to our notice several instances where the State

- A. Government itself have issued orders granting teaching experience to the employees even in case of retired employees, as would be apparent from Annexures 7 and 8 to this appeal. An averment to that effect also has been made in paragraphs 18 and 21 of the Special Leave Petition. Though the State of Bihar has entered appearance but no counter-affidavit has been filed. Mr. Pramod Swarup, Learned counsel appearing for the State of Bihar contended before us that such a question had not been raised before the High court as would appear from the judgment of the High Court. This may be true as contended by Mr. Swarup, but in the Writ Petition that was filed before the High Court such a ground appears to have been taken. In that view of the matter we are not inclined to reject the contention of the appellant out right on that score. The appellant in the meantime has also retired from the Government service. In the aforesaid premises, while we are not interfering with the impugned judgment of Patna High Court but we think that ends of justice require a direction to be given to the State of Bihar to consider the case of the appellant as to whether the services rendered by him for the period 19.10.1971 till 21.4.1978 can at all be counted towards teaching experience. This has to be done by considering the cases of others in whose favour such orders have been issued, as indicated by the appellant, and the nature of services rendered by the appellant as compared to those services rendered by other persons who according to the appellant are similarly situated. We make it clear that we express no opinion on the same and the Appropriate Authority will take a decision depending upon the nature of duties discharged by the appellant while working as Resident Medical Officer in the Department of Paediatrics in Durbangha Medical College. Be it be stated that the Competent Authority should be satisfied that infact the appellant has been teaching the students and on such satisfaction being arrived at an appropriate order can be issued. If the Competent Authority issues such an order in favour of the appellant then the appellant's case for getting any higher promotion from any anterior point of time on the basis of such teaching experience may be re-considered. If the appellant fails to get any order from the Competent Authority that the services rendered for the Period October 1971 to April 1978 would be counted towards teaching experience, then any further exercise is not necessary.

This appeal is disposed of with the aforesaid observations and directions. There will be no order as to costs.