

Anil Kumar Sinha (Dr.)

Vs

State of Bihar & Ors.

(S. Saghir Ahmad, G. B. Pattanaik JJ)

03.02.1998

JUDGMENT

G.B.PATTANAİK, J.

1. 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 Physiology he was transferred to 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 Associated Professor and that not having been done his rights under Articles 14 and 16 of the Constitution have been infringed.

2. 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 that also only for a period of three years. As such no complaint can be made for not only 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 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 Pediatrics 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 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 Judges of Patna High Court examined the judgment in Dr. Ram Janma Singh's 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 having been dismissed the appellant has preferred this appeal.

3. The short question that arises for consideration is whether the services rendered by the appellant as Resident Medical Officer in the Department of Pediatrics for the period 19.10.1971 till 21.4.1978 can at all be counted as the teaching experience of the appellant. The answer to this question would 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 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 favor 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 recognized 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 a 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.

4. In course of hearing, however, Mr. Saran, learned counsel appearing for the appellant brought to our notice several instances where the State 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 outright 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 favor 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 Pediatrics in Durbangha Medical College. Be it stated that the Competent Authority should be satisfied that in fact 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 favor 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.

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