

PETITIONER:
DR. RAMESH CHANDRA SINHA

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT 23/08/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1988 AIR 1976 1988 SCR Supl. (2) 566
1988 SCC Supl. 738 JT 1988 (3) 430
1988 SCALE (2) 418

ACT:

Civil Services, Bihar Medical Service: Patna Medical College Hospital-Associate Professors of Plastic Surgery-Seniority of Length of teaching experience in Plastic Surgery to determine seniority.

HEADNOTE:

The appellant and respondent Nos. 3 and 4 were appointed Associate Professors of Plastic Surgery in the Patna Medical College on September 29, 1978. In the appointment order the name of the appellant was placed below the two respondents. In a writ petition moved by him under Art. 226 of the Constitution claiming seniority above respondent No. 4, the High Court found that he had teaching experience in Plastic Surgery for a period of 3 years 8 months 3 days, while the respondent No. 4 had such experience for 4 years 7 months 27 days and accordingly held that the respondent No. 4 was senior to the appellant.

In this appeal by special leave it was contended for the appellant that in calculating the length of teaching experience the High Court had not taken into consideration that he had worked in the Plastic Surgery Department from November 29, 1963 to June 28, 1966 under the Head of the Department and if that period was taken into consideration along with the period determined by the High Court he would be senior to respondent No. 4.

Allowing the appeal,

HELD: The question of seniority between the appellant and respondent No. 4 is to be resolved on the basis of the length of teaching experience in Plastic Surgery. [568D]

A separate unit of Plastic Surgery was created in the Medical College Hospital on January 2, 1964. It is not disputed that the appellant had worked as a teacher in that unit from January 2, 1964 to June 28, 1966. It cannot be said that during this period he had gained teaching experience in General Surgery, as stated in the affidavit of the State Government, when as a matter of fact; he was teaching in Plastic Surgery. Though the appellant had

PG NO 567

addressed a letter to the Superintendent, Patna Medical College Hospital on December 21, 1963 seeking transfer to

the Department of General Surgery, there is no material to show that his request was acceded to or that he was, as a matter of fact, transferred from the Plastic Surgery Unit to the General Surgery Department. Instead of complying with his request it was ordered that though he would work in the Plastic Surgery Department, he would be deemed to have gained teaching experience in the Department of General Surgery. Such an order was not asked for by the appellant. The order was not only improper and unjust but also illegal. [568G, 569B, E-G]

The High Court was, therefore, not justified in excluding the period from 2. 1. 1964 to 28.6.1966 from the computation of the teaching experience of the appellant in determining his seniority. That period when added to the period of admitted, teaching experience of the appellant, as found by the High Court, he will be senior to respondent

No. 4. [569H-570A]

The State of Bihar to assign to the appellant seniority over respondent No. 4. [570B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 39 & 40 of 1981.

From the Judgment and Order dated 1.8. 1990 of the Patna High Court in C.W.J.C. No. 650 of 1979 and 157 of 1478.

Tapas Roy and M.P. Jha for the Appellant.

D. Goburdhan, D.P. Mukherjee and A.K. Jha for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. The only point that is involved in one of these two appeals by special leave, namely, Civil Appeal No. 39 of 1981, which is the only effective appeal, relates to the seniority between the appellant Dr. Ramesh Chandra Sinha and the respondent No. d Dr. P.K. Verma. The appellant has also challenged the seniority of Dr. S.L. Mandal, respondent No. 3 in Civil Appeal No. 39 of 1981, and Dr. J. Alam, respondent No. 1 in Civil Appeal No. 40 of 1981. But, Mr. Tapas Roy, learned counsel appearing, on behalf of the appellant in both the appeals, has expressly given up the challenge in respect of these two persons. We are,

PG NO 568

accordingly, concerned with the question of seniority between the appellant and Dr. P.K. Verma in Civil Appeal No. 39 of 1981 and, as the appellant does not press the case against Dr. J. Alam, the Civil Appeal No. 40 of 1981 is infructuous and liable to be dismissed.

Both the appellant and Dr. Verma are Plastic Surgeons. By an order dated September 29, 1478, the State Government appointed the appellant, Dr. S.L. Mandal and Dr. P.K. Verma, the Associate Professors of Plastic Surgery in the Patna Medical College. In the said order, the name of the appellant was placed below the names of Dr. Mandal and Dr. Verma, which meant that the appellant was junior to them. The appellant, as stated already., has given up his case against Dr. Mandal. The appellant, however, claims that he is senior to Dr. Verma and, accordingly, his name should have been placed above him in the said order of appointment. Being aggrieved by the said order making the appellant junior to Dr. Verma, the appellant moved the Patna High Court under Article 226 of the Constitution claiming 9 seniority over Dr. Verma.

It is not disputed before us that the question of seniority between the appellant and the respondent No. 4

will be resolved on the basis of the length of teaching experience in Plastic Surgery. The High Court came to the finding that the appellant had teaching experience in Plastic Surgery for a period of 3 years 8 months 3 days, while the respondent No. 4 Dr. Verma had such experience for 4 years 7 months 27 days. In that view of the matter, the High Court held that the respondent No. 4 was senior to the appellant and dismissed the writ petition. Hence the Civil Appeal No. 34 of 1981.

Mr. Roy, learned counsel appearing on behalf of the appellant, submits that in calculating the length of teaching experience of the appellant, the High Court has not taken into its consideration that the appellant had worked in the Plastic Surgery' Department from November 29, 1963 to June 28, 1966 under one Dr. R.N. Sinha, the Head of the Department of the Plastic Surgery, Patna Medical College Hospital. In this connection, it may be stated that in the Patna Medical College Hospital, Plastic Surgery was a part of the General Surgery Department. On January 2, 1964, a separate unit of Plastic Surgery was created and it is not disputed that the appellant had worked as a teacher in the Unit of Plastic Surgery from January 2, 1964 to June 28, 1966. indeed, as stated above, he had been in the Plastic Surgery Department from November 27, 1963 before it was converted into a separate unit. The can be no doubt that if

PG NO 569

this period from January 2, 1964 to June 28, 1966 is taken into consideration along with the period of 3 years 8 months 3 days, the appellant will, undoubtedly, be senior to the respondent No. 4. The High Court has no doubt referred to this period, but it proceeded on the basis that during the said period the appellant had gained teaching experience in General Surgery, as stated in the affidavit of the State Government. It is not easily understand able how the appellant could be said to have gained experience in General Surgery when, as a matter of fact, he was teaching in Plastic Surgery in the new Unit of Plastic Surgery created with effect from January 2, 1964 under Dr. R.N. Sinha, the Head of the Department. The High Court has also observed that during the said period the appellant on some occasion himself wanted a transfer to the General Surgery Department for gaining teaching experience in General Surgery and his request was acceded to by the State Government by allowing him to gain teaching experience in General Surgery. The High Court took the view that the appellant could not fall back and claim that the said period should also be counted as genuine teaching experience in Plastic Surgery.

In the first place, the High Court proceeded on the erroneous assumption that the appellant's request for his transfer to the General Surgery was acceded to by the State Government. It appears from a letter dated December 21, 1963 of the appellant addressed to the Superintendent, Patna Medical College Hospital. that the appellant wanted a transfer to the Department of General Surgery. There is no material to show that the appellant's request for transfer to the General Surgery was acceded to or that the appellant was, as a matter of fact, transferred from the Plastic Surgery Unit to the General Surgery Department. It is true that the appellant had requested for this transfer to the General Surgery Department, but instead of complying with his request it was ordered that though he would work in the Plastic Surgery Department, he would be deemed to have gained teaching experience in the Department of General Surgery. Such an order was not asked for by the appellant. Even assuming that the appellant had requested that his

teaching experience in Plastic Surgery should be deemed to be teaching experience in General Surgery, it did not behove Government or the authority concerned to accede to such a request. The order, in opinion, is not only improper and unjust but also illegal and stand in the way of the seniority of the appellant.

The High Court was, therefore, not justified in excluding the said period from 2. 1. 1964 to 28.6.1966 from

PG NO 570

the computation of the teaching experience of the appellant in determining his seniority. That period when added to the period of 3 years 8 months 3 dais of admitted teaching experience of the appellant, as found by the High Court, the appellant will be senior to the respondent No. 4 Dr. P.K. Verma, whose length of teaching service, as found by the High Court and not disputed before us is 4 years 7 months 27 days only.

For the reasons aforesaid, we set aside the judgment of the High Court and direct the State of Bihar to revise the seniority of the appellant and of the respondent no. 4, Dr. P.K. Verma, and assign to the appellant seniority over the respondent No. 4.

The Civil Appeal No. 39 of 1981 is allowed with costs. quantified at Rs.3,000. Civil Appeal No. 40 of 1981 is, however, dismissed without any order as to cost.

P.S.S.

Appeals disposed