

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.9491 of 2005

DR.SACHDANAND RAI
Versus
THE STATE OF BIHAR & ORS

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10.03.2008

In this writ application, the petitioner has made a prayer for the following relief.

“That the present application is for issuance of a writ in the nature of writ of mandamus directing the respondent to pay the petitioner full salary and other emoluments w.e.f. 1.4.97 as per recommendation of the 7th Pay revision committee report and the petitioner be also paid all the monetary benefits after considering his case for promotion accordingly on a post, for which he is entitled and the same be given with proper interest as the petitioner has lost monetary benefit for more than 8 years due to latches on the part of the respondents and since the post of District Indigenous Medical Officer which is equivalent to the post of Civil Surgeon cum Chief Medical Officer and whose post has been identified in the scale of Rs. 12000-16500/- so the petitioner be given same benefit w.e.f. 1.1.96 and monetary benefit be given w.e.f. 1.4.97. And/or pass such other order or orders as this Hon’ble Court may think fit and proper.”

A counter affidavit has been filed on behalf of the respondents wherein in paragraph no. 6 following stand has been taken.

“6. That in reply to paragraph 1 and 2 of the petition, it is stand that the petitioner was



appointed as Medical Officer, Ayurved on 23.02.75 and joined the post of 28.08.75. Thereafter the petitioner was promoted in the junior selection grade and thereafter in the senior selection grade and thereafter in the senior selection grade w.e.f. 01.03.89 alongwith other persons vide notification memo no. 319 (De-chi) dated 09.05.97. The said notification has been annexed as Annexure-1 in the writ petition. That the petitioner is working on the post of District Indigenous Medical officer at present in the scale of Rs. 6500-10500. It is further stated and submitted that the petitioner has been given promotion in scale of junior selection grade and senior selection grade as per the norms fixed by the government in the scale of Rs. 3700-5000. The replacement scale of Rs. 3700-5000 to Rs. 12000-16500 has not been finalized by the Finance Department who is working on the post of District Indigenous Medical Officer. Therefore, the grievance of the petitioner is not maintainable and justified. It is further stated that petitioner has never been appointed on post of District Indigenous Medical Officer. He is deputed on District Indigenous Medical Officer, post in his own scale of Medical Officer Ayurved.”

The respondents infact explaining the other aspects of the matter have further taken stand in paragraph no. 9 of the counter affidavit which also is relevant for the purpose of this case reads which reads as follows:

“9. That, with regard to statement made in paragraph 6 of the application, it is stated and submitted that the pay scale of District Indigenous Medical Officer for upgradation as to Civil Surgeon in Allopathic side, this matter has not been decided

by the State Government. The petitioner is on the post of District Indigenous Medical Officer in the scale of Rs. 6500-10500, hence matter for enhancement of pay scale is not under consideration from Rs. 6500-10500 to Rs. 12000-16500 the same is not maintainable.”

Mr. Banwari Sharma however, submits that an individual ultimately a decision has to be taken with regard to the claim of the petitioner in the Indigenous Medicine because when the Government has taken a policy decision with regard to grant of certain benefit to the Officers of the cadre of Indigenous medicine that can not be kept pending for an indefinite period on the ground that the Finance Department is being consulted.

In that view of the matter, Mr. Sharma submits that as the petitioner is going to superannuate in near future, his representation as contained in Annexure-6 may be directed to be disposed of so that the petitioner before his retirement knows his position with regard to entitlement as with regard to holding a higher post and its emoluments. This Court without expressing any opinion on the merit of such claim of the petitioner would direct the Principal Secretary of the Health Department to consider the aforesaid grievance of the petitioner and for this purpose, it will be open to the petitioner to file a fresh representation giving full facts and particulars with regard to his claim. In the event of filing of



such a representation within a week from today, the respondent, Principal Secretary of the Health Department of the Government of Bihar will be under obligation to dispose it of by a speaking order within three months of its filing by the petitioner.

It goes without saying that in the event of petitioner being found entitled for any relief by way of his promotion on the higher post and/or emoluments, the same would be extended to him by the concerned authorities in the next one month of such an order passed by the Secretary of the Health Department.

With the aforementioned observations and directions, this writ application is disposed of.

Anand

(Mihir Kumar Jha, J.)