

Before : D. V. Sehgal, J.

ADARSH YAKHMI,—Petitioner .

versus

STATE OF PUNJAB,—Respondent.

Civil Writ Petition No. 3544 of 1987

May, 12, 1988.

Constitution of India, 1950—Art. 226—Mandamus—Punjab Civil Medical Service (Class I) Rules, 1972—Rl. 10—Doctor eligible to be promoted as Civil Surgeon in category A-I post—Juniors promoted to the post of Civil Surgeon—Said Doctor transferred and posted as Senior Medical Officer at Primary Health Centre—Such posting sought to be justified on ground of 'average' service record—No material placed to reach conclusion for such assessment—Such transfer and posting—Whether amounts to reversion—Order of posting—Whether liable to be quashed—Post of Senior Medical Officer—Whether lower than the post of Civil Surgeon.

Held, that if a junior person is appointed as Civil Surgeon and the senior one is placed under him as Senior Medical Officer in Category 'C' this would certainly result in down grading of the senior officer. Therefore, the posting of the petitioner as Senior Medical Officer of the Primary Health Centre amounts to reversion from service. Hence, the order of transfer and posting is liable to be quashed.

(Para B)

Held, that the post of Civil Surgeon in category A-1 carries with it an important status. He is the head of the district administration of Health and Family Welfare Department. He supervises and controls many Primary Health Centres, a number of Senior Medical Officers in the Service and Medical Officers in Class II service work under him. He has many statutory functions to perform. Therefore the post of Senior Medical Officer of a Primary Health Centre is lower in status than that of Civil Surgeon.

(Para 9)

Writ Petition Under Articles 226/227 of the Constitution of India praying that the records of the case be sent for and after perusal of the same :—

- (i) issue a writ of certiorari quashing the order, Annexure P-3
- (ii) issue a writ of mandamus directing the respondents to consider the case of the petitioner for her appointment and posting as Civil Surgeon or other post of equivalent status,
- (iii) issue any other appropriate writ, order or direction as the Hon'ble High Court may deem fit in the circumstances of the case,

(iv) filing of certified copies of the Annexures be exempted.

(v) service of advance notice on the respondents be dispensed with.

The petitioner is still on joining time and has not yet joined at new place of posting. It is, therefore, prayed that the operation of the impugned order so far as the petitioner is concerned be stayed till the disposal of the writ petition.

Sarwan Singh, Advocate and H. S. Gill, Advocate, for the Petitioners.

S. K. Sharma, A.A.G. Punjab, for the Respondent.

JUDGMENT

D. V. Sehgal, J.—

The petitioner joined the Punjab Civil Medical Service Class II in November, 1960. In due course of time she was promoted to Punjab Civil Medical Service Class I (for short 'the Service') in January, 1976. She was confirmed in the Service with effect from 17th July, 1977. Later she was granted selection grade with effect from 1st March, 1983. During the course of her service as such she remained posted as Medical Officer, Senior Medical Officer, Assistant Civil Surgeon etc. On 3rd August, 1984 she was appointed Assistant Director, Health and Family Welfare, Punjab. *Vide* the impugned order dated 18th May, 1987 Annexure P. 4 she has been transferred and posted as Senior Medical Officer, Primary Health Centre, Kiratpur Sahib (Ropar).

(2) The petitioner contends that her posting at the Primary Health Centre, Kiratpur Sahib, as Senior Medical Officer,—*vide* Annexure P. 4 amounts to her down-grading. She contends that she stands at S. No. 78 of the Gradation List of the Service. Officers far junior to her who are at S. Nos. 101, 103, 108, 128 and 130 in the seniority list have been posted as Civil Surgeons, Amritsar, Gurdaspur, Sangrur, Faridkot and Ludhiana respectively,—*vide* Annexure P. 4. She states that as Senior Medical Officer at the Primary Health Centre she will be working under a Civil Surgeon who shall be her immediate superior officer and who shall write her annual confidential report. This, she states, virtually amounts to visiting her with a penalty.

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(3) The petition has been opposed by the respondent. Written statement on its behalf has been filed. It is stated therein that the record of service of the petitioner has been merely 'average'. Reference to the yearly overall assessment in her annual confidential reports for the year 1965-66, 1966-67, 1968-69, 1972-73, 1973-74 and 1983-84 has been made. It is contended that she is not a fit person to hold charge of a district. She has, therefore, not been appointed to the post of Civil Surgeon. It is further averred that the post of Senior Medical Officer is also a post on the cadre of the Service. She has, therefore, been lawfully posted there. It does not amount to her reversion or down-grading as alleged by her.

(4) I have heard the learned counsel for the parties. A reference to the gradation list Annexure P. 3 leaves no manner of doubt that the petitioner is far senior to the officers who have been posted as Civil Surgeons,—*vide* impugned orders Annexure P. 4. A policy regarding posting/transfer and classification of the members of the Service was issued by the respondent,—*vide* Memo, dated 11th March, 1983 Annexure P. 6. It categorised the various posts borne on the cadre of the Service for the purpose of posting and transfers of the members of the Service as under:—

“1. *Unclassified posts* :

The following posts are filled by promotion keeping in view the seniority-cum-merit of the officers concerned. They may be treated as unclassified:

1. Joint Director, Health Services, Punjab.
2. Deputy Director, Health Services, Punjab.

2. *Classified posts*

The following posts are classified into following categories :—

Category A-1

1. All Civil Surgeons, and
2. All Medical Superintendents I/C bigger hospitals, i.e., bed strength 200 and more.

Category A-II

All Senior Medical Officers I/C District headquarter hospitals and other Senior Medical Officers in District Hospitals.

Category 'B'

1. All Senior Medical Officers I/C Sub Divisional level hospitals with bed strength of 50 and above.
2. All Assistant Civil Surgeons.
3. All District Health Officers and Assistant Health Officers.
4. All District Family Planning Officers.
5. All Senior Medical Officers I/C Primary Health Centres/ Rural Hospitals with headquarters located in Municipal areas and with a bed strength of 25 and above.
6. Epidemiologist T.B. Centres, Patiala.
7. Senior Medical Officer I/C B.C.G. Patiala.
8. Deputy Medical Superintendent, Rajindra Hospital, Patiala, and S.G.T.B. Hospital, Amritsar.
9. Zonal Malaria Officers, Patiala, Jalandhar and Ferozepore, and
10. Medical Inspector, E.S.I., Chandigarh.

Category 'C'

1. All Senior Medical Officers, I/C Primary Health Centres and Rural Hospitals not included under 'B' category, and
2. Senior Medical Officers I/C of other Medical Institutions with a bed strength of less than 25 and not included under 'B' category.

The classification made in the preceding para is further subject to the conditions that a PCMS-I Doctor must work at the station in

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category 'C' for a period of at least three years before coming on the station mentioned in category 'B' to category A-II and A-I.

3. *Separate category*

The posting on the following posts is made on merit and personal qualifications and capabilities. As such these posts may be classified as separate category—

1. Assistant Director, Health Services, Punjab.
2. Principals, Health and Family Planning Centres, and Chemical Examination, Patiala."

(5) From the above it would be evident that all the Civil Surgeons and all Medical Superintendents Incharge of bigger hospitals with bed strength of 200 beds or more have been placed in category A-I. It is no doubt provided in the above policy that a member of the Service must work at a station in category 'C' for a period of atleast three years before coming to a station mentioned in category 'B' to category A-II and A-I. It is, however, not disputed before me that the petitioner long back worked as Senior Medical Officer Incharge of a Primary Health Centre in category 'C'. Therefore, according to her seniority and position in the Service she is eligible for posting as a Civil Surgeon or Medical Superintendent in category A-I.

(6) The assertion of the respondent that the work and conduct of the petitioner has only been 'average' and she is not able to hold charge of a district as a Civil Surgeon has not been justified by production of any record before me. The averment in the written statement that for six years in the long span of her service extending to over 28 years she earned 'average' reports has not impressed me. This avertainment rather shows that for not less than 20 years her record of service is good and does not contain any adverse remarks. In fact, she was promoted to Class I Service in January, 1976. Therefore, the 5 'average' entries till the year 1973-74 could not be set up in defence by the respondent. The single 'average' grading in the year 1983-84, in fact, goes to show that since the promotion of the petitioner to Class I Service in January, 1976, except for the year 1983-84 she has good record of Service.

(7) Rule 10 of the Punjab Civil Medical Service (Class I) Rules, 1972 provides that there shall be selection grade posts in the Service carrying such fixed pay or such scale of pay as may from time to time be fixed by the Government. No person is to be appointed to a selection grade post unless he has been a member of the Service

for a minimum period of seven years. It is not in dispute that the petitioner was appointed to a selection grade post in the Service with effect from 1st March, 1983. For nearly four years, she has been discharging the functions of Assistant Director Health and Family Welfare, Punjab, which without doubt is a post carrying sufficient responsibility. It is nowhere alleged that she did not properly perform her functions as Assistant Director since her posting as such from 3rd August, 1984. Rather by process of deduction it can be safely concluded that her record of Service as Assistant Director has been good.

(8) I do not agree with the contention of the learned counsel for the respondent that a member of the Service can be posted to any of the posts categorised in Annexure P. 6. If one goes by one's logic, an officer working as Civil Surgeon or Medical Superintendent of a bigger hospital in category A-I can be posted as a Senior Medical Officer Incharge of a Primary Health Centre in category 'C'. This would lead to a chaotic situation. A junior officer in the Service working as Senior Medical Officer Incharge of a Primary Health Centre in categories 'B' or 'C' is admittedly to work under the Civil Surgeon who is a superior officer. Civil Surgeon records the annual confidential reports of the Senior Medical Officers in categories 'B' and 'C'. If a junior person is appointed as a Civil Surgeon and the senior one is placed under him as Senior Medical Officer in category 'C', this would certainly result in the downgrading of the senior officer. There can be absolutely no doubt about this position. The contention of the learned counsel for the respondent that the posting of the petitioner as Senior Medical Officer of the Primary Health Centre does not amount to reversion from the Service is of no avail. I find support for the view that I am taking from *Vice Chancellor, Lalit Narain Mithila University v. Daya Nand Jha* (1), wherein the final Court has, *inter-alia*, observed as thus:

"In that view, there can be no doubt that the two posts of Principal and Reader cannot be regarded as of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal

being the head of the college has many statutory rights, such as : (i) He is the ex-officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the College Professors, Readers, Lecturers, and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the *ex officio* member of the Academic Council of the University. And (v) He has the right to act as Centre Superintendent in the University examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. May be, when the affairs of a college maintained by the University are mismanaged, the Vice-Chancellor may for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of section 10(14) of the Bihar State Universities Act, 1976, as amended."

(9) The post of Civil Surgeon in category A-I carries with it an important status. He is the head of the district administration of Health and Family Welfare Department. He supervises and controls many Primary Health Centres, a number of Senior Medical Officer in the Service and Medical Officers in Class II service work under him. He has many statutory functions to perform. It is, therefore, too much for the respondent to contend that the post of Senior Medical Officer of a Primary Health Centre is not lower in status than that of Civil Surgeon.

(10) Consequently, I allow this writ petition with costs, quash the impugned order Annexure P. 4 so far as it directs the posting of the petitioner as Senior Medical Officer, Primary Health Centre, Kiratpur Sahib. I direct the respondent to consider the petitioner for posting as Civil Surgeon or Medical Superintendent against a post in category A-I, according to her status and seniority. The costs of the petition are assessed at Rs. 500.