

teaching post, he never served as such. After joining duty at Jawaharlal Nehru Medical College and Hospital, Bhagalpur on 13th May 1994, he proceeded on leave on 14th May 1994, never to return till December, 1997. It is not believable that though the petitioner's headquarter was maintained at Patna while under suspension, the petitioner was not aware of the order dated 17th February 1997 of revocation of the order of suspension. On revocation of the order of suspension the petitioner was expected to immediately report for duty at Bhagalpur which he did not do for ten months. He reported for duty on 23rd December 1997 though he was posted at Dumka he did not serve at Dumka for a day. There is nothing on record to support that the petitioner did report for duty at Dumka on 30th June 1998 as averred by him. We are unable to believe that the petitioner could have reported for duty at Dumka on 30th June 1998 the date of his posting order. Further it is clear that the petitioner did not want to move out of Patna. He, therefore, did not serve either at Bhagalpur or at Dumka. The tenor of the writ petition and the relief prayed for also disclose his mind that he is not ready to serve at any place but at Patna. In the writ petition he has asked for suitable posting keeping in view the posting of his wife at Patna Medical College and Hospital.

As we have already seen, the Rules of 1997 provides for four years' teaching experience as a Lecturer for promotion to the post of Assistant Professor and the teaching experience of five years as Assistant Professor for promotion to the post of Associate Professor. The petitioner's claim

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for promotion as Assistant Professor or Associate Professor is totally misconceived as the petitioner has not gained teaching experience either as a Lecturer or as an Assistant Professor. Even if we presume that the petitioner was restrained from performing his duty as Registrar, the fact remains that the petitioner has not gained requisite teaching experience.

In our opinion, the learned single Judge has erred in issuing directions to consider the case of petitioner for promotion and appropriate posting on the post of Assistant Professor (Orthopaedics). It may further be noted that it has now been placed on record that all along the petitioner was carrying on profession as a Orthopaedic Surgeon at Patna. As the petitioner was gainfully employed, the order for consequential benefits which would necessarily include the back wages, is erroneous. In our opinion, the above referred facts disclose that the petitioner was not willing to serve at Bhagalpur or at Dumka. Since his posting at Bhagalpur in the month of May, 1994 he has not served as Registrar or on any other post in the Medical Education Services for a single day. In absence of the

actual teaching experience gained by the petitioner either as a Registrar/Lecturer or as an Assistant Professor, his claim for promotion cannot be countenanced. The petitioner is, therefore, not entitled to any relief."

In our view, the reasons assigned by the Division

Bench for setting aside the direction given by the learned Single Judge are legally correct and the impugned order does not call for interference under Article 136 of the Constitution.

The special leave petitions are, accordingly, dismissed.

(N. Annapurna)
AR-cum-PS

(Phoolan Wati Arora)
Court Master