

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6217 of 2005**

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Dr. Rajendra Prasad, S/o Sri Umar Shanker Prasad, R/o- 403, Santosha Complex, Bander Bagicha, P.S. Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Medical Education and Family Welfare Department, Government of Bihar, Patna.
3. The Principal, Patna Medical College, Patna.
4. The Superintendent, Patna Medical College and Hospital, Patna.
5. The Head of Department, Anaesthesia Department, Patna Medical College and Hospital, Patna.
6. The Secretary, Health Department, Bihar, Patna.
7. The Joint Secretary to the Government, Health Department, Bihar, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner	:	Mr. Rajeev Kumar Singh, Advocate Mr. Harsh Raj, Advocate Mr. Mohit Ranjan, Advocate
For the State	:	Mr. Dharendra Kumar, AC to AAG-6

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**C.A.V. JUDGMENT**

**Date : 10-03-2026**

The petitioner has filed the instant application for the following reliefs :-

*“(a) For an appropriate direction to respondents to issue notification of Assistant Professor, so far it relates to petitioner w.e.f. 24.9.93, the date from which petitioner is working as Designated Assistant Professor of Anaesthesia in Patna Medical College and Hospital (here is after referred as P.M.C.H.) forthwith.*



*(b) For an appropriate direction to respondents to pay the difference of salary of Assistant professor with appropriate statutory interest w.e.f. 24.9.93.*

*(c) For an appropriate direction to the respondents to promote the petitioner on the post of Associate Professor w.e.f. 25.9.96 as per the notification no.1110(17) dated 17.12.90 and accordingly pay the difference of salary of Associate Professor w.e.f. 25.9.96 till date with appropriate statutory interest forthwith.”*

2. Subsequently, on an application having been filed by the petitioner, by order dated 17.11.2025, the following reliefs were added :-

*“i. To quash memo no.-545 (17) dated 22.07.2014 issued by Joint Secretary to the Government, Health Department, Bihar, Patna, so far it relates to petitioner whose name figures at serial no.-4, by which the petitioner has been granted benefit of regular promotion on the post of Assistant Professor, Anesthetist w.e.f. 01.06.2009 instead of 24.09.1993. A copy of memo no.-545(17) dated 22.07.2014 is annexed as ANNEXURE No.- 11 to this application.*

*ii. To quash memo no.-156 (17) dated 09.03.2016 issued by Joint Secretary to the Government, Health Department, Bihar, Patna, so far as it relates to the petitioner whose name figures at serial No. 3 in the list of Anesthetist, whereby and whereunder the petitioner has been*



*granted promotion on the post of Associate Professor w.e.f. 01.06.2015 instead of 25.09.1996. A copy of memo No:-156 (17) dated 09.03.2016 is annexed as ANNEXURE No. 12 of this application.*

*iii. To quash Memo No.: 971 (17) dated 21.09.2023 issued by Secretary, Health Department, Bihar, Patna, so far as it relates to the petitioner whose name figures at serial No. 39, whereby and whereunder petitioner has been granted promotion on the post of Professor w.e.f. 21.09.2023 instead of 25.09.2002. Relevant portion of memo no.- 971 (17) dated 21.09.2023 is annexed as ANNEXURE No.-13 to this application.*

*iv. Further, to direct the respondents to grant promotion to the petitioner on the post of Assistant Professor as Anesthetist from 24.09.1993, on the post of Associate Professor with effect 25.09.1996 as well as on the post of Professor with effect from 25.09.2002 and further grant consequential and monetary benefits to the petitioner on the promotional posts with appropriate statutory interest.*

*v. To add Secretary, Health Department, Bihar, Patna, as Respondent No.- 6 and the Joint Secretary to the Government, Health Department, Bihar, Patna as Respondent No. 7 in the instant writ application.*

*vi. To direct the respondents to pay the difference of pension, gratuity and other pensionary benefits on the basis of last paid*



*drown after granting promotion and monetary benefits on the post of Professor Anaesthetist with appropriate statutory benefits.”*

3. The case of the petitioner in brief is that having passed his MBBS examination from the Darbhanga Medical College and Hospital, Darbhanga, on his selection the petitioner joined as Civil Assistant Surgeon on 11.8.1983. He subsequently obtained his postgraduate masters degree i.e. M.D. (Anaesthesia) from the Patna Medical College and Hospital (PMCH) in the Session 1984-86. The petitioner thereafter completed his Diploma in Anaesthesia from PMCH in the year 1987.

4. It is the case of the petitioner that vide notification dated 22.9.1990, the petitioner along with others were posted on the vacant post of Anaesthetist in PMCH and he joined on 24.9.1990.

5. It is further case of the petitioner that the Health, Medical Education and Family Welfare Department took a decision contained in Memo no.176(17) dated 20.6.1996 to the effect that all the Tutors/Anaesthetists who were having three years teaching experience and postgraduate qualification will be designated as Assistant Professor. As such, a seniority list prepared by the Department and sent along with the letter dated



6.4.1998 to the Principals of all the Medical Colleges would show that the petitioner whose name figures at Serial no.37 therein was placed on the post of Assistant Professor on 24.9.1993.

6. Learned counsel for the petitioner submits that in terms of the policy decision dated 20.6.1996 (Annexure-2), the petitioner having three years teaching experience from 24.9.1990 when he joined the PMCH to 24.9.1993 as also having the postgraduate degree i.e. M.D. (Anaesthesia) which he obtained from the PMCH in the Session 1984-86, the respondents should have promoted him on the post of Assistant Professor with effect from 24.9.1993.

7. It is further submitted that the eligibility for promotion on the post of Associate Professor at the relevant time was three years teaching experience on the post of Assistant Professor which the petitioner completed with effect from 25.9.1996. Further for the promotion on the post of Professor, the requirement at the relevant time was six years teaching experience on the post of Associate Professor which the petitioner completed on 25.9.2002. As such it is submitted that that the petitioner should have been promoted on the post of Assistant Professor with effect from 24.9.1993, as an Associate



Professor with effect from 25.9.1996 and as a Professor with effect from 25.9.2002.

8. It is further submitted by learned counsel for the petitioner that the petitioner had filed an intervention application and was made respondent no.17 in CWJC no.4959 of 1997 (Dr. Ashok Kumar Vatsyayan & Anr. vs. The State of Bihar & Ors.). The writ application was disposed of by order dated 9.2.2009 directing the respondents to pass necessary orders relating to grant of promotion to the private respondents (which included the petitioner who was respondent no.17 therein) who have remained deprived from due benefits on account of the stay order passed in the said case on 28.4.1999.

9. Referring to the stay order dated 28.4.1999 passed in CWJC no.4959 of 1997, learned counsel for the petitioner submits that though it was ordered that the policy decision dated 20.6.1996 shall remain in abeyance, however the same was only in the matter of promotion to the post of Associate Professor (Anaesthesia) that too till disposal of the said case.

10. The order dated 9.2.2009 passed in CWJC no.4959 of 1997 was challenged in LPA no.368 of 2009 and LPA no.417 of 2009. The petitioner was respondent no.16 and 19 in the two appeal. The two LPAs were disposed of by order dated



13.7.2011 modifying the order of the learned Single Judge. The respondent-State was directed to consider the cases of the doctors who are in service on 20.6.1996 by giving effect to their promotion as per the eligibility criteria and as per the policy dated 20.6.1996 prospectively.

11. It is submitted by learned counsel appearing for the petitioner that no steps having been taken by the respondent-State, the instant writ application was filed for the reliefs quoted herein above.

12. Subsequently, during pendency of the instant application, the respondent having come out with the orders dated 22.7.2014 (Annexure-P/11), 9.3.2016 (Annexure-P/12) and 21.9.2023 (Annexure-P/13) granting regular promotion to the petitioner on the post of Assistant Professor (Anaesthesia) with effect from 1.6.2009, as Associate Professor (Anaesthesia) with effect from 1.6.2015 and Professor with effect from 21.9.2023, the three orders have been challenged by way of an interlocutory application which came to be allowed on 17.11.2025. Learned counsel submits that the promotion be granted to the petitioner from the dates 24.9.1993, 25.9.1996 and 25.9.2002 and the respondent be directed to pay the consequential benefits including the difference of pension,



gratuity etc. on the basis of the last pay drawn.

13. The application is opposed by learned counsel appearing for the State of Bihar. It was submitted that the petitioner is trying to reopen the matter which has already been settled by this Court in the judgment dated 9.2.2009 passed in CWJC no.4959 of 1997 modified by judgment dated 13.7.2011 in LPA no.368 of 2009. It is submitted that the petitioner herein who was intervener-respondent no.17 in CWJC no.4959 of 1997 was directed to be given due promotion from the date from which he remained deprived on account of the stay order passed in the case by order dated 28.4.1999. The contempt application (MJC no.1620 of 2009) filed alleging non-compliance of the directions contained in LPA no.368 of 2009 stood disposed of on 17.3.2016. It is thus submitted that the issue with respect to promotion having been settled by the orders passed in the writ application, the LPA and the contempt application, the same cannot be reopened. As such, there is no merit in the instant writ application and the same be dismissed.

14. Heard learned counsel for the petitioner and learned counsel for the respondents. Perused the material on record.

15. The case of the petitioner in brief is that he was



appointed as Civil Assistant Surgeon on 11.8.1983. Having obtained is postgraduate masters degree i.e. M.D. (Anaesthesia), the petitioner also obtained his Diploma in Anaesthesia from PMCH in the year 1987.

16. The petitioner came to be appointed as an Anaesthetist in PMCH on 22.9.1990.

17. The respondents came out with a resolution contained in Memo no.176(17) dated 20.6.1996 issued under the signature of the Secretary, Health, Medical Education and Family Welfare Department, Government of Bihar. By the said resolution the Government took a decision that all the Tutors/Anaesthetists who were having three years teaching experience and postgraduate qualification in the faculty would be designated as Assistant Professor. The *inter se* seniority of Assistant Professors would depend on the tenure of their work as Tutor/Anaesthetist after having obtained the postgraduate degree. It was further decided that so far as *inter se* seniority between persons who are so designated as Assistant Professors and those who became Assistant Professor directly without having become Tutor/Anaesthetist, the seniority between them would be fixed as per the orders of the High Court.

18. Subsequent to the respondents coming out with



their policy decision contained in the resolution dated 20.6.1996, certain notifications of promotion to the post of Associate Professor were taken out by the Department as also the grant of *ad hoc* promotion as Associate Professor (Anaesthesia) to some other persons including Dr. Ashok Kumar Vatsyayan were cancelled. Dr. Ashok Kumar Vatsyayan and one another moved this Court in CWJC no.4959 of 1997 against the said orders and also praying for a direction not to give retrospective seniority to the respondents on the post of Assistant Professor by giving retrospective effect to the resolution dated 20.6.1996.

19. In CWJC no.4959 of 1997, by filing I. A. no.1749 of 2008, the petitioner herein got impleaded as respondent no.17.

20. CWJC no.4959 of 1997 was disposed of by order dated 9.2.2009 by the learned Single Judge who held that there was no illegality in the impugned resolution dated 20.6.1996 and any consequential order passed by the Government either relating to promotion or preparation of gradation list cannot be held to be illegal. The Court further with respect to the petitioner herein (respondent no.17 in CWJC no.4959 of 1997) held that he should be given promotion from the date from



which he remained deprived on account of stay order passed in the said case on 28.4.1999. The relevant part of the order dated 9.2.2009 in CWJC no.4959 of 1997 is reproduced herein below for ready reference :-

*“So far intervener respondents 17 and 18 are concerned, they should also be given due promotion from the date from which they remained deprived on account of the stay order passed in this case by order dated 28.4.1999. The respondents are directed to pass necessary orders relating to granting due promotion to the private respondents and similarly situated persons within eight weeks from the date of communication of this order since the respondents have remained deprived from due benefits on account of pendency of the writ application. This application is disposed of.”*

21. The petitioners in CWJC no.4959 of 1997 preferred LPA no.368 of 2009. A Division Bench of this Court by its order dated 13.7.2011 allowed the appeal and modified the order of the learned Single Judge observing that so far as grant of promotion with retrospective effect is concerned, the same was set aside. The Court observed that it would suffice if a direction is issued to the respondent-State to consider the cases of the doctors who are in service on 20.6.1996. Relevant part of the order dated 13.7.2011 passed in LPA no.368 of 2009 is



reproduced herein below :-

*“In view of above, we are of the opinion that the order of learned Single Judge with reference to effecting the promotion with retrospective effect has to be set aside. Accordingly, it is set aside. However, having heard all the parties, we are of the opinion that in the interest of justice it would suffice if a direction is issued to the respondent-State to consider the cases of the doctors who are in service on 20.06.1996 in their respective posts by giving effect to their promotion as per the eligibility criteria and as per the guidelines contained in the policy dated 20.06.1996 prospectively.*

*We also make it clear that as the rules came into force on 14.05.1997 the promotion of these persons and also other doctors who have not come to this Court, should be considered as per the existing rules.*

*With the aforesaid observations the order of learned Single Judge is modified and appeal is accordingly allowed to the extent modified above.*

*However, we reject the cases of the appellants in L.P.A. No. 417 of 2009, who are all retired doctors and not in service on 20.06.1996. They had filed the appeal with liberty of this court. The record shows that leave of this Court has already been granted to them.”*



22. Subsequently, the respondents came out with a final gradation list of the medical teachers of Anaesthesia Department contained in Memo no.357(17) dated 9.5.2014 wherein the regular promotion of the petitioner on the post of Assistant Professor was shown to be with effect from 1.6.2009.

23. A perusal of the memo dated 9.5.2014 would show that a provisional gradation list of the medical teachers and Anaesthetists was printed vide Departmental Letter no.1065(17) dated 22.8.2013 inviting objections to the same. The objections received were decided in light of the judgment dated 9.2.2009 passed in CWJC no.4959 of 1997 and dated 13.7.2011 passed in LPA no.368 of 2009.

24. So far as the final gradation list dated 9.5.2014 is concerned, this Court does not find mention of any objection having been filed to the provisional gradation list published on 22.8.2013 nor has the final gradation list dated 9.5.2014 been challenged by the petitioner.

25. The respondents thereafter came out with the notification dated 22.7.2014 giving regular promotion to the petitioner on the post of Assistant Professor with effect from 1.6.2009.

26. It may be observed here that the petitioner having



been appointed as an Anaesthetist in PMCH on 22.9.1990 and having obtained his degree of M.D. (Anaesthesia) in the year 1986, he had completed three years of teaching experience much prior to coming into effect of the resolution dated 20.6.1996.

27. Taking into consideration the decision of the Division Bench of this Court in its order dated 13.7.2011 passed in LPA no.368 of 2009 whereby grant of promotion with retrospective effect was set aside and a further direction was given to the respondent-State to consider the case of the doctors who were in service on 20.6.1996, in the opinion of the Court, the petitioner will be entitled for being designated as Assistant Professor with effect from 20.6.1996. However, this designation would obviously be subject to *inter se* seniority of the petitioner with others in the final gradation list dated 9.5.2014 which is not under challenge herein and also subject to availability of the sanctioned and vacant post.

28. Similarly the regular promotion on the post of Associate Professor and Professor would be consequent to the petitioner/individual having rendered the minimum required years of service on the post of Assistant Professor and Associate Professor, once again subject to the position of the



petitioner/individual in the gradation list and availability of the sanctioned vacant post.

29. The petitioner is held entitled for grant of promotion as Assistant Professor in Anaesthesia with effect from 24.9.1993, on the post of Associate Professor with effect from 25.9.1996 and on the post of Professor with effect from 25.9.2002. However the same will be subject to the seniority/position of the petitioner in the final gradation list dated 9.5.2014 and availability of sanctioned and vacant post. The respondents are directed to carry out the exercise for grant of promotion to the petitioner without any delay.

30. The above exercise shall be completed within a period of three months from the date of receipt/production of a copy of this order and any consequential financial benefits found payable to the petitioner consequent to the promotion shall be paid within a period of three months from the date of passing of the order.

31. The orders impugned herein contained in Notification no.545(17) dated 22.7.2014 issued under the signature of the Joint Secretary, Health Department, Government of Bihar, the order contained in Notification no.156(17) dated 9.3.2016 issued under the signature of the



Joint Secretary, Health Department, Government of Bihar as also the order contained in Notification no.971(17) dated 21.9.2023 issued under the signature of the Secretary, Health Department, Government of Bihar will stand modified subject to the result of the above exercise being carried out by the Secretary, Health Department, Government of Bihar, Patna (Respondent no.6).

32. In case the respondent concerned find the petitioner not to be entitled for any further benefit, an order in writing giving reasons shall be provided to the petitioner within the aforesaid period.

33. The writ application stands disposed of with the above observations and directions.

**(Partha Sarthy, J)**

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AFR/NAFR	
CAV DATE	23.12.2025
Uploading Date	10.03.2026
Transmission Date	

