

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 125 of 2022

Dr. Kumari Sandhya @ Kumari Sandhya, aged about 60 years, w/o Vanshi Dhar, r/o Ashok Nagar, C-172, P.O. Doranda, P.S. Argora, District-Ranchi, Jharkhand 834002.

... .. Petitioner/Appellant

Versus

1. State of Jharkhand.
2. Principal Secretary, Department of Health, Medical Education and Family Welfare, At-Project Building, P.O. & P.S. Dhurwa, Ranchi-834004, Jharkhand.
3. Director, Rajendra Institute of Medical Sciences, Bariatu, P.O. and P.S. Bariatu, Ranchi, Jharkhand.
4. Dr. Dharmendra Kumar, s/o Shri Dineshwar Prasad, presently working and posted as Professor, Department of Anatomy, Rajendra Institute of Medical Sciences, Bariatu, P.O. and P.S. Bariatu, Ranchi, Jharkhand.

.. ... Respondents/Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Appellant	: Mr. Rajiv Sinha, Advocate Ms. Shreesha Sinha, Advocate Mr. Rohit Sinha, Advocate
For the respondent-State	: Mrs. Amrita Banerjee, AC to GP-I
For the respondent-R.I.M.S.	: Dr. Ashok Kumar Singh, Advocate Mr. Shivam Singh, Advocate Mr. Prabhat Kumar, Advocate Mr. Nilesh Modi, Advocate
For the respondent no.4	: Mr. Ajit Kumar, Sr. Advocate Mr. Rajeev Kumar Sinha, Advocate Mr. Vishnu Kumar Mahto, Advocate

C.A.V./Reserved on 11.09.2023

Pronounced on 11/10/2023

Per Sujit Narayan Prasad, J.:

1. The instant letters patent appeal under clause 10 of the Letters Patent is directed against the order/judgment dated 18.02.2022 passed by the learned Single Judge of this Court in W.P.(S) No. 3570 of 2015, whereby and whereunder, the claim of the writ petitioner seeking seniority over the

respondent no.4 has been declined to be granted by dismissing the writ petition.

2. The brief facts of the case as per the pleading made in the writ petition, which require to be enumerated herein, read as under:

(i) The appellant/writ-petitioner was appointed as a Medical Officer on 22.09.1990 has taken charge on 01.11.1990. Subsequently, the appellant/writ petitioner has been posted as a tutor in the department of Anatomy, RIMS where she joined on 06.10.2005 and she has been promoted to the post of Assistant Professor and she joined on the said post on 31.07.2008. Thereafter, the appellant-writ petitioner has been promoted to the post of Associate Professor where she joined on 29.10.2012.

(ii) The respondent no.4 also joined the service of State Government in the Health Department in the year 1990 after joining of the appellant-writ petitioner and subsequently posted in the Anatomy department of the RIMS as tutor, where he joined on 07.10.2005. Subsequently, he was promoted as Assistant professor on 31.07.2008 and thereafter on the post of Associate professor on 29.10.2012.

(iii) The state of Bihar has published the seniority list vide memo no. 778 dated 17.06.2005 in which the appellant-writ petitioner has been shown at serial no.997 having the seniority position 603 while respondent no.4 has been shown at serial no.1126 having the seniority position 1399.

(iv) The State of Jharkhand has also published the provisional seniority list vide letter dated 29.05.2007 wherein the appellant-writ petitioner has been shown at serial no.829 while the respondent no.4 has been shown at serial no.953.

(v) A committee was constituted vide memo no.2265 dated 15.04.2014 for the purpose of deciding seniority and the said committee had submitted its recommendation on 26.05.2014 and after the decision of above committee respondent no.3 has issued order vide memo no.5627 dated 02.07 2014 whereby as per recommendation of the committee constituted for the purpose of deciding seniority of the appellant-writ

petitioner and respondent no 4, respondent no 4 has been declared Senior to the appellant-writ petitioner.

(vi) The appellant-writ petitioner made representation before the respondent no.3 vide letter dated 22.04.2015 which has been forwarded to the respondent no.2 vide memo no.3216 dated 22.05.2015. The appellant-writ petitioner also made representation to respondent no.2 vide letter dated 07.07.2015 for clarification of the inter-se seniority between the appellant-writ petitioner and respondent no.4.

(vii) Being aggrieved by the action of the authorities, the appellant-writ petitioner approached before this Court by filing writ petition being W.P.(S) No. 3570 of 2015 but the same has been dismissed against which the instant intra-court appeal has been preferred.

3. (i) It is evident from the factual aspect that the appellant-writ petitioner was appointed on 22.09.1990 as medical officer under Bihar Government and took charge on 01.11.1990. The seniority list was published by the State of Bihar in the year 2005 before final allocation of cadre to the employees whose services were sent to the state of Jharkhand after bifurcation, vide memo no.778 dated 17.06.2005. As per the list, the appellant-writ petitioner was at serial no.997 with seniority position 603 whereas the respondent no.4 is shown at serial no.1126 having at seniority position at 1399.

(ii) After bifurcation of the State of Bihar, services of the appellant-writ petitioner as well as respondent no.4 was allocated to the State of Jharkhand. The State of Jharkhand, on the basis of such allocation and based upon the requisition sent by the Director, RIMS handed over the services of the appellant-writ petitioner as well as respondent no.4 to the RIMS Ranchi vide notification as contained in memo no. 322(4) dated 05.10.2005.

(iii) The appellant-writ petitioner as well as the respondent no.4 was posted as tutor in department of anatomy RIIMS holding 'lien' with the State Government by joining the said post.

The State of Jharkhand subsequent thereto, published a provisional seniority list wherein the appellant-writ petitioner's seniority is shown at serial no.829 while the respondent no.4 is placed at serial no.953.

(iv) The appellant-writ petitioner was promoted to the post of Associate Professor to which joining was given by her on 29.10.2012.

Thereafter, one objection was raised by the respondent no.4 for considering the position in the seniority based upon the fresh recruitment to the post of Associate Professor. The concerned authority had constituted a committee vide memo no. 2265 dated 15.04.2014 for deciding the seniority between petitioner and respondent no.4.

(v) The committee has recommended by granting seniority to the respondent no.4 over the appellant-writ petitioner and accordingly, concerned competent authority has decided that the respondent no.4 is senior to the appellant-writ petitioner vide memo no. 5627 dated 02.07.2014.

(vi) The appellant-writ petitioner, being aggrieved with the determination of seniority preferred a writ petition being W.P.(S) No.3570 of 2015 questioning the jurisdiction of the RIMS on the ground that the RIMS was having no jurisdiction to decide the seniority of the appellant and the respondent no.4. since the 'lien' of both the appellant and the respondent no.4 lies with the State Government and hence, the State Government is the competent authority and in that capacity, State is the only competent authority to decide the seniority position.

(vii) The learned Single Judge after taking into consideration the rival submissions put forth on behalf of the parties, had dismissed the writ petition by declining to interfere with the impugned order against which the present appeal has been preferred.

Argument on behalf of the appellant-writ petitioner:

4. (i) Mr. Rajiv Sinha, learned counsel for the appellant-writ petitioner has submitted that the appellant was under the services of the State Government and while working as Medical Officer was deputed as Tutor

in RIMS by keeping her 'lien' with the State Government against the post of Medical Officer. The 'lien' had continued and by virtue of that State Government is the competent authority.

(ii) It has been contended that the respondent no.4 has also been appointed as Medical officer under the State Government who had also been deputed in the Anatomy Department of the RIMS. 'lien' of the post of Medical Officer remained with the State Government. The appellant was senior to the respondent no.4 while working in the capacity of Medical Officer under the State Government and since the 'lien' was there with the post of Medical officer, hence, the position of seniority held by the appellant and the respondent no.4 will remain in operative. The appellant since was senior to the respondent no.4, hence, there is no justification for the RIMS to prepare a fresh seniority list by lowering down the position of the appellant and keep her below the respondent no.4.

(iii) It has been contended that so long as the 'lien' is with the State Government, RIMS has got no jurisdiction to change the position of seniority or take any decision which will be detrimental to the interest of the appellant. The authority of the RIMS has been questioned on that ground.

(iv) The argument has been advanced that so long as the 'lien' is with the State Government, the RIMS has got no power said to be any controlling power for alteration in the position of seniority or any change in the service condition.

(v) Learned counsel for the appellant in order to substantiate his argument has relied upon the provision of Rule 68, 69 and 71 of the Service Code wherein specific provision has been made for termination/suspension of the 'lien'. But, none of the condition as available in the aforesaid provision for the purpose of termination of the 'lien' is available herein.

Learned counsel has further argued that in pursuance of the advertisement although the appellant has been appointed but that will be

construed to be promotion and not fresh appointment, therefore, changing the seniority position of the appellant and keeping her below the respondent no.4 is nothing but absolutely arbitrary exercise of power.

But, the learned Single Judge has not appreciated the aforesaid aspect of the matter while dismissing the writ petition, therefore, the instant appeal.

(vi) Learned counsel has relied upon the judgment of the Hon'ble Apex Court in *High Court of M.P. and Ors. vs. Satya Narayan Jhavar, (2001) 7 SCC 161*; *L.R. Patil vs. Gulbarga University, Gulbarga, 2023 SCC OnLine SC 1110* and; *State of Madhya Pradesh and Ors. vs. Sandhya Tomar and Anr., (2013) 11 SCC 357*.

Argument on behalf of RIMS:

5. (i) Dr. Ashok Kumar Singh, learned counsel for the RIMS has defended the order passed by the learned Single Judge on the ground that the contention of the appellant that they are employees of the State Government by virtue of 'lien' which was created at the time when they have been deputed to render services in the capacity of Tutor under RIMS cannot be said to be available the moment the appellant has participated in the process of selection in pursuance of a fresh advertisement and in consequence thereof, they have been appointed as Associate Professor. ‘
- (ii) The contention has been made that the principle of 'lien' is very much established that a person cannot hold the 'lien' of two posts. If an employee is holding 'lien' of a post and subsequent thereto, if such employee is being appointed by way of fresh recruitment, then the 'lien' of the erstwhile employer will stand terminated automatically. The same is on the basis of the principle that a person cannot be allowed to retain the 'lien' of two posts and by virtue of the appointment on the subsequent post in pursuance of fresh recruitment, 'lien' will be created for fresh post after giving joining to the said post.
- (iii) It has been contended that herein that appellant although has been appointed as Associate Professor in terms of fresh recruitment to fill the said post through direct recruitment as also the respondent no.4.

(iv) The advertisement contains a condition to fill up several posts under RIMS under the teaching cadre by way of direct recruitment. The advertisement has been issued to fill up the post by way of direct recruitment by keeping the statutory mandate as contained under Section 11 of RIMS Act, 2002 wherein it has been stipulated that although all the teaching posts from basic cadre to the higher cadre are to filled up through direct recruitment, meaning thereby, there is no promotional post to be filled up by way of promotion either the post of Associate Professor or the Professor.

(v) The RIMS has come out with the advertisement to fill up the post of Associate Professor and Professor as would appear from the advertisement. The appellant and the respondent n.4 both have made their application by following the terms and conditions available in the advertisement as also by seeking No Objection Certificate by the erstwhile employer as required under condition no.9 of the said advertisement.

The appellant as also the respondent no.4 had being declared to be successful and accordingly, they have been offered with offer of appointment and in pursuance thereof, both have joined as Associate Professor against four notified posts under the Anatomy Department under RIMS.

(vi) The RIMS authority thereafter has taken decision in order to fix the seniority of the appellant and the respondent no.4 based upon their position in the merit list. The respondent no.4 has been found to have obtained more marks in comparison to that of the appellant and making the merit position to be a ground for fixation of seniority, the respondent no.4 has been held to be senior over the appellant.

(vii) Further contention has been made in reply to the argument advanced on behalf of the appellant that the appointment so made in pursuance of the advertisement cannot be said to be a direct recruitment, is absolutely a misconceived argument keeping the provision of Section 11 of the RIMS Act, 2002 wherein all the posts from the Assistant

Professor up to the post of Professor including the Associate Professor are to be filled up through direct recruitment.

Since there is no provision under the statute to fill up the post by way of promotion, hence, it cannot be said to be correct as is being submitted that the appointment was made either of the appellant or of the respondent no.4 as Associate Professor by way of promotion rather it is by way of direct recruitment as per the mandate of Section 11 of the RIMS Act, 2002 as also advertisement was issued for the said purpose which is only for the purpose of filling the post by way of direct recruitment.

(viii) It has been submitted that it is incorrect on behalf of the appellant to take the ground that the 'lien' of the appellant and the respondent no.4 still subsist with the State Government rather the moment the appellant and the respondent no.4 had joined by way of direct recruitment as Assistant Professor, the 'lien' of the post of Medical Officer under the State Government will stand terminated automatically on the principle that the employee cannot be allowed to hold the 'lien' of two posts.

(ix) Learned counsel for the RIMS on the aforesaid premise has submitted that if the learned Single Judge after taking into consideration the aforesaid fact has passed the impugned order by declining to interfere with the impugned order therein, it cannot be said to suffer from error.

Argument on behalf of respondent no.4:

6. (i) Mr. Ajit Kumar, learned senior counsel appearing for the respondent no.4 has submitted in addition to what has been submitted by learned counsel for the RIMS by referring to the advertisement wherein the advertisement stipulates for inviting application to the post of Assistant Professor, Associate Professor and Professor which suggest that the said advertisement is for the purpose of filling up the post through direct recruitment. The eligibility criteria has also been referred in the advertisement wherein in order to hold the post of Associate Professor, 4 years tenure in the capacity of Assistant Professor is a condition precedent.

- (ii) The contention has been made that the appellant as also the respondent no.4 were holding the post of Assistant Professor by virtue of deputation in RIMS by the State Government as Tutor and subsequent thereto, they have been absorbed as Assistant Professor, hence, their candidature has been accepted and finally they have been accepted as Associate Professor by way of direct recruitment.
- (iii) Learned senior counsel, in the aforesaid premise, has submitted in response to the submission made on behalf of the appellant that the appellant as also the respondent no.4 are direct recruits and hence, the 'lien' has been created to hold the post of Associate Professor for both the appellant and the respondent no.4.
- (iv) It has been contended that the moment both the appellant and the respondent no.4 had joined the post of Associate Professor under RIMS, the 'lien' which were available attached to the post of Medical Officer under the State Government stands automatically terminated.
- (v) Learned senior counsel in order to substantiate his argument has drawn the attention of this Court towards Rule 68 of the Jharkhand Service Code.
7. We have heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge in the impugned order.
8. This Court, on appreciation of the rival submissions and after going through the documents available on record, is of the view that the following issues are to be considered and answered.
- (i) Whether the 'lien' on deputation of the appellant as Tutor in RIMS still lies with the post of Medical Officer under the State Government?
- (ii) Whether the 'lien' will stand terminated automatically the moment the appellant and the respondent no.4 joined the post of Associate Professor?

(iii) Whether the appointment of the appellant and the respondent no.4 are to be considered by way of promotion or through the direct recruitment?

9. This Court, before considering the aforesaid issues, deems it fit and proper to refer some undisputed facts herein for proper adjudication of the *lis*.

(i) The appellant and the respondent no.4 both had been appointed under the State Government as Medical Officer in the year 1990.

(ii) Seniority list was prepared for the post of medical officer wherein the appellant has been placed at serial no.997 with seniority position 603 and the respondent no.4 was at serial no.1126 having seniority position at 1399.

(iii) The appellant and the respondent no.4 based upon their requisition for deputation as Tutor under RIMS had been deputed by the order passed by the competent authority of the State Government. The appellant and the respondent no.4 both had joined the deputed post of Tutor under RIMS and subsequent thereto, they have been absorbed as Assistant Professor and started discharging their duties.

(iv) The appellant and the respondent no.4 while discharging their duties as such, i.e., on the post of Assistant Professor, an advertisement was published inviting applications to fill up the post of Tutor, Senior Resident, Assistant Professor, Associate Professor and Professor. The advertisement contains certain condition in which one of the conditions is that the candidate who are working in any Government or Semi-Government organization have to make application after getting No-Objection Certificate. The advertisement has been issued which suggest that all the post are to be filled up through direct recruitment only.

(v) The appellant and the respondent no.4 had applied for consideration of their candidature of the post of Associate Professor and in pursuance of the condition stipulated in the advertisement to make application after getting no-objection certificate, hence, impliedly it will mean that both the appellant and the respondent no.4 had applied their applications after getting no-objection certificate from

the State Government where the 'lien' was with the State Government of the post of Medical Officer.

- (vi) The appellant and the respondent no.4 both have been declared to be successful.

The appellant got lesser marks in comparison to that of the respondent no.4. The RIMS authority has fixed the seniority of the respondent no.4 and the appellant by placing the respondent no.4 over the appellant which is based upon the marks secured in the process of selection.

- (vii) The appellant after fixation of her seniority keeping her below the respondent had objected on the ground that she was holding the post of medical officer and the 'lien' was with the State Government wherein the appellant was all along senior to the respondent no.4 then, the RIMS has got no jurisdiction to revise the seniority.
- (viii) The aforesaid grievance having not been accepted, writ petition was filed by the appellant claiming therein seniority over the respondent no.4 but the writ petition has been dismissed.

10. The reference of some of the statutory provision is also required to be made herein pertaining to the constitution of RIMS and applicability of the Rules 68, 69 and 71 of the Service Code which provides to decide the termination/suspension of 'lien'.

11. The RIMS earlier known as Rajendra Medical College and Hospital was under the control of the State Government but in order to give autonomy to the said institution, the State Government has come out with enactment notified on 20.04.2002 by virtue of Act 10 of 2002 which is known as Rajendra Institute of Medical Sciences Act, 2002.

By virtue of the aforesaid act, the RIMS has been given an autonomous status keeping the State not to interfere in the day-to-day affairs save and except the evasive control as per the provision of Section 29 of the Act, 2002.

By virtue of Section 12, power has been conferred to the governing body, whereby and whereunder, all the powers for the smooth functioning of the RIMS has been vested upon the governing council. For ready reference, Section 12 of the RIMS Act, 2002 is being referred as under:

“(12) **शासी परिषद् की शक्तियाँ** - (i) शासी परिषद् के पास संस्थान के मामलों से संबंधित पूरी प्रशासनिक एवं वित्तीय शक्तियाँ तथा शक्तियों के उपयोग तथा संस्थान के लक्ष्यों एवं उद्देश्यों के अनुकूल संस्थान के सभी कार्यों एवं कृत्यों का संचालन का प्राधिकार होगा -

(ii) परिषद् को संस्थान के वार्षिक बजट को अनुमोदित करने एवं स्वीकृति हेतु उसे राज्य सरकार के पास भेजने की शक्ति होगी। राज्य सरकार स्वीकृति प्राप्त करने के उपरान्त शासी परिषद् को बजट में शामिल किसी भी मद पर व्यय की मंजूरी देने का पूरा अधिकार होगा :

यदि किसी वित्तीय वर्ष के दौरान किसी कार्यक्रम को धन देने का प्रस्ताव हो, जिसे उस वित्तीय वर्ष के प्राक्कलन में शामिल नहीं किया गया हो, ऐसी स्थिति में शासी परिषद् अनुपूरक बजट हेतु राज्य सरकार से अनुमोदन प्राप्त करेगी।

(iii) धारा-6 में निर्दिष्ट कार्यों के निष्पादन हेतु की गयी कार्रवाई में संस्थान के खर्चों को पूरा करने हेतु शासी परिषद् को संस्थान की निधि के उपयोग की वित्तीय शक्तियाँ होगी।

(iv) शासी परिषद् के पान संस्थान की निधि से व्यय संबंधी वही शक्तियाँ होंगी जो लोक निधि से व्यय करने के मामले में राज्य सरकार के पास है।

(v) राज्य सरकार द्वारा निर्मित नियमों के अधीन रहते हुए शासी परिषद् को संस्थान में पदों के सृजन एवं समापन का अधिकार होगा।

(vi) शासी परिषद् किसी भी धर्मदाय, न्यास निधि, चन्दा या प्रतिदान का प्रबंधन और प्रशासन स्वीकार कर सकता है, बशर्ते इनमें ऐसे कोई उपबन्ध न हो जो संस्थान के उद्देश्यों के प्रतिकूल और विरोधी हो।

(vii) शासी परिषद् को अनुषंगी सेवाएँ, जैसे कैटरिंग, लॉन्ड्री सेवाएँ, एम्बुलेन्स सेवाएँ भी आवश्यकता समझे जाने पर बाह्य स्रोतों से प्राप्त कर सकती है परन्तु शासी परिषद् बुनियादी सेवाओं का वाह्य स्रोतों से प्राप्त नहीं कर सकेगी।

(viii) शासी परिषद् को नियमों तथा विनियमों द्वारा निर्धारित फीस एवं अन्य शुल्कों के आरोपित एवं संस्थान के देख भाल एवं विकास हेतु, प्राप्त राशि के उपयोग की शक्ति होगी।

(ix) शासी परिषद् राज्य सरकार की पूर्वानुमति से धारा-32 के प्रावधानानुसार अधिसूचना जारी कर विनियमों का निर्माण कर सकती है।

(x) शासी परिषद् अपनी शक्तियों को संकल्प द्वारा कार्यकारिणी समिति, अध्यक्ष उपाध्यक्ष संस्थान के निदेशक या संस्थान के अन्य पदाधिकारियों को, प्रत्यायोजित कर सकता परन्तु शासी परिषद् नियमों तथा विनियमों के निर्माण की शक्तिया, संस्थान के वार्षिक बजट स्वीकृत करने की शक्ति, संस्थान में उपलब्ध निधियों के विशेष अनुदान या दान के माध्यम से स्वीकृति देने की शक्ति तथा शैक्षिक संकाय पदों पर नियुक्ति की शक्ति को प्रत्यायोजित नहीं कर सकता।”

Section 29 provides the provision of controlling power of the RIMS and by virtue of the same, the State has been given power to look into that the institution, i.e., RIMS may run on the basis of the policy decision

which is to be issued by the State time-to-time in order to achieve the object and intent of the Act.

12. The State Government through the Health, Medical Education and Family Welfare Department in exercise of power conferred under Section 32 of the Act, 2002 has come out with a notification on 08.09.2014 wherein specific provision has been made as under Regulation 11 that all the posts under para 11 of page 6 which carries reference of the teaching posts are to be filled up through direct recruitment and to be made on the basis of the recommendation made by the permanent selectin committee to be acted upon by the governing council. For ready reference, the said regulation is being referred as under:

“11. विभिन्न पदों पर नियुक्ति एवं प्रोन्नति नियमावली

रिम्स अधिनियम, 2002 में शैक्षणिक संवर्ग की नियुक्ति एवं प्रोन्नति के संबंध में दो भिन्न बातें वर्णित हैं-

- I. राजेन्द्र आयुर्विज्ञान संस्थान नियमावली 2002 पृष्ठ संख्या 6 की कंडिका 11 में वर्णित है कि - शैक्षणिक संवर्ग के सभी पदों पर नियुक्ति, खुले विज्ञापन तथा शैक्षणिक संवर्ग के पदों हेतु स्थायी चयन समिति द्वारा की गयी अनुशंसाओं के आधार पर शासी परिषद् द्वारा की जाएगी।
- II. रिम्स अधिनियम 2002 धारा 28 में स्पष्ट निर्देशित है कि सभी प्रवेश, पदों पर सभी भर्ती एवं प्रोन्नति के मामलों में विभिन्न वर्गों के आरक्षण के संबंध में राज्य सरकार के नीति एवं नियम लागू होंगे।”

13. The said regulation also contains a schedule being Schedule IV in which policy to decide the seniority has been made under Schedule IV (5) as per which the parameters have been given therein for fixation of seniority. For ready reference, the same is being referred as under:

“5. Seniority List

As per the rules in force, there can be direct recruitment to all grades of the faculty and selection on each occasion could be for appointment to be made at the same time but in more than one discipline. The combined seniority list of the Institute shall be worked out as follows:-

i. The seniority of the employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the Grade in question, those selected on an earlier occasion being ranked senior as a block to those selected later.

ii. The preparation of seniority list of persons selected in the same selection committee would involve the following steps:-

Step-I

Draw up list of persons on the basis of their date of joining those joining on an earlier date being placed above those joining on a later date.

Step -II

In the list prepared as above, those who join on the same date may be arranged in order of age – those born earlier being placed above those born later.

Step-III

For those joining on the same date and adjusted as in step II above according to their age, further re-arrangement may be carried out so that the original inter-seniority of the Institute employees in the Lower Post/ Grade maintained. This operation may be done by pulling down the junior in the previous combined seniority list immediately below his senior in that list now appearing in this list even though he may be elder in age.

Step -IV

The above list may now be further modified to carry corrections of violation of departmental merit/seniority laid down by the selection committee. This will be done by pulling the junior down immediately below his senior in merit.

Note:

In cases where a junior in the combined & seniority list is being considered for assessment, all persons senior to him/her in the seniority list will also be considered even though the seniors do not have the requisite years of service. The senior if found fit will be given national promotion with effect from the date of promotion of his/her junior and for purpose of pay etc., it would be granted to him/her with effect from the date of actual promotion i.e. the date on which he completes 4 years service on the grade at the RIMS, provided the following two conditions are fulfilled:-

- a. Probation should have been completed by him/her successfully.*
- b. The total period of extension granted to join the service should not have exceeded 6 months.”*

14. The purpose of making reference of the aforesaid statutory provision is that the RIMS is not under the control of the State Government rather RIMS is to govern under the statutory provision as enacted by virtue of the Act, 2002 and the Regulation, 2014.

However, the State has only been given power to the extent to see that the RIMS is following the policy decision for the betterment of the people at large of the State of Jharkhand as is being formulated by the State of Jharkhand.

The State has been excluded from interfering with the day-to-day affairs including the matters of appointments and promotions. That is the

spirit of the Act, 2002 and it is for this reason the reference of the RIMS Act is being made herein.

15. Reference of Rules 68, 69, 70 and 71 also needs to be made herein, which read as under:

“68. Unless in any case it be otherwise provided in these rules a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

69. Unless his lien is suspended under Rule 70 or transferred under Rule 72 a Government servant holding substantively a permanent post retains a lien on that post –

(a) while performing the duties of that post,

(b) while on foreign service, or holding a temporary post or officiating in another post,

(c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post.

(d) while on leave, and

(e) while under suspension.

70. (a) The lien of a Government on permanent post which he holds substantively shall be suspended if he is appointed in a substantive capacity .—

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another Government servant would hold a lien had his ‘lien’ not been suspended under this rule.

(b) The State Government may, at its opinion, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or, in circumstances not covered by Clause (a) of this rule is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in Clause (a) or (b) of this rule a Government servant’s lien on a tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his ‘lien’ on the tenure post must be terminated.

(d) If a Government servant’s ‘lien on a post is suspended under Clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it provided that the arrangements shall be reversed as soon as the suspended lien revives.

(e) A Government servant's lien which has been suspended under Clause (a) of this rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in sub-clauses (1), (2) or (3) of that clause.

(f) A Government servant's lien which has been suspended under Clause (b) of this rule, shall revive as soon as he ceases to be on deputation out of India, or on foreign service or to hold a post in another cadre, provided that a suspended lien shall not revive because the Government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India, or on foreign service, or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in sub-clause (1), (2) or (3) of Clause (a).

71. (a) *A Government servant's lien on a post may in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended 'lien' upon a permanent post.*

(b) In a case covered by sub-clause (2) of clause (a) of Rule 70, the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government service."

16. It is evident from the provision of Rule 68 wherein it has been provided that a government servant on substantive appointment to any permanent post acquires a 'lien' on that post and ceases to hold any 'lien' previously acquired on any other post.

It is, thus, evident from the perusal of the provision as contained under Rule 68 that the 'lien' will be automatically ceased the moment the concerned government servant has been appointed on substantive post to any permanent post.

17. Rule 69 provides that unless the 'lien' is suspended under Rule 70 or transferred under Rule 72 a Government servant holding substantively a permanent post retains a 'lien' on that post while performing the duties of that post; while on foreign service, or holding a temporary post or officiating in another post; during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case his 'lien' is transferred to the new post from the date on which he is relieved of his duties in the old post; while on leave, and; while under suspension.

18. Rule 70 deals with a position in which the 'lien' of a government servant on a permanent post which he holds substantively shall be suspended if he is appointed in a substantive capacity to a tenure post or to a permanent

post outside the cadre on which he is borne, or provisionally to a post on which another Government servant would hold a 'lien' had his 'lien' not been suspended under this rule.

19. It is thus evident after going through the provision of Rule 68, 69 and 70 that Rule 68 speaks about retain of the 'lien' of a post and its automatic termination on being appointed on substantive capacity against a permanent post. Rule 69 and 70 deals with altogether different posts.
20. The reference of judicial pronounce in this regard is also required to be made on the issue of 'lien'.

(i) The Hon'ble Apex Court in *State of Rajasthan & Anr. vs. S.N. Tiwari & Ors, (2009) 4 SCC 700*, has been pleased to hold by taking into consideration the applicable rule under Rajasthan Service Rules as would appear from paragraph nos. 14, 15, 17, 18, 21 and 21. For ready reference, the said paragraphs are being referred as under:

"14. It is not the case of the State that any competent authority terminated the lien of the respondent in the parent department. There is no material made available by the State to show that the respondent had been confirmed in any permanent post and that he was holding that appointment in a substantive capacity on permanent basis. On the other hand, even while working as homoeopathic doctor in ESI Corporation, the respondent employee obtained directions as against the State and the Directorate of Economics and Statistics Department to determine the yearwise vacancies and to make promotions from the post of Statistical Inspector to Statistical Assistant in accordance with the Rules. That order attained its finality. The same would demonstrate that the respondent employee always had a lien in the Department of Economics and Statistics.

15. It may be necessary to notice Rule 18 of the Rajasthan Service Rules which is reproduced in its entirety hereunder:

"18. Termination of lien. -- (a) A government servant's 'lien' on a post may in no circumstances be terminated, even with his consent if the result will be to leave him without a 'lien' or a suspended 'lien' upon a permanent post.

(b) A government servant's lien on a post stands terminated on his acquiring a lien on a permanent post (whether under the Government or Central/other State Governments) outside the cadre on which he is borne."

A bare reading of the Rule makes it clear that a government servant's lien on a post cannot be terminated in any circumstances even with his consent if it results in leaving the government servant without a lien or a suspended lien upon a permanent post. A government servant's lien on a post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne.

17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against

the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the 'lien' of the employee shifts to the new permanent post. It may not require a formal termination of 'lien' over the previous permanent post.

18. This Court in Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99 : 1989 SCC (L&S) 644 : (1984) 11 ATC 841] observed that: (SCC p. 102, para 8)

“8. ... lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.”

19. The term “lien” comes from the Latin term “ligament” meaning “binding”. The meaning of ‘lien’ in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.

21. Be it noted that no objections were raised when the respondent employee gave his option on 8-4-1991 duly informing all the concerned that his lien in the Subordinate Statistical Service had to be maintained for the purposes of promotions to higher posts/protection of financial interests, etc. In such view of the matter the respondent employee always had his ‘lien’ in his parent department. The State at this stage cannot be allowed to turn round and say that the respondent employee did not retain lien against his post in the parent department.”

It is evident from paragraph 17 of the aforesaid judgment that the Hon'ble Apex Court has been pleased to observe regarding the settled position that when a person with a 'lien' against the post is appointed substantively to another post, only then he acquires a 'lien' against the latter post. Such observation has been made on the basis of the interpretation of Rule 18(b) of the Rajasthan Service Rules.

The word “lien” has also been defined interpreting it under paragraph 19 as per which the terms “lien” comes from the Latin term “ligament” meaning “binding”. The meaning of ‘lien’ in service law is different from other meanings in the context of contract, common law, equity, etc. The ‘lien’ of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.

(ii) The Hon'ble Apex Court in another judgment rendered in *State of Madhya Pradesh & Ors reported in Sandhya Tomar and Anr., (2013) 11*

SCC 357, in particular paragraph no. 10, has been pleased to observed which is quoted hereunder as:

“10. “lien” connotes the civil right of a government servant to hold the post “to which he is appointed substantively”. The necessary corollary to the aforesaid right is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. “The word ‘lien’ is a generic term and, standing alone, it includes lien acquired by way of contract, or by operation of law.” Whether a person has lien, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post.”

It is evident from the aforesaid proposition that a person can be said to have acquired ‘lien’ as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post.

Whether a person has ‘lien’, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post.

(iii) The Hon'ble Apex Court in ***Ramlal Khurana (Dead) by Lrs. Vs. State of Punjab & Ors., (1989) 4 SCC 99***, has been pleased to hold at paragraphs 7, 8 and 9 which are quoted hereunder as:

“7. We do not think that the contention urged for the appellant as to Rule 3.14 could be accepted. Rule 3.14 provides that a competent authority shall suspend the lien of a government servant when he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. It seems to us that this rule cannot be operated to the prejudice of a government servant who on his own has acquired legal right to an ex cadre post. Indeed, the rule is for the benefit of a government servant who intends to return back to his parent department. That was also the view expressed in T.R. Sharma case. But then, the appellant never wanted to return back to his parent department. He was stoutly opposing repatriation and asserting his right to remain in the ex cadre post. He has thus denied himself of the benefit of that rule.

8. The other contention urged for the appellant that he was not confirmed in the Excise Department and unless confirmed, he acquired no lien cannot also be accepted. Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no government servant can have simultaneously two liens against two posts in two different cadres. It is a well-accepted principle of service jurisprudence.

9. In that instant case, the civil court has already ruled that the appellant had a right to continue in his substantive appointment as Excise Sub-Inspector. He secured that declaration when the Excise Department repatriated him to his parent department. After obtaining that decree from a court of competent jurisdiction, he could not turn round and say that he still retained lien against his post in the parent department. The lien in his parent department must be held to have been cancelled consequent on the decree of the civil court. Therefore, the Excise Commissioner seems to be the only competent authority to pass the order compulsorily retiring him from service.”

(iv) The Hon'ble Apex Court in ***L.R. Patil vs. Gulbarga University, Gulbarga, 2023 SCC OnLine SC 1110*** while dealing with the issue of 'lien' has been pleased to hold that the moment a public servant is being appointed to a permanent post on substantive capacity, the 'lien' of the erstwhile post will stand terminated.

However, the facts of the said case as would appear from paragraph-4 thereof is that applications were invited by the University in the year 1993 to fill the post by way of direct recruitment. The appellant of the said case applied for the said post and was selected. As per the terms of the appointment, the appellant had to serve as a probationer for a period of two years, before he could be confirmed on the said post. On his appointment, respondent-University vide office order dated 08.04.1993 relieved the appellant from the post of Office Superintendent w.e.f. 04.02.1993, and duly recorded that he is being relieved to accept the another appointment as 'Assistant Registrar' in the Gulbarga University. The order further recorded that its contents shall be noted in the service book.

During pendency of the said writ petition, the respondent-University vide order dated 03.02.1996, promoted 'Sri. A. Raghavendra' and 'Sri Shankar Rao Kamble' looking to their seniority and posted them as Assistant Registrar, Examination Branch and Assistant Registrar, Administrative Branch respectively. But, on account of the pendency of aforesaid writ petition, the appellant continued on probation on the post of Assistant Registrar. The High Court had quashed the appointment of the appellant. The same had been confirmed under the intra-court appellate jurisdiction. The University in consequence thereof, has withdrawn the appointment of the appellant as Assistant Registrar.

Thereafter, the appellant of the said case has gone to give joining to the post of Office Superintendent. His joining was accepted. The appellant had made representation for fixation of his seniority in the cadre of Office Superintendent and further requested for promotion on the vacant post of Assistant Registrar at par with his two juniors, namely, Sri. A. Raghavendra and Sri. Shankar Rao Kamble who were promoted to the post of Assistant Registrar by the respondent University.

The grievance having not been redressed, writ petition was filed being Writ Petition No. 22838 of 2001 which was disposed of on 21.03.2005 with a direction upon the respondent concerned to take decision. The decision was taken and the representation was rejected and, in the meantime, the appellant superannuated on 30.06.2007 from the post of Office Superintendent. The appellant had again filed writ petition being Writ Petition No. 4066 of 2006 challenging the rejection order dated 08.02.2006 and prayed for restoration of his seniority. The matter finally gone before the Hon'ble Apex Court and in the background of the aforesaid fact, the Hon'ble Apex Court has considered while deciding the issue, the judgment rendered by the Hon'ble Apex Court in ***Ramlal Khurana (Dead) by Lrs. Vs. State of Punjab & Ors.*** (supra); ***Triveni Shankar Saxena vs. State of U.P. and Ors., 1992 Supp (1) SCC 524*** wherein the Hon'ble Apex Court has observed that a person can be said to acquire a 'lien' on a post only when he has been confirmed and made permanent on that post and not earlier. The Hon'ble Apex Court on consideration of the judgment rendered by the Hon'ble Apex Court in ***State of Rajasthan and Anr. Vs. S.N. Tiwari and Ors.*** (supra) and ***State of Madhya Pradesh and Ors. vs. Sandhya Tomar and Anr.,*** (supra) has held as under paragraph-26 which reads as under:

“26. In view of the discussion made herein above, we answer the questions framed above as follows -

- (i) Order dated 08.04.1993 passed by respondent-University, relieving the appellant to take up the new appointment as 'Assistant Registrar' is not to be treated as resignation in terms of Rule 252(b) of KCS Rules.*
- (ii) The appellant's lien on the original/previous post of 'Office Superintendent' shall be maintained and deemed to be continued from the date when he was relieved by respondent-University, i.e., 08.04.1993.*

(iii) Considering the facts and circumstances of the case and in order to do complete justice, the appellant will be entitled to all the service benefits including seniority, consequential promotions and pensionary benefits at par with his juniors, though notionally, since he superannuated on 30.06.2007 and has not worked on the promoted post.”

It is evident from the aforesaid conclusion as under paragraph-26 thereof that the appellant's 'lien' on the original/previous post of 'Office Superintendent' shall be maintained and deemed to be continued from the date when he was relieved based upon the fact that the appellant was not allowed to continue in service as Assistant Registrar and appointment was withdrawn within the probation period of two years. Hence, he was continued on temporary basis despite the completion of two years and in that view of the matter the 'lien' which was earlier been held by the appellant of the said case of the post of Office Superintendent has been directed to be remained there.

21. This Court is now proceeding to examine the factual aspect involved in the present case.
22. Admittedly herein, the appellant and the respondent no.4 were employees of the State Government appointed as Medical Officer. While they were working on the said post, on requisition they have been deputed as Tutor under RIMS. They have been allowed to continue as Tutor by keeping the 'lien' with the State Government of the post of Medical Officer.

The appellant and the respondent no.4 have been absorbed as Assistant Professor and based upon their absorption they became eligible to participate in the process of selection or to hold the post of Associate Professor.

However, we need to refer herein since we have already taken note of the Act, 2002 regarding the autonomous status of the RIMS as also the fact that the post of Tutor is not to be held by one or the other on permanent basis although the post of Tutor is permanent and further the post of Tutor is not under the teaching cadre rather it is to be vacated by one or the other so as to make space for other PG course students.

23. We have decided the said issue in another litigation being L.P.A. No. 313 of 2021 and analogous cases. The purpose of referring this judgment is that the basis of claiming the post by way of promotion is that both the appellant and the respondent no.4 have been absorbed as Tutor and subsequently have been promoted to the post of Assistant Professor.
24. Question is that the post of Assistant Professor, Associate Professor and/or Professor are to be filled up through direct recruitment then where is the question to grant promotion to the post of Assistant Professor that too by making absorption to the post of Tutor.

However, this is not the issue herein regarding the propriety of their absorption to the post of Tutor or the promotion to the post of Assistant Professor but the fact since has been agitated in course of argument so it is our bounded duty to make reference of the fact.

The fact remains that the appellant and the respondent no.4 have entered into the service of the Assistant Professor and remained there and became eligible to hold the post of Associate Professor.

25. At that stage, advertisement was issued inviting applications to fill up the post of Tutor, Assistant Professor, Associate Professor and Professor. Several conditions were there and one of the conditions was that the government servant will have to get no-objection certificate for consideration of their candidature.

The appellant and the respondent no.4 had applied and have been declared to be successful and accordingly, they have been appointed as Associate professor. They have also joined to the said post. The appointment letters were issued wherein a clause has been inserted that the service will be for probation period of two years and the same will be temporary subject to satisfactory service then their services will be absorbed under the regular establishment.

Another condition is condition no.11 that if one or the other successful candidate who have been declared successful and willing to accept the offer of appointment and if working in any of the service will have to get relieved or have to resign from the service then only the

joining in the RIMS will be accepted. For ready reference, condition no.2 and 11 are being referred as under:

“2. नियुक्ति स्थायी पद पर किन्तु दो वर्षों तक प्रोवेशन (Probation) काल में अस्थायी रहेगी। उक्त अवधि में उनकी सेवा संतोषजनक पाये जाने पर ही उन्हें नियमित सेवा में समायोजन किया जा सकेगा।

11. पूर्व से किसी भी सेवा में कार्यरत चिकित्सकों को उनके पूर्व पद से विरमित होने/पदत्याग की स्वीकृति होने पर ही इस संस्थान में योगदान की स्वीकृति दी जा सकेगी।”

26. The appellant's main argument is the condition no.2 based upon the same it has been argued that the appointment is on probation for two years which will be temporary, therefore, so long as the appellant is absorbed in the regular service, the 'lien' which was there of the post of Medical Officer will remain there. Learned counsel in order to substantiate his argument has relied upon the judgment rendered by the Hon'ble Apex Court in *L.R. Patil vs. Gulbarga University, Gulbarga* (supra).

The Hon'ble Apex Court in the aforesaid case has been pleased to hold that the 'lien' will be there so long as the fresh appointment is not made to a permanent.

27. We are not in dispute regarding the said settled position but on scrutiny of the fact of the said case, we have found that there, the appellant of the said case was appointed for a period of two years and during the pendency of the litigation, he was continued on temporary basis despite completion of two years.

28. Herein, the appellant from the date of appointment, i.e., from 29.10.2012, is regularly discharging her duties and as such, now it is not available for the appellant to take the ground that her services will be construed to be on probation. The question herein will be if the contention of the appellant will be accepted of the service being construed to be temporary then question will be that how the appellant and the respondent no.4 were granted promotion to the post of Professor.

29. The law is well settled that the promotion to the higher post is only to be granted to the holder of the substantive post. The granting of promotion by the office order issued by the Rajendra Institute of Medical Sciences

coupled with the continuation of service, the admitted fact is that the service of the appellant and the respondent no.4 will be said to be under the regular establishment of the RIMS.

30. The issue although herein is not of either holding the post of Associate Professor or the Professor rather the issue of seniority is the issue of the *lis*.

The appellant claims her seniority to be retained by her which she was holding by virtue of holding the post of Medical Officer where she was declared to be senior with that of the respondent no.4.

It is the contention of the appellant that since the 'lien' lies with the State Government on the post of Medical Officer, hence, it was not the jurisdiction of the RIMS to change the seniority position of the appellant by ranking her below the respondent no.4.

The seniority list although has been prepared by the RIMS the moment the appellant and the respondent no.4 had been appointed as Associate Professor.

The basis of preparing the seniority list is the merit position of the appellant and the respondent no.4. The appellant admittedly has got lesser marks in comparison to that of the respondent no.4. in the selection process and the competent authority has taken decision to place the respondent no.4 above than the appellant in the seniority position.

The question of keeping the 'lien' with the State Government is being taken for the reason that the State Government is only the employer and hence, the RIMS has exceeded its jurisdiction in preparing the list showing the appellant below the respondent no.4.

31. But, we are not in agreement with such submission for the reason that the moment the appellant has joined the services as Associate Professor on substantive capacity against the permanent post and subsequent thereto, she has been promoted to the post of Professor, the same corroborates that the appellant has joined her services on the substantive post as Associate Professor on permanent post. As such, the moment the appellant and the

respondent no.4 joined the post by virtue of recruitment on the basis of recruitment process conducted in pursuance of advertisement, the 'lien' which is being claimed to be retained by the State Government will not be there due to the settled position of law that the moment a public servant is being appointed on permanent capacity to another post, the 'lien' retained in the previous post will automatically ceases to exist.

32. Exactly herein the Rule 68 of the Service Code states the same wherein it has been provided that the 'lien' will cease to exist for the earlier post the moment a government servant joins his service in substantive capacity on the permanent post.
33. The only ground has been taken that the appointment of the appellant as Associate Professor cannot be construed to be a permanent in nature based upon the condition no.2 of the appointment letter.

But, the same cannot be accepted at least for the reason that the appellant is still continuing and not only that she has also been promoted to the post of Professor and unless the service of a government servant is permanent, there cannot be any promotion to the higher post. Hence, the fact that the service of the appellant is not permanent and the 'lien' lies with the State Government, according to our considered view, is having no substance.

34. Learned counsel for the appellant has tried to impress upon the Court that the basis of seniority is the Schedule IV (5) of the Regulation, 2014 which has come subsequent to the finalization of the seniority of the appellant and the respondent no.4.
35. It is admitted fact that the Regulation, 2014 was notified on 08.09.2014 wherein the provision has been made for determination of seniority as has been quoted and referred above.

It is also settled that the Act / Rule / Regulation cannot be given retrospective effect unless stipulated in the Statute.

36. We have considered the stipulation made therein, more particularly 5(i) wherein it has been provided, at the risk of repetition the same is being

repeated herein, that “The seniority of the employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the Grade in question, those selected on an earlier occasion being ranked senior as a block to those selected later.; the preparation of seniority list of persons selected in the same selection committee would involve the steps.”

37. Various steps have been given but we are concerned with the parameter fixed for seniority which is based upon the merit position of the appellant and the respondent no.4 and instructions as has been provided in the regulation, the seniority is to be determined by the order of merit in which they were selected for appointment.
38. The word ‘were’ is having bearing which denotes that the seniority is to be prepared even of such appointees who have been appointed prior to coming into effect of the Regulation, 2014.

The purpose of insertion of word ‘were’ is that prior to Regulation, 2014 where there was no Rule in the RIMS to decide the seniority and the basic object of insertion of word ‘were’ was that all the issues regarding seniority is to be set at rest even the seniority of the appointees made prior to coming into effect of the Regulation, 2014.

Therefore, the contention which has been made regarding retrospective application of the Regulation, 2014 is not available herein to be raised.

39. This Court, after having discussed the factual aspect with the legal position has gone across the order passed by the learned Single Judge wherein the consideration has been given regarding the rule of seniority as available under Regulation, 2014, i.e., Schedule IV(5) and on its consideration, the learned Single Judge has refused to interfere with the decision of fixation of seniority since the appellant in the process of selection has obtained 59.74 marks while the respondent no.4 has obtained 67.4 marks.
40. The learned Single Judge has also considered that based upon the marks secured by both the appellant and the respondent no.4, merit list was

prepared in which the respondent no.4 was placed at serial no.1 while the appellant/writ petitioner has been placed at serial no.2.

41. The learned Single Judge, by taking into consideration the principle for deciding the seniority as available under Schedule IV(5) wherein the seniority is to be decided by the order of merit position in which they were selected for appointment, came to the conclusion that the seniority was fixed of the appellant keeping her below the respondent no.4, the same has not been faulted with.
42. This Court, on the basis of the discussion made hereinabove, is of the view that while reaching to such conclusion, the learned Single Judge has committed no error.
43. Accordingly, the instant appeal fails and stands dismissed.
44. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Navneet Kumar, J.)

(Navneet Kumar, J.)

High Court of Jharkhand, Ranchi

Dated: 11/10/2023

Saurabh/-

N.A.F.R.