

Dr Usharani N vs State of Karnataka

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Court : Karnataka Dharwad

Decided On : Feb-04-2026

Judge : M.Nagaprasanna

Appeal No. : WP/101766/2024

Appellant : Dr Usharani N

Respondent : State of Karnataka

Advocate for Def. : Sri. J.M. Anil Kumar

Advocate for Pet/Ap. : Sri. P.A. Kulkarni

Judgement :

Reserved on : 03.12.2025

Pronounced on : 04.02.2026

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE 04TH DAY OF FEBRUARY, 2026 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.101766 OF 2024 (S - PRO) BETWEEN: DR.USHARANI N., AGED ABOUT 46 YEARS W/O DR.C.RAGHUVeer OCCN.: PROFESSOR DEPARTMENT OF OBSTETRICS AND GYNAECOLOGY (OBG)

VIJAYANAGAR INSTITUTE OF MEDICAL SCIENCES (VIMS) BALLARI
- 583 104. ... PETITIONER (BY SRI P.A.KULKARNI, SR.ADVOCATE
A/W SRI P.G.CHIKKANARAGUND, ADVOCATE) AND:

1. STATE OF KARNATAKA BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF MEDICAL EDUCATION (HEALTH AND FAMILY
WELFARE) VIKAS SOUDHA BENGALURU - 560 001.

2. THE DIRECTOR VIJAYANAGAR INSTITUTE OF MEDICAL
SCIENCES (VIMS) BALLARI - 583 104.

3. CHIEF ADMINISTRATIVE OFFICER VIJAYANAGAR INSTITUTE OF
MEDICAL SCIENCES (VIMS) BALLARI - 583 104.

4. DR. SHAILA CHIKKAGOWDRA OCCN : PROFESSOR
DEPARTMENT OF OBSTETRICS AND GYNAECOLOGY (OBG)
VIJAYANAGAR INSTITUTE OF MEDICAL SCIENCES (VIMS) BALLARI
- 583 104.

... RESPONDENTS (BY SMT.GIRIJA S.HIREMATH, HCGP FOR R1;
SRI J.M.ANILKUMAR, ADVOCATE FOR R2 AND R3; SRI A.S.PATIL,
A/W SRI SABEEL AHMED, ADVOCATE FOR R4) THIS WRIT
PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA PRAYING TO - A.DECLARE AND DIRECT THE
RESPONDENTS HEREIN BY ISSUE OF A WRIT IN THE NATURE OF
MANDAMUS OR ANY OTHER WRIT ORDER OR DIRECTION;

(1) TO EXTEND THE TIME BOUND PROMOTION PROFESSOR
SCALE

IN TERMS OF GO DATED 16.12.2011 READ WITH MODIFICATION GO DATED
12.02.2013 BOTH AVAILABLE VIDE ANNEXURE-L TO THIS PETITION w.e.f
06.08.2022 WITH ALL CONSEQUENTIAL BENEFITS INCLUDING THE
MONETARY BENEFITS; (II) TO EXTEND THE BENEFIT OF REGULAR
PROMOTION TO THE GRADE OF

PROFESSOR W.E.F 16.10.2023 ON PAR WITH HER COMPARES IN OTHER DEPARTMENTS AS EVIDENCED BY R-2's OM DATED 11.12.2023 ANNEXURE-M WITH ALL CONSEQUENTIAL BENEFITS INCLUDING THE MONETARY BENEFITS; III) TO REMOVE THE REMARKS APPEARING IN THE SENIORITY LIST DATED 10.02.2023 OF THE ASSOCIATE PROFESSOR GRADE IN OBG DEPARTMENT OF R-2 INSTITUTE AND TO SETTLE THE SENIORITY POSITION OF PETITIONER AND R-4 ONCE AND FOR ALL IN THE GRADES OF ASSOCIATE PROFESSOR AND PROFESSOR ON THE BASIS OF THE RELIEF (I) AND (II) ABOVE; B. DIRECT THE RESPONDENTS 1 TO 3 HEREIN FOR COMPLIANCE OF THE ABOVE DIRECTIONS WITHIN A STIPULATED PERIOD OF THREE MONTHS OR WITHIN SUCH PERIOD THAT MAY BE FIXED BY THIS HONBLE COURT IN THE CIRCUMSTANCES OF THE CASE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.12.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court seeking the following prayers: A. Declare and direct the Respondents herein by issue of a writ in the nature of mandamus or any other writ order or direction;

(i) To extend the Time Bound Promotion Professor scale in terms of G.O. dated 16-12-2011 read with modification G.O. dated 12-02-2013 both available vide Ann-L to this petition w.e.f. 06-08-2022 with all consequential benefits including the monetary benefits.

(ii) To extend the benefit of regular promotion to the grade of

Professor w.e.f. 16-10-2023 on par with her compares in other departments as evidenced by R-2s O.M. dated 11-12-2023 Annexure-M with all consequential benefits including the monetary benefits.

(iii) To remove the remarks appearing in the seniority list

dated 10-02-2023 of the Associate Professor grade in OBG Department of R-2 Institute and to settle the seniority position of petitioner and R-4 once and for all in the grades of Associate Professor and Professor on the basis of the relief (i) & (ii) above. B. Direct the respondents 1 to 3 herein for compliance of the above directions within a stipulated period of three months or within such period that may be fixed by this Honble Court in the circumstances of the case. C. Pass any other order or direction that this Honble Court may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.

2. Heard Sri P.A. Kulkarni, learned senior counsel appearing

for the petitioner, Smt. Girija S. Hiremath, learned High Court Government Pleader appearing for respondent No.1, Sri J.M. Anil Kumar, learned counsel appearing for respondents 2 and 3 and Sri A.S. Patil, learned counsel appearing for respondent No.4.

3. Facts, in brief, germane, are as follows: -

3.1. The petitioner was appointed as Assistant Professor in Alluri Sitarama Raju Academy of Medical Sciences, Eluru, Andhra Pradesh, an institution regulated by the Medical Council of India. That appointment happens on 26-06-2006. Vijayanagar Institute of Medical Sciences (the Institute for short), an autonomous institution issues a Notification for direct recruitment of eligible persons to various cadres including the cadre of Assistant Professor. The petitioner applies and is selected, pursuant to which an appointment of the petitioner is made on 29-12-2007 as Assistant Professor in OBG Department with the then pay scale of 12000-420-18300. The petitioner was permitted time upto 11-01-2008 to join duties pursuant to the order of appointment dated 29-12-2007. The petitioner then represents to the respondents requesting two more months time to join duties. The request of the petitioner was accepted and on 04-01-2008 two more months time was granted. The petitioner then gets herself relieved from Alluri Sitarama Raju Academy of Medical Sciences, Andhra Pradesh on 31-01-2008 and joins duties at the Institute on 01-02-2008. Owing to the service rendered by the petitioner as Assistant Professor both at the erstwhile institution and the present Institute, the petitioner is promoted as Associate Professor on 06-08-2012. 3.2. The promotion

of the petitioner to the post of Associate Professor comes to be challenged before this Court by the 4th respondent in Writ Petition No.76753 of 2013. During the subsistence of the said petition, the 4th respondent also gets promoted as Associate Professor, but with effect from 15-07-2013 on completion of qualifying experience of teaching of five years. On 19-04-2018 the petition filed by the 4th respondent comes to be disposed of, with a direction to the Institute to redo and publish the seniority list in the cadres of Assistant Professor and Associate Professor in the Department of OBG, particularly with reference to the inter se seniority of the petitioner and the 4th respondent. This was not done. Therefore, the 4th respondent invokes the contempt jurisdiction of this Court in C.C.C.No.100088 of 2019. The Institute then files a counter affidavit that the provisional seniority list in the cadre of Assistant and Associate Professor has been issued taking into consideration the order passed by the learned single Judge dated 19-04-2018. Liberty was reserved to challenge, if the 4th respondent was so aggrieved. 3.3. After the said drawal of the seniority list, the Institute initiated promotion from the posts of Assistant Professor to Associate Professor and from Associate Professor to Professor. On 01-07-2022, the petitioner is said to have submitted a representation that her placement in the grade of Professor in terms of Government order with regard to time bound advancement issued on 16-12-2011 should be from the date on which she completes 10 years service in the grade of Associate Professor. This was not considered and the petitioner had to approach this Court in Writ Petition No.105744 of 2022 seeking a direction to the Institute for consideration of her claim for promotion to the cadre of Professor. This writ petition comes to be disposed of directing consideration of her case, which again resulted in a contempt petition filed by the petitioner in C.C.C.No.100375 of 2023. The Institute after issuance of notice, filed a memo of compliance before the Contempt Court that the petitioner is promoted to the grade of Professor in terms of the order dated 24-01-2024. Contempt proceedings are dropped on the score of substantial compliance with the order, but reserving liberty to challenge the said order if the petitioner is aggrieved. The petitioner claiming to be aggrieved by the order impugned is before the Court yet again, claiming seniority in the cadre of Professor qua the 4th respondent.

4. The learned senior counsel Sri P.A. Kulkarni appearing for

the petitioner would vehemently contend that the petitioner is entitled to be promoted to the cadre of Professor 10 years from the date on which she was promoted to the cadre of Associate Professor in terms of Government order dated 16-12-2011. The 4th respondent could not have been posted as Associate Professor over and above the claim of the petitioner. To that effect, the learned counsel submits that the error in the seniority must be rectified and the petitioner must be shown as senior.

5. Per contra, the learned counsel Sri J.M. Anil Kumar

appearing for respondents 2 and 3 submits that aforementioned Government order is not applicable to the case of the petitioner. The petitioner is granted seniority in terms of law and there is neither illegality nor irregularity in the grant of seniority, as the petitioner joins the Institute on 01-02-2008 when the 4th respondent was already in the Institute. Therefore, the 4th respondent is undoubtedly senior to the petitioner. He would seek dismissal of the petition.

6. The learned counsel Sri A.S.Patil, appearing for the 4th respondent would toe the lines of the learned counsel appearing for the Institute in seeking dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.,

8. The afore-narrated facts are all a matter of record. The

petitioner gets appointed on 29-12-2007 pursuant to a process of direct recruitment. The order of appointment is as follows: A.i:(1);374:07-08 : 29-12-07 :- . GR: 1) F PbjAi v A.i;A(2);374;07-08 :02-12-07 2) Pgz v A:CPP;381/JA.JA.:2007 :19.12.07. %& : 28.12.07)&(. - - - +(, / 0)2 034 , 7 8

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03 Q F& JS O:T. 2 (U? CU @ (OBG Dept.) , 2 9 F A 1 Dr. Usha Rani.N S.T . C/o. Venkateshwarulu.N H.No.1030/D,Rly Qrts, Vinobanagar Gadag Road, Hubli. Q W XY2 . 1) 2F A Z,F ([>&) S , <= Q S(I= IA &]/ DF^4>. 2) 03 >I F & F& 0, QW XY .

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The petitioner then seeks permission of two months to join duties, gets relieved from the institution at Andhra Pradesh in terms of the following relieving order and then reports for duty at the Institute on 01-02-2008: Alluri Sitarama Raju Academy of Medical Sciences Eluru-534 004 OFFICE OF THE DEAN E/261/2008 31ST January 2008

RELIEVING ORDER

Sub: Dr. N.Usha Rani, Assistant Professor, Obst.& Gynae Department, E.No.849 relieving from services - Reg. Ref: Resignation letter dated 05-01-2008 of Dr. N.Usha Rani. -- With reference to the above, Dr. N.Usha Rani, Assistant Professor, Department of Obst. & Gynae, who has joined the institution on 26-06-2006, has worked from 26-06-2006 to 31-01-2008.

He/she has been relieved of his/her duties and from the institution w.e.f. 31-01-2008 A.N. Sd/- Prof. M.Rama Krishna Dean To Dr. N.Usha Rani. These facts are not in dispute. By the time the petitioner joined the Institute as Assistant Professor,

the 4th respondent had already joined the 2nd respondent/Institute as Assistant Professor on 03-07-2007. The petitioner then gets promoted as Associate Professor with effect from 06-08-2012. This promotion of the petitioner was challenged by the 4th, respondent in Writ Petition No.76753 of 2013. In the said writ petition, respondent No.4 sought the following prayer: WHEREFORE, it is prayed that this Honble Court be pleased to issue -

i) Writ of certiorari or any other order or direction quashing the impugned Official Memorandum/Order dated 06-08- 2012 passed by the Respondent No.2 in No.VIMS/Est.II/179/2012-13 insofar as promoting the Respondent No.4 to the post of Associate Professor of OBG Department as per Annexure-Q.

ii) Writ of mandamus or any other order or direction, directing the respondents to give promotion to the petitioner to the post of Associate Professor in the Department of OBG with effect from 04-07-2012 with all consequential benefits and to extend AICTE pay scale to the petitioner as per the Order dated 16-12-2011 passed by the Respondent No.1 by considering the Representations dated 06-08-2012 and 19-02-2013 submitted by the petitioner as per Annexures H & W respectively.

iii) Writ of mandamus or any other order or direction, directing the Respondents No.2 and 3 to publish the seniority list of Assistant Professors and Associate Professors of OBG Department and to assign the proper seniority ranking to the petitioner and Respondent No.4 by taking into consideration of the date of Appointment

Order and joining of the duty.

iv) Issue any other appropriate writ or order or direction

which deems fit to grant by this Honble Court in the facts

and circumstances of the case. The claim of the 4th respondent was that she was already working as Assistant Professor by the time the petitioner joined the

Institute, as the 4th respondent was appointed on 03-07-2007 by a walk-in interview/direct recruitment notification of 28-06-2007. The learned single by his order dated 19-04-2018 disposes of the

said petition. The rights of the parties are determined in the order

passed by the learned single Judge. It is, therefore, necessary to paraphrase the said order to the subject order. The learned Judge holds as follows: . . .

20. Some of the undisputed facts are the date of appointment and date of reporting for duty by the petitioner and the 4th respondent respectively.

21. In the course of hearing the counsel for the Institute has placed on record the copy of the proceedings of the 24th Finance Committee Meeting held on 12.05.2011 at 11:00 am

held in the chambers of the Principal Secretary to Govt. Medical

Education, Vidhana Soudha, Bengaluru and one of the subjects particularly subject No.4 reads as under:- SUBJECT-4: PROCEEDINGS OF THE REVIEW COMMITTEE MEETING HELD ON 18.4.2011 (Book let enclosed) RESOLUTION: The Finance Committee approved the proceedings of the Review Committee except of Super specialty departments where in both the Associate Professors of Plastic Surgery & Paediatric Surgery have not completed requisite teaching experience as per MCI norms as Associate Professor for promotion as Professors.

22. From a plain reading of the above, it is apparent that

the Finance Committee has approved the decision of the review committee to fill up the vacant posts of Associate Professors with the exception of candidates proposed for the said post in the Dept. of Plastic Surgery and Paediatric Surgery. Thereafter, the said resolution of the finance committee has been placed before the Governing Council and the Governing Council in its 35th Meeting held on 24.05.2012 in the chambers of Minster for Medical Education, Vidhana Soudha, Bengaluru has considered the same and approved the proposal. The same has been listed as subject No.5 and the Governing Council has by its resolution dated

24.05.2012 approved the resolution in its entirety.

23. In the light of these two documents the contention

that the promotion accorded to the 4th respondent is contrary to the regulations and byelaws of the institute requires to be rejected and is accordingly rejected. The further contention that the resolution of finance committee has no relevance is a misconception and fallacious. The simple reason being that approval of posts and budgets is in the domain of the finance committee and financial propriety would require the concurrence of the finance committee. Hence, no illegality arises on account of the finance committee reviewing the proposal of the review committee to accord promotions. As required under the regulations the byelaws the proposal of the review committee has been approved by the Governing Council, albeit in a slightly different manner than as canvassed by the petitioner. The same is a mere procedural aspect and cannot be termed as a material irregularity vitiating the very promotion itself.

24. Even otherwise, the writ petition with regard to the

quashing of the promotion has to be rejected as the petitioner was admittedly not qualified to be appointed as an Associate Professor as it is her admitted case that she had not accumulated 5 years teaching experience as an Assistant Professor.

25. It is contended by the learned counsel for Institute

that the writ petition does not survive in the light of the fact that the petitioner has also been promoted on 15.07.2013. In view of the said assertion and the finding rendered above with regard to the legality and validity of the process adopted to accord promotion to the 4th respondent, the prayer sought for at (i) & (ii) do not survive. The only other relief that remains consideration by this court is with regard to publication of seniority list with particular reference to the petitioner and the 4th respondent by calculating seniority from the date of appointment order and joining of duty only.

26. It is not in dispute that as on the date of filing

of the writ petition both petitioner and the 4th respondent were duly qualified to be promoted to the post of Associate Professor. This court has perused the rules and regulations and byelaws of the Institute and chapter-I of Annexure-2 of the Pay Recruitment, Conditions of Services and Misc. Provisions Rules, 1995 reads as follows:-

1. SENIORITY: The Director shall prepare and publish a Seniority list of the staff of the Institute both intra and inter-departmental in accordance with the provisions of the Seniority rules of the State Government or such rules to be framed by the Governing Council from time to time. (underlining by this court).

27. From a reading of the above, it is apparent that

the institute which is of a recent origin (1995) has under the rules vested certain amount of discretionary powers with the Governing Council to frame rules with regard to fixation of seniority and in the absence thereof, place reliance on the seniority rules as framed by the State Govt. This is complimented by the provisions of regulation 21 and if the above provisions are read in conjunction with regulations 20 and 16 it appears that certain latitude is vested in the competent authority to draw up conditions of service in the matter of appointment. The only qualification to the said latitude being that it ought to be in consonance with the rules framed by the Governing Council and in its absence, rules framed by the State Govt.

28. It is not in doubt that the 4th respondent had

put in only 3 years 2 months service as an Assistant Professor in the institute as on the date of consideration of her candidature for promotion. That apart, she had also put in 1 year 7 months service as an Associate Professor in a private medical college and it is the adding of this 1 year 7 months period to the service rendered in the institute which is seriously objected to by the petitioner. It is not in dispute that the minimum qualification stipulated by the Medical Council of India is that a candidate who is to be appointed as a Reader/Associate Professor is required to render 5 years service as an Asst. Professor in a recognised medical college. This stipulation is as per the MCI (Minimum Qualifications for Teachers in Medication

Institution Regulations) 1998 in the table-1 appended to the regulation is also stipulated in the recommendations of the Medical Council of India. At this juncture, it is relevant to state that the parties have placed before the court truncated copies of the rules and regulations.

29. In the light of the above discussions, the only

fact in dispute is whether the service rendered by the 4th respondent in a private medical college would enure to the benefit of the 4th respondent for the purpose of calculating the length of service for according promotion to the next higher post? The said issue requires to be addressed by the respondent Nos. 2 and 3 as the determination of the seniority of the petitioner and the 4th respondent cannot be done in isolation and would necessarily impact the other candidates also. Further, the fact remains that the guidelines and parameters adopted or followed by the respondent Nos.2 and 3 while according promotions is also not laid bare before this court either by the petitioner or the contesting respondents. Hence, this court is of the considered opinion that the writ petition could be disposed off by rejecting the prayers at serial (i) and (ii) and with a further direction to the respondent Nos.2 and 3 to redo the seniority list as indicated herein below. Accordingly, the prayer at serial (i) is rejected and the second prayer with regard to mandamus to the respondents to accord promotion to the petitioner is rendered infructuous.

In view of the above discussion, the writ petition is disposed off by directing the respondents 2 & 3 to re-do and publish the seniority list of Assistant Professors & Associate Professors of the Department of OBG more particularly with reference to the inter-se seniority of the petitioner and the 4th respondent and while doing so the 2nd respondent shall determine the following points:-

1. Whether the 3rd respondent is entitled to rely on the Medical Council of India (Minimum Qualifications for Teachers in Medical Institutions) Regulations 1998, in the matter of according promotions?

2. Whether the VIMS, Bellary, Rules and Regulations, 1995 and its Bye-Laws permit incorporation of the provisions of the MCI (Minimum Qualifications for Teachers in Medical Institutions) Regulations 1998?

3. Whether the MCI regulations or the State Govt. rules provide for taking into consideration the services rendered outside the institute for the purpose of calculating the seniority.

4. Whether the similar restriction clauses as contained

in Annexure-X are imposed while appointing the 4th respondent. (Emphasis Supplied) The learned single Judge holds that the only fact in dispute was whether the service rendered by the present petitioner in a private Medical College would enure to her benefit for the purpose of calculating the length of service for according promotion to the next higher post. Directions were issued by the learned single Judge for drawing up of the inter se seniority as well. The directions so issued were not complied with.

9. The 4th respondent invokes the contempt jurisdiction and

during the subsistence of the contempt, the Institute publishes a provisional seniority list of Assistant and Associate Professors of the OBG Department. The contempt petition CCC 100088 of 2019 comes to be closed by the following order:

. . .

5. It is apparent that the respondent-accused has notified

the provisional and final seniority lists subsequent to the order

passed by the writ Court said to be in compliance with the directions issued in the writ petition. In view of the seniority lists published as aforesaid, keeping in mind the points enumerated by the writ Court, proceeding with the contempt petition is not warranted. If the complainant is aggrieved by the seniority list now published, he is at liberty to assail the same, if so advised.

6. Accordingly, contempt proceedings are dropped with

liberty to the complainant to assail the provisional seniority list dated 11.11.2019 and final list dated 29.11.2019 published by the respondent-accused if so advised.

Liberty was reserved in the parties to assail the provisional seniority list and the final seniority list notified on 29-11-2019. Challenge was not raised immediately. A notification comes to be issued on 09-02-2022 drawing the seniority list of faculty members working as Associate Professors in the Institute. In the Department of OBG in which the petitioner and the 4th respondent were working the seniority list as on 01-01-2022 was as follows:

Vijayanagar Institute of Medical Sciences, Bellary Final Seniority of Associate Professors as on 1-01-2022 OBG

30	1	Dr . Usha Rani N	16-03-1977	01.02.2008
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A circular then comes to be issued by the State Government on 26-07-2022 for granting time bound promotion to teaching and non-teaching staff who were eligible to be considered for promotion to higher cadre. The circular reads as follows: D2I : `E 03<= 7=Qo / w 7=Qo @<= { / 2 / F& @ F `E 03 >I /w. (/ 2 0 I / <= &.

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/- Q F `E 9:& The petitioner claims that she should be promoted as Professor over and above the 4th respondent on the score that she has completed 10 years as on 05-08-2022. This representation goes unheeded. The petitioner then approaches this Court again in Writ Petition 105744 of 2022. The prayer sought in the said petition is as follows:

This Writ Petition is filed under Articles 226 and 227 of the constitution of India, praying to Issue a writ of mandamus or any other writ order or direction directing the respondents 1 to 3 herein to forthwith finalize the

petitioners promotion claim to the grade of Professor in OBG Department in respondent No.2 Institute and to issue necessary orders thereon.

It comes to be disposed of by the following order: . . .

3. The petitioner, who was appointed as Assistant

Professor in the second respondent - Institute was subsequently promoted to the post of Associate Professor. It is the case of the petitioner that she has been working as Associate Professor with effect from 06.08.2012. The second respondent - Institute has issued a Circular dated 26.07.2022, vide Annexure-J calling for applications from the eligible candidates to fill up the post of Professor that had fallen vacant in various departments. In response to the same, the petitioner appears to have filed her application on 01.07.2022. On the ground that the said

application is not yet considered, the petitioner is before this Court.

4. Learned counsel appearing for the petitioner submits

that the claim of the petitioner is pending consideration before the competent authority for promotion to the post of Professor from 01.07.2022 onwards and therefore, she has approached this Court seeking for appropriate direction.

5. Per contra, learned counsel appearing for the

respondent - Institute submits that the process of considering the petitioner's application along with similar applications filed by respondent No.4 and other eligible candidates, are still under process and the committee constituted for considering the said applications has met on several occasions and has now sought for clarification from the second respondent - Institute and awaiting the said clarification, the decision is not yet taken. He submits that there is no delay on the part of the committee in considering the applications and the applications are being considered.

6. Be that as it may be, without expressing any opinion

on the merits of the case, since the applications of the petitioner as well as the other candidates including of the fourth respondent are pending consideration for promotion to the post of Professor since the month of July-2022 onwards, it is needless to state that the committee constituted for the purpose of considering the said applications will pass appropriate orders as expeditiously as possible in accordance with law. Accordingly, the writ petition is disposed off.

The coordinate Bench did not express any opinion on its merits, but the applications of the petitioner as well as other candidates including the 4th respondent, consideration of which was pending, were directed to be considered and appropriate orders were directed to be passed.

10. Then comes the Official Memorandum dated 24-01-2024 granting promotion to the petitioner. The order of promotion reads as follows:

As per the approval obtained in the Proceedings cited under reference (1 to 4) the following Teaching staff working in Vijayanagar institute of Medical Sciences, Ballari has been promoted on 08-01-2024 to the higher post as shown against their name and until further orders. SL. Name of the Teaching Present Promotional posts NO. staff & Department Designation, & Pay scale Department & pay scale 1 Dr. Usharani N Associate Professor of OBG Department of OBG Professor in 37400- OBG. 37400- 67000+AGP10,000 6700+ AGP (7th pay 1,44,200 9000 (7th pay to 2,19,200) 1,31,400 to 2,17,100)

Note: 1) Concerned should get relieved from the present post and report to the higher post within 15 days. Failing which, their promotions will be withdrawn without further notice. 2) Concerned shall affix the self-attested latest passports size photograph of an individual in case of unmarried and self-attested latest passport size photographs of family members in case of married.

The promotion is granted with effect from 08-01-2024. This is now what is under challenge. The claim of the petitioner is on the strength of a Government order dated 16-12-2011. The said Government order insofar as it is germane reads as follows: F A : 4 (2010 > : 16.12.2011

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2. 12000- 15600-39100 8000

3. 16400- 37400-67000 9000

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<= ?L D 0 O 01.04.2011& L2 . iii) ,F , S2: ,F , S2 T pay band 2 AGP <= ^ Y , C 3 f Lf iv) D O >S D 2 & D 0&D I= ? D O ? F& & Q 2 <= 01.04.2011 & ,f. v) XY D & (X , C +<= 01.04.2011 & , C 51 Y 2 01.07.2011 & C 58 Y XY D F&D2?. vi) Q 2 E ? ? F& &)~D Q 2 E 60 F f ?f vii) & W : & (X , C +/- 01.04.2011 & 2&IT / NF IA X+ A : 16 n d q 2011 05.03.2011 2 A : 519 2/2011 07.12.2011<= QS H? SIL . F ? C0 2 &<= /- (. .@) F FjF-2 ? 2 I IA (, 7 j)

The Government order would indicate that persons who are eligible to be promoted to the next higher cadre and if the vacancy is not subsisting, they must

be granted time bound promotion till the vacancy would arise. The petitioner claims that she has to be granted promotion from a date anterior to the actual date of promotion i.e., with effect from 16-10-2023. The petitioners representation is yet to be considered. Therefore, a mandamus is sought to consider the said representation for grant of seniority or removing the remark in the seniority list dated 10-02-2023 of Associate Professor and settle the position of seniority between the petitioner and respondent No.4.

11. It is understandable as to how the Institute has not yet

settled the seniority between the two and even now a remark is available in the seniority list that the seniority in the cadre of Associate Professor between the two is pending consideration. Therefore, it becomes necessary to consider the case of the petitioner, strictly in consonance with the Government Orders dated 16-12-2011 as modified on 12-02-2013, determine the seniority, draw up an appropriate seniority list and regulate the promotion and consequential seniority in the cadre of Professor, taking note of the judgment rendered by the learned single Judge of this Court, which has admittedly become final.

12. For the aforesaid reasons, the following: -

ORDER

(i) Writ Petition is partly allowed.

(ii) Mandamus issues to respondent Nos.2 & 3/Institute

to consider the claim of the petitioner in consonance with two Government orders dated 16-12-2011 as modified on 12-02-2013 and consider the date of promotion with effect from 06-08-2022, as sought in the representations and grant all consequential benefits that would flow from such consideration.

(iii) While considering the claim of the petitioner, the observations of the learned single Judge in the

judgment quoted supra shall be borne in mind.

(iv) The Institute shall endeavour to settle the dispute and not drive the petitioner or the fourth respondent back to the doors of this Court with the same cause of action.

(v) The aforesaid action shall be complied with within four months from the date of receipt of a copy of this

order.

SD/- (M.NAGAPRASANNA) JUDGE bkp CT:MJ

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