
(2014) 09 AHC CK 0298
In the Allahabad High Court
Case No : Writ-A No. 63313 of 2013

Arun Kumar Dwivedi

APPELLANT

Vs

Union Of India and 6 Ors.

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 36

Citation : (2014) 9 ADJ 340 : (2014) 33 ESC 2269 : (2014) 4 UPLBEC 3374

Hon'ble Judges : Sheo Kumar Singh, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : S.S. Mishra and Radha Kant Ojha, Advocate for the Appellant; Ajit Kr. Singh, K.C. Kaushik, Pratik Chandra, S.C., Triloki Singh and Udyan Nandan, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dinesh Maheshwari, J.—The petitioner, who offered his candidature for the post of Assistant Professor (Kshara Evam Anushastra Karma) in the Department of Shalya Tantra, Faculty of Ayurveda, Institute of Medical Sciences, Banaras Hindu University ("the University"), has preferred this writ petition on being aggrieved of the communication dated 11.11.2013, whereby the representation for his inclusion in the interview was rejected on the ground that he was not possessing the requisite experience. The petitioner has sought quashing of the impugned order dated 11.11.2013; and a writ of mandamus commanding the respondents to quash the entire selection process and to conduct the same afresh by considering his case in accordance with law.

2. The candidature of the petitioner has been rejected by the respondent University on the ground that he is not fulfilling the requirement of experience and hence, is not carrying the essential qualification for the post in question. The petitioner, on the other hand, asserts that in the first place, as per the Rules and Regulations governing the field, no experience is required for the post of Assistant Professor; and secondly, if at all any experience is required, he is

possessed of the same.

3. Elaborating on the aforesaid two limbs of submissions, the learned counsel for the petitioner has referred to the contents of the Indian Medicine Central Council (Postgraduate Ayurveda Education) Regulations, 2005; the Indian Medicine Central Council (Post-graduate Ayurveda Education) Regulations, 2012; and the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2012. For the sake of convenience and brevity, these Regulations are referred hereinafter as "the PG Regulations of 2005"; "the PG Regulations of 2012"; and "the Minimum Standards Regulations of 2012" respectively. The learned Counsel has contended that under the PG Regulations of 2005, of course, there had been the requirement of three years' professional experience for the post of Lecturer (now Assistant Professor) but then, the PG Regulations of 2012 were issued in supersession of the PG Regulations of 2005; and thereunder, the aforesaid requirement, as contained in clause 16 of the PG Regulations of 2005, was totally done away with. Hence, according to the learned counsel, the requirement of experience does not exist at all in the applicable Regulations. The learned Counsel has also referred to the communication of the Secretary of Central Council of Indian Medicine (CCIM) dated 20.02.2013 (Annexure-1), stating that as per the amendment of the year 2012, the experience and qualifications as amended would be applicable for the said Regulations having been framed under the Central Act i.e., the Indian Medicine Central Council Act, 1970.

4. The learned counsel has referred to clause 13 of the PG Regulations of 2012, as notified on 16.03.2012, to submit that the Post Graduate Education Centre is to satisfy the minimum requirements of the Undergraduate Training and, therefore, the provisions contained in the Minimum Standards Regulations of 2012, as notified on 25.04.2012, shall apply for the purpose of qualification and experience of the teaching staff. Then, with reference to the Minimum Standards Regulations of 2012, the learned counsel has contended that as per clause 12 (ii) (c) thereof, no teaching experience is required for the post of Assistant Professor (Lecturer). Thus, according to the learned counsel, applying the said Minimum Standard Regulations of 2012 for the selection in question, the position obtainable is that for the post of Assistant Professor, no teaching experience is required and hence, the respondent University could not have rejected the candidature of the petitioner on the alleged requirement of experience. In this regard, the learned counsel has also referred to the details of criteria adopted by the University for the purpose of short-listing the candidates for interview and has pointed out that thereunder, no quality score was prescribed for teaching experience for the post of Assistant Professor though such had been the prescription in relation to the posts of Associate Professor and Professor which, according to the learned counsel, clearly demonstrates that experience has not at all been the part of essential qualifications.

5. It has also been submitted with reference to the advertisements issued by the

University in the year 2010 as also the advertisement No. 1 of 2014-15, for engagement of Assistant Professor on contractual basis in Shalya Tantra (Kshar Karma), that no requirement of any experience was at all stated therein. Yet further, several advertisements issued by other institutions have also been referred to submit that such institutions, directly related with Central Council of Indian Medicine ("CCIM"), were also aware that no experience was required for the post of Assistant Professor and hence, no such requirement was stated in their advertisements. Thus, according to the learned counsel, the respondent University has acted wholly illegally in rejecting the petitioner's candidature on the ground of the requirement of experience though such has not been the mandatory requirement.

6. In the second limb of submissions, it has strenuously been argued on behalf of the petitioner that even if any requirement of experience is held applicable, the petitioner indeed fulfils the same and the respondent University has been wholly unjustified in rejecting his candidature. In this regard, it is contended that the experience of teaching gained by the petitioner at Sant Kabir Mahant Vidyanand Ayurveda Evam Pharmacy Mahavidyalaya, Fatuha (Patna) from 09.08.1993 to 20.09.1998 (as per the certificate dated 22.09.2005 Annexure-3), where he worked as Lecturer and Deputy Superintendent of hospital cannot be ignored. Yet further, it is submitted that the petitioner has worked on contractual basis with Rajkiya Ayurveda Mahavidyalaya and Chikitsalaya, Lucknow from 05.05.1998 to 13.01.2004 (as per the certificate dated 03.09.2005) and this had been a specific experience of teaching, as also clinical work. It is further submitted that the petitioner was appointed as Medical Officer (Radiology), Indian Medicine in Sir Sunderlal Hospital established by the respondent University since 28.10.2005 and has been duly promoted as Senior Medical Officer in the same hospital in the year 2009. It is contended that as a part of his duties as Senior Medical Officer, the petitioner has also carried out the work of teaching the students of P.G. and Diploma Courses. It is yet further submitted that the petitioner has completed his Ph.D. while being enrolled in the University itself and in such completion of Ph.D., he has further acquired the experience of research work, which could not have been ignored.

7. Apart from the above, the learned Counsel for the petitioner has questioned the very eligibility of the respondent No. 7, the person who is proposed to be appointed, inter alia, with the submissions that his B.A.M.S. Degree from the respondent University of the year 1999 is not a recognised one because B.A.M.S. Degree of Banaras Hindu University was recognised only in the year 2005; and further that the respondent No. 7 does not even carry the necessary experience.

8. On the strength of the submissions foregoing and with reference to the decision of the Hon'ble Supreme Court in Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others, , it is contended that the decision rejecting the candidature of the petitioner deserves to be set aside with direction to conduct the entire selection process afresh.

9. Before proceeding further in the matter, it may be observed that at the initial stage consideration of this matter on 28.11.2013, this Court took note of the submissions of the petitioner on his claim that he fulfilled the eligibility requirements whereupon, it was suggested on behalf of the respondent University that the Vice Chancellor may be directed to look into the aspects suggested by the petitioner. While accepting the suggestion, this Court directed the Vice Chancellor to consider the claim of the petitioner. It was also directed that until the next date of listing, respondents shall not open the sealed cover (of recommendations).

10. The Vice Chancellor of the respondent University took up the matter for examination pursuant to the order so passed by this Court and, in his order dated 09.12.2013, came to the conclusion against the claim made by the petitioner. The petitioner had moved an application for amendment in this petition while seeking to question the said order dated 09.12.2013 also. This application for amendment has been taken on record, but no formal order allowing the amendment has been passed. Be that as it may, this aspect is more of a formal nature because the order impugned in the writ petition dated 11.11.2013, as also the order passed by the Vice Chancellor dated 09.12.2013, essentially carry the stand of the respondent University in opposition to the claim of the petitioner and shall be examined as such.

11. The contents of the said letter dated 11.11.2013, as issued by the Deputy Registrar Recruitment and Assessment Cell of the respondent University, carrying the reasons for rejection of candidature of the petitioner, could be noticed as under:

"This has reference to your representation dated 09.11.2013 regarding issuing interview letter for the post of Assistant Professor Shalya Tantra (Kshara Avum Anushastra Karma) in the Dept. of Shalya Tantra, Faculty of Ayurveda, IMS, BHU.

In this connection, I am directed to inform you that your representation dated 09.11.2013 has been considered by the Hon"ble Vice-Chancellor and it is found that you have rendered your services as Lecturer-cum-Dy. M.S. in the SKMV Ayurvedic College, Patna in a lower pay scale as well as the aforesaid college is not in the approved list of CCIM. As such, you are not fulfilling the advertised qualification for the post of Assistant Professor Shalya Tantra (Kshara Avum Anushastra Karma) in the Dept. of Shalya Tantra, Faculty of Ayurveda, IMS, BHU.

Your representation dated 09.11.2013 accordingly disposed of."

12. The contents of the order passed by the learned Vice Chancellor on 09.12.2013 could also be noticed as under:

13. Order

14. The Hon"ble High Court, Allahabad has passed an order dated 28.11.2013 in Writ A No. 63313 of 2013 directing the Vice-Chancellor or Banaras Hindu University to personally examine and consider following two claims of the

petitioner Dr. Arun Kumar Dwivedi:-

1. Whether the period spent by the petitioner for doing Ph.D in B.H.U. Can be considered as Three Years Research Experience to qualify the petitioner to fulfill the essential qualification requirement for the post of Assistant Professor (Kshara Evum Anushastra Karma), Department of Shalya Tantra, Faculty of Ayurveda, Institute of Medical Sciences, Banaras Hindu University?

2. Whether the services rendered by the petitioner as Guest Lecturer at Rajkiya Ayurved Mahavidyalaya Evam Chikitsalaya, Lucknow for the period 05.05.1998 to 13.01.2004 qualifies the petitioner to meet the essential qualification requirement of Three Years Teaching Experience?

15. In compliance of the aforesaid directives of the Hon"ble High Court, I Lalji Singh, Vice-Chancellor of Banaras Hindu University, Varanasi, have personally examined the certificates and the above claims of the petitioner and after thorough consideration I conclude as below:

That Banaras Hindu University being a Central University is bound to follow the guidelines, rules and regulations as prescribed under "UGC Regulations (On Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) 2010.", (Copies enclosed at Annexure 1):-

1. With regard to the petitioner Dr. Arun Kumar Dwivedi's claim to consider the period of duration he spent to complete his Ph.D. as Research Experience of Three Years to satisfy the advertised essential requirement of three years research experience as, the clause 3.9.0 of the U.G.C. Regulations, 2010 categorically states as under:-

"The period of time taken by candidates to acquire M.Phil. And/or Ph.D Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions".

The Indian Medicines Central Council (Postgraduate Ayurveda Education) Regulations, 2005 does not speak anything about the period spent to obtain Ph.D. degree should be considered as Research Experience. However, the UG Regulations, 2013 of the CCIM says at paragraph 12, in sub-paragraph (ii) relating to "Experience"" in clause (d) (Copies enclosed as Annexure-2 and 3):

"c. The research experience of regular Ph.D. Holder shall be considered equivalent to one year of teaching experience."

Hence this rule, which has been rigorously and uniformly applied to shortlist candidates in all disciplines across the University, cannot be relaxed for the petitioner Dr. Arun Kumar Dwivedi, Any relaxation in this rule at this point of time may cause serious legal problem for the University, as appointments have been made after listing out hundreds of candidates following this rule of UGC Regulations.

Moreover, I would like to further submit that Ph.D. is a training for doing research acquired under the supervision of a guide for earning a degree which qualifies its holder to carry out independent research and hence kept positions in Universities. It is for this reason none of the University in India considers Ph.D. period as research experience for the purpose of appointing teachers.

Further, for doing Ph.D. a candidate may take minimum period of two years to a maximum period of Six years to submit his/her thesis for evaluation, examination and award. It is obvious that time taken by the candidate to submit his thesis depends on the academic and intellectual capabilities of the candidates and the standard and complexity of the research topic.

In this context it is also a matter of consideration that the petitioner has not done his Ph.D. as a regular Ph.D. scholar but as part-time candidate, and therefore, does not fulfill even the requirement of UG Regulations of CCIM for giving any relaxation on account of the research experience during Ph.D.

Hence, neither the UGC regulation (law) nor the academic logic or convention allows me to consider the Ph.D. experience of the petitioner to meet the criteria of having three years research experience.

2. With regard to petitioners' other experience certificate claiming that he served as "Guest Lecturer in Rajkiya Ayurved Mahavidyalaya Evam Chikitsalaya, Lucknow during the period 05.05.1998 to 13.01.2004, the clause 10.1 (f) of the UGC Regulation, 2010 (Copy enclosed as Annexure-4) says that past services can be counted provided that:

"The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration.....".

Hence the experience for the purpose of counting teaching experience of Dr. Dwivedi as Guest Lecturer could not be considered for issuing him the interview letter. This is also supported by the CCIM "Policy for the Teachers Appointment/Promotion" at point No. 10 and 11 - which state that "10. All colleges should pay the UGC scale to the teaching staff....." and "11. Appointment on contract/deputation or honorary basis against the regular teaching post shall not be accepted by the CCIM" (Copy enclosed as Annexure 5). Hence Dr. Dwivedi's experience of working as Guest Lecturer is also not valid for consideration as Three years teaching experience which is an essential qualification requirement for the said post.

Hence, I do not find any ground to accept both claims and, therefore, both the claims of the petitioner to consider his eligibility for the advertised post of Assistant Professor (Kshara Evam Anushastra Karma), Department of Shalya Tantra, Faculty of Ayurveda, IMS, BHU are not acceptable and are hereby rejected."

16. Questioning the entitlement of the petitioner for any relief in this writ petition, while also refuting his contentions on merits, the learned counsel

appearing for the contesting respondents have put forth two aspects of objections. The first one is on the conduct of the petitioner that there has been specific misrepresentation on his part inasmuch as there are two certificates obtained by him from the institution at Patna, one dated 22.09.1998; and another dated 22.09.2005, carrying the same dispatch number (248/98) and signed by the same person. Moreover, the period mentioned in these certificates i.e., from 09.08.1993 to 20.09.1993 clearly overlaps the period as suggested in the other certificate from Rajkiya Ayurveda Mahavidyalaya, Lucknow i.e., from 05.05.1998 to 13.01.2004. It is thus, submitted that the petitioner cannot claim any relief in the equitable writ jurisdiction, while coming out with such documents, which are per se manipulated and cannot be relied upon. The Full Bench decision of this Court in *Asiatic Engineering Co. Vs. Achhru Ram and Others*, has been referred to. The second ground of objections is that the petitioner has not challenged the terms of the advertisement in this writ petition and hence, the requirement of experience, as stated in the advertisement, cannot be questioned by him.

17. On merits, it is submitted that the Minimum Standards Regulations of 2012 as referred by the petitioner deal with Undergraduate Lecturer only and have no application to the present case. It is also submitted that, if such Regulations are pressed into service, the petitioner would not be eligible at all for being 48 years of age as against the maximum age of 40 years envisaged therein. It is further submitted that clause 13 of PG Regulations of 2012 relates only to the requirement of infrastructure; and has nothing to do with the qualifications. It is also submitted that the entire PG Regulations of 2005 have not been repealed by the PG Regulations of 2012, as notified on 16.03.2012; rather it had been a case where the provisions up to clause 13 were amended, but not beyond. It means, according to the respondents, that the other provisions relating to qualifications continue to hold the field. It is also submitted that, even if there be any ambiguity in the proposition of CCIM as regards amendments of the Regulations, the University is entitled to provide for the experience as a part of essential qualification because standard of education cannot be compromised and the persons like the petitioner cannot be considered eligible with reference to some uncertain engagements at some point of time or some other job which is not of the requisite experience. It is also submitted that reference to any other advertisement is of no avail as no such appointments were made, so far the respondent University is concerned.

18. As regards not providing marks for experience in short-listing, it is submitted that any criteria adopted for short-listing cannot be decisive of the requisite qualifications; and the respondent University is not debarred from examining the requisite qualifications at the relevant stage.

19. As regards the question of the petitioner possessing the requisite experience, it is submitted with reference to the certificate from the institution at Patna that the said one had not been a recognised institution and any experience certificate

from the said institution is of no effect. It is also submitted that grade in which the petitioner allegedly worked with the said institution had been lower than the grade prescribed by the UGC and other Regulatory Bodies for the post in question and for this reason too, even if the petitioner worked with the said college at Fatuha, Patna, the same cannot be taken sufficient for the requisite experience.

20. It is further submitted that as per the applicable UGC Regulations (On Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) 2010, ["the UGC Regulations"], particularly clause 10.1(f) thereof, the alleged working of the petitioner as Guest Lecturer with the Rajkiya Ayurveda Mahavidyalaya and Chikitsalaya, Lucknow would not qualify for the requisite teaching experience.

21. It is yet further submitted that as per the Minimum Standards Regulations of 2012, as amended in 2013, the Ph.D. Experience can be considered only equivalent to one year of teaching experience and that too would not be available to the petitioner as he has not undertaken Ph.D. programme as a regular candidate.

22. It is also submitted that the post of Medical Officer in the respondent University is a non-teaching post and no teaching assignment has been allotted to the Medical Officers to teach any course; and hence the alleged experience as Medical Officer or Senior Medical Officer has no bearing on the requirement for the selection in question.

23. It has also been argued on behalf of the respondent no. 7 that he possess a recognised degree and the requisite experience; and is engaged in surgical processes since the year 2004, whereas the petitioner has never carried out any surgery and cannot be considered having the requisite qualifications for the post in question.

24. Before proceedings further, a few relevant and material aspects of the proceedings in this case deserve to be taken note of. At the initial stage of consideration, after having taken note of the submissions of the rival parties, this Court found obvious but glaring ambiguities and anomalies on the questions as to which were the applicable Regulations for the selection in question; as to what were the requisite qualifications; and as to what was the value and worth of the experience possessed by the petitioner including that of his Ph.D. Having regard to the questions involved, this Court, in the order dated 16.01.2014, directed impleadment of the Central Council of Indian Medicine as also the Central Government in its Ministry of Health and Family Welfare, Department of AYUSH as respondents Nos. 8 and 9 respectively. While taking note of the issues involved and need of clarity in the minimum qualifications for such appointment, this Court directed the impleaded respondents Nos. 8 and 9 to file their affidavits specifying the relevant Regulations which would apply in the matter of minimum

qualifications for the appointment in question. As by that time, recommendations had been made and kept in sealed cover; but were not to be opened for the stay order dated 28.11.2013, this Court permitted opening of the sealed cover but directed that no appointment shall be offered to the selected candidates without leave of the Court.

25. Thereafter, what was suggested by the respondents Nos. 8 and 9 in this case only confounded the controversy rather than providing any clarity, what to say of a solution. In the first place, on 15.02.2014, an affidavit came to be filed on behalf of the respondent No. 8 CCIM, essentially with the submissions that the PG Regulations of 2005 have been superseded by PG Regulations of 2012, in which no minimum qualification has been prescribed; and that the qualification of teachers should be counted as per the Minimum Standards Regulations of 2012. It has also been stated in this affidavit that earlier a communication dated 02.01.2014 was issued stating that the qualifications as prescribed in PG Regulations 2005 continued, but the same stood superseded by another letter dated 07.02.2014. It has further been stated that as per the Minimum Standards Regulations of 2013, research experience of regular Ph.D. holder is to be considered equivalent to one year's teaching experience. Similar nature affidavit was filed on 18.02.2014 on behalf of the respondent No. 9.

26. On the affidavits aforesaid, on 18.02.2014, this Court found the things obscure and uncertain; and expected the Secretary of the Department concerned as also the Chairman of CCIM to file their personal affidavits while categorically stating as to which qualifications, both academic and experience, would apply. This Court also left it open for the Authorities to examine if any vacuum had been left and to fill the same up at the earliest. These observations and expectations are contained in the order dated 18.02.2014, which is reproduced in extenso as under:-

"The affidavit filed on behalf of the Government of India discloses non-application of mind with regard to the effect of supersession of the regulations which were applicable in respect of appointment of Faculty Members in Postgraduate Medical Colleges (Ayurveda).

It is surprising that the affidavit says that after such supersession the rules applicable in respect of appointment of Faculty Members in Undergraduate Institutions may be applied. It is admitted that earlier there were separate sets of rules for the teachers to be appointed in Postgraduate Institutions and Undergraduate Institutions. Such affidavits only lead to confuse instead of solving the problem for all times to come.

Similar is the affidavit filed on behalf of the Assistant Registrar (Siddha) of Central Council of Indian Medicine, Janakpuri, New Delhi.

We in the facts of the case are of the firm opinion that something more is required to be done both by the Central Government as well as by the Central Council for the Indian Medicines and the controversy with regard to the

qualifications to be possessed by a person so as to be eligible for appointment on faculty post in Postgraduate Medical Colleges (Ayurveda) be laid to rest early.

We, therefore, direct that the Secretary, Ayush, Ministry of Health and Family Welfare Department Government of India as well as the Chairman, Central Council of Indian Medicines, New Delhi to file their personal affidavits, after examining the provisions of the Indian Medicines Central Council Act, 1970 and Rules and Regulations framed thereunder, categorically stating as to what qualifications both academic and experience would apply in the matter of appointment of Faculty Members in Postgraduate Medical Colleges (Ayurveda) and the statutory provisions applicable in that regard shall also be brought on record.

This Court leaves it open to the aforesaid authorities to examine as to whether any vacuum has been left and, if so, to fill the vacuum at the earliest.

List on 27.02.2014.

Interim order to continue till then."

27. Then, another affidavit was filed on behalf of the respondent No. 8 CCIM on 27.02.2014, essentially reiterating its submissions of the earlier affidavit and enclosing therewith the copies of notifications and communications. On 27.02.2014, however, another affidavit was filed by the Secretary, Government of India, Ministry of Health and Family Welfare, Department of Ayush. In this affidavit, it has been stated that "PG Regulations, 2012 do not provide for the qualification and experience for postgraduate teachers and the qualification of the UG teachers is applicable for the PG teachers as per the provisions mentioned in the UG Regulations". In this affidavit, apart from other aspects, two paragraphs occur for which, the learned counsel for the contesting respondents would contend that the same are rather incomprehensible. These paragraphs No. 7 and 8 are reproduced hereunder for ready reference:

"7. It is submitted that the intended qualification and experience for the PG teachers is same as the qualification and experience enshrined in provisions of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2012 and the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2013 for UG Ayurveda course.

8. It is further submitted that the PG regulations for Ayurveda, Unani and Siddha are under revision and will be notified after approval of the competent authority which is likely to be completed within six months. It is further submitted that the qualification and experience of the PG teachers will also be taken care of in New PG Regulations."

28. With this affidavit, the respondent No. 9 has also placed on record a copy of the approved draft of Regulations of 2012 to submit that the intention for not providing the qualification and experience in the PG Regulations of 2012 was "to

avoid the duplicity of the qualification and experience of the PG Regulations and UG Regulations". The approved draft for the purpose of amendment of PG Regulations of 2005 has been placed on record as Annexure R-9 whose material contents shall be referred hereinafter later.

29. The stand of the respondents being still not categorical and clear, in the order dated 27.02.2014, apart from making other observations, this Court left it open for the respondents to issue necessary amendments in the Regulations applicable qua the minimum qualifications for the teachers to be appointed in the degree colleges. Then, an affidavit was filed on 21.03.2004 on behalf of the respondent No. 9, stating the response to the order dated 27.02.2014 as regards the amendment of syllabus etc.

30. Again, on 01.04.2014, this Court noticed the failure on the part of CCIM to frame and provide the necessary syllabi; and also that the Regulations for laying down the minimum qualifications, as expected by the order dated 27.02.2014, have not been framed. Thereafter, on 15.04.2014, an affidavit of the Chairman of CCIM was filed, inter-alia, stating that for the PG Centres, deliberately the provisions in respect of qualification and experience were deleted because two sets of teaching staff are not feasible/required in Ayurveda College. This part of the affidavit of the Chairman of CCIM could be noticed as under:

"4. It is further submitted that the Council/respondent no. 8 has deliberately deleted the provisions in respect of qualifications and experience required for teaching staff to be appointed as teacher in Post Graduate Centres because two sets of teaching staff is not feasible/required in Ayurved College."

31. Then, the Chairman of CCIM filed another affidavit on 16.04.2014 with the minutes of the meeting of CCIM dated 19.03.2014 to suggest that "proposed committee would initiate the process of amendment to the said Regulations as already submitted before this Hon"ble Court on the last date of hearing".

32. Lastly, on 30.04.2014, this Court, after noticing the affidavits filed on behalf of the said regulatory body, observed that the process of amending the recommendations was yet to be concluded and whatever steps had been taken by the University in the past could not be controlled or impeded by the CCIM or the petitioner on the strength of the proposed action to be taken in future. After such observations, the parties were permitted to complete the pleadings.

33. After the aforesaid proceedings and upon the matter coming up with completion of pleadings, having regard to the circumstances, we have heard the learned counsel for the parties finally at this stage itself.

34. After having heard the learned counsel for the parties at length and having given thoughtful consideration to the entire matter, we are of the view that even when the suggestions of the petitioner against the requirement of experience for the selection in question cannot be accepted, on the other aspects, the issues deserve to be re-examined by the Vice Chancellor for taking an appropriate and

objective decision in the matter.

35. In the first place, appropriate it shall be to take note of the relevant parts of the Regulations having bearing on the material questions posed and arguments advanced in this case. The relevant parts of the PG Regulations of 2005 are reproduced hereunder:-

@@"CENTRAL COUNCIL OF INDIAN MEDICINE NOTIFICATION

New Delhi, the 3rd February, 2005

No. 1.-In exercise of the powers conferred by clauses (I), (j) and (k) of sub-section (1) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), and in supersession of the Indian Medicine Central Council (Post-graduate Education) Amendment Regulations, 1994, except as respects things done or omitted to be done before such super-session, the Central Council of Indian Medicine, with the previous sanction of the Central Government in order to regulate the Postgraduate Education of Ayurveda, hereby makes the following regulations namely:-

1. Short title and commencement-(1) These regulations may be called the Indian Medicine Central Council (Postgraduate Ayurveda Education) Regulations, 2005.

.....

13. Minimum requirement for post-graduate teaching center:- (1) The postgraduate education center shall satisfy the entire minimum requirements of undergraduate training as prescribed by the Council.

.....

16. Qualification for Post-graduate teachers- (1) The teachers deputed/appointed for postgraduate teaching shall possess post-graduate degree qualifications in the concerned subject.

(2) For the post of Professor, thirteen years teaching experience including five years as Reader in postgraduate teaching in the concerned subject shall be required.

(3) For the post of Reader, eight years teaching experience as Lecturer including three years in postgraduate teaching or total ten years experience of undergraduate teaching in the concerned subject shall be required.

(4) For the post of Lecturer, three years professional experience after post-graduation as Clinical Registrar or Senior Resident or three years research experience in a recognized institution or three years teaching experience in the concerned subject in a recognized college shall be required.

.....

17. Criteria for recognition.-(1) The postgraduate education Center shall satisfy

the entire minimum requirements of undergraduate training as prescribed by the Council; and in addition shall fulfil additional requirements of postgraduate training depending upon the type of work to be carried out in the department:

Provided that the postgraduate Center established by the Central Government shall satisfy the requirement specified in these regulations.

..... "

36. The relevant parts of the PG Regulations of 2012, framed in supersession of the PG Regulations of 2005, are as under:-

"CENTRAL COUNCIL OF INDIAN MEDICINE NOTIFICATION

New Delhi, the 16th March, 2012

No. 4-90/011-Ay (PG Regu)1.-In exercise of the powers conferred by clauses (I), (j) and (k) of subsection (1) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), and in supersession of the Indian Medicine Central Council (Post-graduate Education) Amendment Regulations, 2005, except as respects things done or omitted to be done before such super-session, the Central Council of Indian Medicine with the previous sanction of the Central Government in order to regulate the Post-graduate Education of Ayurveda, hereby makes the following regulations namely:-

1. Short title and commencement-(1) These regulation may be called the Indian Medicine Central Council (Post-graduate Ayurveda Education) Regulation, 2012.

.....

13. Minimum requirement for post-graduate teaching centre:-

(1) The post-graduate education centre shall satisfy the entire minimum requirements of under-graduate training as prescribed by the Council.

..... "

37. Noteworthy it is that no provision corresponding to the clauses 16 and 17 of the PG Regulations of 2005 is available in the PG Regulations of 2012. Then, the relevant parts of the Minimum Standards Regulations of 2012 could be noticed as under:-

"CENTRAL COUNCIL OF INDIAN MEDICINE NOTIFICATION

New Delhi, the 25th April, 2012

No. 28-14/2011-Ay (UG Regu).- In exercise of the powers conferred by clauses (I), (j) and (k) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Council of Indian Medicine with the previous sanction of the Central Government, hereby makes the following regulations further to amend the "Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulation, 1986, subsequently 2005, 2010" namely:-

(1) These regulations may be called the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2012.

In the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulation, 1989 for the existing Schedule I, the following shall be substituted, namely:

.....

12. Qualifications & Experience for teaching staff for UG teachers:

.....

(ii) EXPERIENCE:

.....

c) For the post of Assistant Professor (Lecturer):

(age not exceeding 40 years)

No teaching experience is required. Lecturer will be treated as Asst. Professor."

38. Further, the relevant parts of the Minimum Standards Amendment Regulations of 2013 could be noticed as under:-

"CENTRAL COUNCIL OF INDIAN MEDICINE NOTIFICATION

New Delhi, the 21st May, 2013

No. 28-14/2012-Ay (UG Regu).- In exercise of the powers conferred by clauses (I), (j) and (k) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Council of Indian Medicine with the previous sanction of the Central Government, hereby makes the following regulations further to amend the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulation, 1986, namely:-

1.(1) These regulations may be called the "Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulation, 2013.

(A) for clause (c); following clause shall be substituted, namely:-.....

(c) For the post of Assistant Professor (Lecturer) with the age not exceeding forty-five years, no teaching experience is required and Lecturer will be treated as Assistant Professor.....

(C) in clause (d), after the table, after item (b), the following shall be inserted, namely:-

c. The research experience of regular Ph.D holder shall be considered equivalent to one year teaching experience."

39. After having thus taken note of the stand of the respective parties, the proceedings in this petition, and the relevant parts of the referred Regulations, we may examine the contentions urged and the issues raised.

40. Coming to the first limb of submissions about non-applicability of any requirement of experience for the selection in question, we are not inclined to accept the suggestions made by the petitioner and even those made by the respondents No. 8 and 9.

41. It remains a matter of fact that irrespective of the existence of the Minimum Standards Regulations since the year 1986 (which have presently been amended in the year 2012 and in the year 2013), separate and independent Regulations for Postgraduate Ayurveda Education have been framed and have continued to operate; the current one being the PG Regulations of 2012, which were made in supersession of the PG Regulations of 2005.

42. The intriguing aspect in this matter is that while drawing the amendment in the PG Regulations in the year 2012, the provisions like those contained in clauses 16 and 17 of the PG Regulations of 2005 and dealing with "qualification for post-graduate teachers" and "criteria for recognition", were not included in the amended PG Regulations of 2012. However, the reason for their omission had not been the one as suggested by the petitioner or by the respondents Nos. 8 and 9 that prescription for qualifications occurs in the UG Regulations and two sets of qualifications were not to be provided. As a matter of fact, clause 16 with the title "Qualifications for Post-graduate teachers", as occurring in the Regulations of 2005, was proposed to be deleted for the specious reason that all the criteria were already included in the minimum requirement of PG Centre. This position is noticed from the draft Regulations, placed on record by the respondent No. 9 as Annexure R-2 (affidavit dated 27.02.2014, page 40). The significant factor remains that in the clause concerning minimum requirement for post-graduate teaching centre i.e., clause 13, nothing as such had been provided as regards qualification of the post-graduate teachers. The said clause

43. 13, which has been retained in PG Regulations of 2012 also, essentially deals with infrastructure, staff and related requirements but not the qualifications.

44. There had been another clause 17 in the PG Regulations of 2005 which provided for criteria for recognition of PG centre. Interestingly, even when nothing was suggested as regards this clause 17 in the proposal for amendment yet, and for the reasons inexplicable, the said clause 17 was also omitted in the PG Regulations of 2012. This has led to an entirely anomalous and perplexing situation so far Post Graduate Education Regulations are concerned, that neither any qualification for PG teacher is provided nor any criteria for PG centre's recognition !

45. In view of what has been discussed hereinabove, we are satisfied that the reason for deletion of clause 16 had not been the applicability of the U.G. Regulations i.e., Minimum Standards Regulations but of a proposition that all the

aspects were contained in the other part of the same PG Regulations. However, it is ex facie evident that such relevant aspects concerning qualification for PG teacher and criteria for PG centre's recognition are not available in the other clauses of these Regulations.

46. It appears that despite the anomaly having surfaced, and is found leading to avoidable litigation, the respondents Nos. 8 & 9 have not taken the remedial measures and, instead, it is sought to be suggested that for the purpose of qualification, the Minimum Standards Regulations of 2012 shall apply. However, in the given status of record, it is difficult to construe that the Minimum Standards Regulations of 2012 would apply for the purpose of qualification for Postgraduate teachers. We are unable to agree with the suggestion that with reference to clause 13 of the PG Regulations of 2012, the qualifications of teachers could be traced in the Minimum Standards Regulations of 2012. What could be connected, at the most, with this clause 13 of the PG Regulations of 2012 are the requirements for infrastructure and other related aspects but not the qualifications of the teachers. It is quite dissatisfying that despite this Court having indicated the ambiguity and lacuna in the Regulations; and having given time to the Regulatory Bodies to take the remedial measures, the only suggestion is that the matter would be considered by a proposed committee. One would expect more concerned and serious approach on the part of these Regulatory Bodies than the superficial one as noticed in the present case.

47. The problem still remains that when the Minimum Standards Regulations of 2012 do not apply; and there is no prescription of qualification in the PG Regulations of 2012, what qualifications could have been provided by the respondent University for the selection in question; or more particularly, as to whether the University could have provided for experience as an essential qualification? The requirement on experience had been stated in the advertisement in question in the following terms:-

Teaching Experience: Three years professional experience after postgraduation as Clinical Registrar or Senior Resident or three years research experience in a recognized institution or three years teaching experience in the concerned subject in a recognized college shall be required.

48. The terms aforesaid had been exactly as per the phraseology of sub-clause (4) of clause 16 of the PG Regulations of 2005. From the submissions made on behalf of the University and from the contents of the terms of the advertisement for the selection in question, it is apparent that the University had proceeded as if clause 16 of the Regulations of 2005 was applicable and stated the requisite qualification in conformity thereof. In the given status of record and the position of the Regulations, particularly for the grey area, nay vacuum, left in the PG Regulations of 2012, even if the respondent University proceeded on the assumption that qualification is to be prescribed as envisaged by clause 16 of the Regulations of 2005, its approach cannot be said to be wholly unjustified or suffering from any such illegality as to call for interference by this Court in writ

jurisdiction.

49. In view of what has been observed hereinabove, the other submissions on behalf of the petitioner that no score was provided for experience in the short-listing; or reference to other advertisements of the respondent University or of other institutions are of little avail. The criterion for shortlisting of the candidates has no bearing, and cannot be considered decisive, on the question of essential qualification. Similarly, other advertisements or prescriptions on qualifications therein cannot control the terms of the advertisement for the selection in question. These contentions have only been noted to be rejected.

50. Moreover, we are clearly of the view that even if there is some ambiguity in the Regulations, so far the present case is concerned, the petitioner cannot be permitted to question the terms and conditions of the advertisement for two reasons: one that he had indeed applied under the said advertisement without questioning its terms at the relevant stage; and second that the said terms of the advertisement have not, as such, been challenged in this writ petition either. The suggestion of the petitioner about unavailability of the copy of the advertisement, as cursorily taken in the petition, cannot be accepted as the petitioner had several options open to procure the copy thereof or to properly challenge the same after the copy was filed by the respondents. The petitioner having failed to do so, we find no reason to allow the petitioner to question the requirements stated in the advertisement, particularly when such requirements cannot be considered wholly impermissible or wholly unwarranted.

51. In the aforesaid view of the matter, the first line of arguments of the learned counsel for the petitioner that there is no requirement of any experience cannot be accepted and stands rejected.

52. However, the alternative arguments of the learned counsel for the petitioner that the petitioner answers to the requirements of experience, cannot be dubbed as baseless altogether.

53. Coming to the question of possession of requisite experience by the petitioner, we may in the first place deal with the objection taken by the respondents that there had been manipulation of documents by the petitioner and he has been wanting in fair conduct. There is no quarrel with the proposition on the requirement of fair conduct to seek relief in equitable writ jurisdiction, as explained in the Full Bench decision of this Court in *Asiatic Engineering* (supra). However, in our view, in the present case, the respondents appear to be asking too much to read into the fact of the petitioner having produced two certificates from the same institution at Patna, one of the year 1998 and another of the year 2005, with the same dispatch number; and about some overlapping of the period in the certificates from the institution at Patna, and that from with institution at Lucknow. The petitioner has explained the discrepancy about the overlapping of a small portion of the period of end of his term at Patna and beginning of his term at Lucknow with reference to the fact that he joined at the later place after

taking leave and actual termination of service in the records at Patna, had been a bit later. Such a discrepancy, in our view, cannot take away or override the substance of the issue involved, that is, as to whether the petitioner possesses the requisite experience or not. Reference to the same dispatch number of the two certificates from Patna cannot be considered carrying any bearing on the conduct of the petitioner for he cannot have a control over the contents and dispatch number of the certificate issued by an institution. Such an objection from the respondents is required to be and is rejected.

54. Now coming to the core question as to whether the petitioner answers to the requirement of experience, we are of the view that dealing by the respondent University with the petitioner cannot be said to be justified and requires reconsideration. It is at once noticeable that in the letter dated 11.11.2013, the only ground suggested was about the petitioner having worked in a lower pay scale in the college at Patna and the said college being not in the approved list of CCIM. The contentions of the petitioner in regard to this experience were not examined. Further, though the petitioner has, indisputably, referred to several other experiences in item No. 21 of his on-line application but the same were not even referred to in the communication dated 11.11.2013.

55. Then, the learned Vice Chancellor, in his order dated 09.12.2013, has chosen to rely upon the UGC Regulations to say that the period of time taken by the candidate to acquire Ph.D. degree will not be considered as teaching/research experience and on the Regulations of 2013 of CCIM that research experience of a regular Ph.D. holder is to be considered equivalent to one year teaching experience. The learned Vice Chancellor has also observed that the petitioner has completed his Ph.D. not as a regular, but as a part time candidate; and that the term of the petitioner as Guest Lecturer in Rajkiya Ayurved Mahavidyalaya Evam Chikitsalaya, Lucknow, shall not be counted as teaching experience with reference to clause 10.1(f) of the UGC Regulations.

56. In regard to above, we feel that the learned Vice Chancellor has not examined in the first place the requirements of the advertisement in question which required the experience in the manner that it may be three years" professional experience after post graduation as Clinical Registrar or Senior Resident; or three years" research experience in a recognized institution; or three years" teaching experience in the concerned subject in a recognized college. All the aspects of experience as mentioned by the petitioner in item No. 21 of his on-line application do deserve consideration to find if the petitioner meets with the requirement of experience for the selection in question. We may observe in this regard that so far teaching experience is concerned, no specific form of teaching has been prescribed therein. It is noticed that one of the specific contentions of the petitioner is that he was working as Medical Officer and then, is working as Senior Medical Officer in the hospital of the University itself; and as a part of his duties, has been regularly engaged in the teaching job for the Post Graduate and Diploma students. This aspect of the experience of the

petitioner has not been considered. The ratio in the decision of Dr. Asim Kumar Bose (supra) deserves to be taken note of, particularly when the concerned Regulations do not provide that the experience gained in the capacity of Medical Officer shall not be counted towards the requisite teaching experience. In Dr. Asim Kumar Bose (supra), the Hon'ble Supreme Court has, inter alia, observed as under:

"It is necessary to emphasise that the recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex officio) shall not count towards the requisite teaching experience. There is no provision made in the Rules that the teaching experience must be gained on a regular appointment. There is hardly any difference so far as teaching experience is concerned whether it is required on regular appointment or as Specialist in a teaching hospital with the ex officio designation. As the statutory rules do not provide that the teaching experience gained in an ex officio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor or Radiology (ex officio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor of Radiology in Maulana Azad College."

57. Though we are not passing final order in this matter in affirmation of the experience suggested by the petitioner, but we are of the view that the requirement of experience in the present case ought to be examined by the respondent University from a practical stand-point rather than on ceremonies or formalities or technicalities. In the given set of facts and circumstances, we are of the view that the matter requires reconsideration by the Vice Chancellor of respondent University.

58. We propose to adopt the course of leaving the matter for reconsideration by the Vice Chancellor essentially for the reason that ultimately the matter relates to the selection on the post of Assistant Professor in the University and the specific requirements of experience need to be examined and appreciated by the experts of the University itself, of course from a practical stand-point and not on technicalities.

59. So far the third limb of contentions on behalf of the petitioner on the eligibility of the respondent No. 7 is concerned, for the order proposed to be passed in this matter, we do not consider it expedient to deal with this issue at the present stage, particularly when the eligibility of the petitioner himself remains to be finally decided yet. In the circumstances of the case, these aspects are left open to be raised, if occasion so arise, at the appropriate stage.

60. Before parting with this matter, we are constrained to observe that it is required of the bodies responsible for ensuring minimum standards and prescribing syllabi as also the requisite qualifications like CCIM that the relevant Regulations are framed, and when necessary immediately modified, for the

purpose of providing clarity rather than creating and confounding confusion, as has been noticed in this case. Though this matter is being disposed of but the respondents Nos. 8 and 9 shall be expected to immediately attend on the requirements delineated hereinabove and in the previous orders passed in this case.

61. With the observations foregoing, this writ petition stands disposed of in the manner that the impugned communication dated 11.11.2012 as also the order passed by the learned Vice Chancellor on 09.12.2013 are disapproved and are set aside. The question on possession of necessary qualifications by the petitioner is remitted for reconsideration and decision afresh by the Vice Chancellor who shall be expected to deal with the matter dispassionately and objectively; and to decide the relevant questions after adequate opportunity of hearing to the petitioner and by way of a speaking order. The restraint order against offering appointment for the selection in question shall continue to operate until final decision of the matter by the Vice Chancellor.