
(2019) 06 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 235 Of 2018

Col. Dr. Virendra Pratap Singh Retd

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0020

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Lalit Kumar, Pooran Singh Rawat, V.K. Kaparwan, V.K. Kohli, Parikshit Saini, Rajendra Dobhal, Shubhang Dobhal

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Lalit Kumar, learned counsel for the petitioner and Mr. V.K. Kohli, learned Senior Counsel assisted by Mr. Parikshit Saini, learned counsel for the Medical Council of India-respondent no.2 and, with their consent, the Writ Petition is being disposed of.

2. When the Writ Petition was listed before us on 14.05.2019, we had recorded the submission of Mr. V.K. Kohli, learned Senior Counsel appearing for the MCI, that the documents annexed by the Medical Council of India, in rejecting the petitioner's application, would form the basis of the submissions to be urged on behalf of the M.C.I. that the petitioner was not entitled for the relief sought for in the Writ Petition; and no counter-affidavit of the M.C.I. was necessary. After recording this submission of Mr. V.K. Kohli, learned Senior Counsel that no counter-affidavit was necessary for an adjudication of the lis, we had directed that the matter be listed today.

3. In the light of the submission made by Mr. V.K. Kohli, learned Senior Counsel appearing for the M.C.I., we shall now proceed to adjudicate the lis on the basis of the un-rebutted assertions in the writ affidavit, and the documents annexed

thereto.

4. In this Writ Petition, the petitioner seeks a writ of certiorari to quash the order passed by the M.C.I. dated 06.04.2018; and a writ of mandamus commanding/directing the second respondent to issue the "Teachers Eligibility Certificate" in favour of the petitioner stating therein that he has been eligible, for appointment to the post of Professor 'ENT' in a medical college in India, since 12th June, 2010 i.e. after his retirement from military service on 11th June, 2010.

5. Facts, to the limited extent necessary, are that the petitioner, after obtaining his MBBS degree in August, 1980 joined the Army Medical Corps. He obtained his post graduate degree in ENT from the Mahatma Gandhi Memorial Medical College (MGMMC), Indore, after having studied there for a period of two years from January 1993 to December 1994. It is the petitioner's case that he was given the status of 'Classified Specialist' in ENT at the Army Hospital (Research and Referral), New Delhi where he worked from March, 1998 to March, 2000; he was appointed as an Associate Professor in April, 2000 when he was working at the Army Hospital (R&R), New Delhi; he worked in the Armed Forces Medical College, Pune as an Associate Professor 'ENT' from September, 2002 to April, 2004; he was appointed as a Professor in 'ENT' in the Armed Forces Medical College, Pune in April, 2004, and worked thereat till May, 2006; he did not work in any teaching hospital after May, 2006, till he sought voluntary retirement in the year 2009; he was permitted to voluntarily retire from service, in the Armed Forces, on 11.06.2010; and he was, thereafter, appointed as a Professor 'ENT' in Shri Guru Ram Rai Institute of Medical & Health Sciences, Dehradun.

6. Even prior thereto, the petitioner had addressed a letter to the M.C.I. on 02.05.2010 for issuance of a teaching experience certificate. In reply thereto, the M.C.I., by its letter dated 25.05.2010, informed him that, as per the decision of the General Body of the Council at its meeting held on 24.03.2003, Specialist Medical Officers of the Armed Forces, having a minimum 5 years' teaching experience as Graded/Classified Specialist after possessing the requisite recognized post-graduate qualification in the subject, or having a minimum 5 years experience as Lecturer/Assistant Professor in a teaching hospital of the Armed Forces, could be considered eligible for appointment as a Reader/Associate Professor; and a Specialist Medical Officers of the Armed Forces appointed as Senior Advisor/having minimum 4 years' teaching experience as a classified specialist possessing the requisite recognized post-graduate qualification in the subject, or having a minimum 4 years experience as a Reader/Associate Professor in a teaching hospital of the Armed Forces, could be considered eligible for appointment as a Professor in the Department of Oto-Rhino-Laryngology.

7. The third respondent is said to have submitted a scheme for allotment of one seat of MS 'ENT' to the Government of India, through the M.C.I., in September, 2013. Pursuant thereto, the Inspection Committee of the M.C.I. is said to have inspected the third respondent-institute and to have granted permission for

conducting a post-graduate degree programme for one seat in MS 'ENT' for the academic year 2014-15. The third respondent is said to have applied for allotment of more seats, in MS 'ENT' course, in the year 2015 for the academic year 2016-17. After inspection the M.C.I. Committee, in its letter dated 26.10.2015, pointed out certain deficiencies, which included that, while the petitioner was from Army Services, no certificate of experience from the Competent Authority of the Office of the Directorate General of Armed Forces Medical Services, indicating his places and period of posting as Graded, Classified Specialist and Advisor, was attached without which his equated academic designation could not be considered.

8. The petitioner claims to have sought for a certificate of medical teaching experience from the Director General, Armed Forces Medical Services, and to have been given the certificate dated 19.11.2015. In response to the petitioner's application dated 26.03.2017, the M.C.I. informed him, vide letter dated 28.04.2017, that the Council had considered the documents of his academic qualification and teaching experience for determining eligibility for the post of Professor in the department of 'ENT' in a medical college, and to have found him ineligible. Aggrieved thereby, the petitioner filed Writ Petition (S/B) No.346 of 2017 and a Division Bench of this Court, by its order dated 08.12.2017, allowed the Writ Petition, set-aside the impugned order dated 28.04.2017, and directed the M.C.I. to pass a fresh order giving reasons in support of the order, in accordance with law; the petitioner was directed to make available the documents, showing his eligibility, within a period of three weeks to the M.C.I; and, upon receipt of the same, the M.C.I. was directed to pass order within two weeks from the date of production of the documents.

9. The petitioner claims to have submitted the relevant documents by his letter dated 08.12.2017; and, since no decision was taken by the M.C.I., he filed Writ Petition (S/B) No.80 of 2018 seeking a declaration that he had been appointed in the post of Professor 'ENT' on 02.08.2010 by the third respondent as per Rules. After Writ Petition (S/B) No.80 of 2018 was filed, the respondent-M.C.I. passed the order dated 06.04.2018; and, on this fact being brought to its notice, the Division Bench closed the Writ Petition without prejudice to the right of the petitioner to seek redress against the decision of the Medical Council of India.

10. In its order dated 06.04.2018, the M.C.I, while referring to the petitioner's representation dated 29.12.2017 and the order of the Division Bench of this Court in Writ Petition (S/B) No.346 of 2017 dated 08.12.2017, observed that the matter was considered by the Teachers' Eligibility Qualification (for short 'TEQ') Sub-Committee in its meeting held on 16.02.2018, and the decision of the TEQ Sub-Committee was approved by the Executive Committee in its meeting held on 05.03.2018. The said order, thereafter, refers to the qualifications of the petitioner to be MBBS from the Armed Forces Medical College, Pune and MS 'ENT' from MGMMC, Indore. His teaching experience, as a Classified Specialist, is shown in the Army Hospital (R&R), New Delhi from March 1998 to August 2002,

and in the Armed Forces Medical College, Pune from September 2002 to May 2006. It is further stated therein that the TEQ Sub-Committee had perused the decision of the General Body of the Council at its meeting held on 24.03.2003, and to have held that the petitioner had not acquired a total of 9 years experience as Graded/Classified & Senior Advisor and may not be considered eligible for the post of Professor in the Department of ENT in a medical college in India. Aggrieved thereby, the present Writ Petition.

11. Mr. Lalit Kumar, learned counsel for the petitioner, would submit that, till fresh conditions were stipulated by the General Body of the Council in its meeting held on 24.03.2003, the condition governing appointment of Readers/Associate Professors, in Armed Forces teaching hospitals, was in terms of the guidelines prescribed in the proceedings of M.C.I. dated 12.09.1977 as amended on 12.10.1977; in terms of the 1977 M.C.I. proceedings, classified specialists, with the requisite recognized post-graduate qualification, and two years experience as Classified Specialists, could be designated as a Reader/Associate Professor; the petitioner was appointed as an Associate Professor in the Army Hospital (R&R), New Delhi, in terms of the 1977 guidelines, by the Director General, Armed Forces Medical Services in April, 2000; and, in terms of the conditions stipulated by the General Body of the M.C.I, on 24.03.2003, Special Medical Officers of the Armed Forces, appointed as Senior Advisors or having a minimum of 4 years experience as a Reader/Associate Professor in a teaching hospital of the Armed Forces, can be considered eligible for appointment as a Professor.

12. Mr. V.K. Kohli, learned Senior Counsel appearing on behalf of the M.C.I., would place reliance on the impugned order to submit that it is only classified specialists with 9 years experience (5 years as a Lecturer/Assistant Professor and 4 years as a Reader/Associate Professor) who are eligible to be considered for appointment as a Professor in a medical college in India; from the table extracted in the impugned order, it is evident that the petitioner has worked as a classified specialist only for a period of 8 years 03 months, which is far less than the minimum stipulated 9 years of service; while the impugned order has, no doubt, been subjected to challenge in the Writ Petition, this specific ground, that it would suffice for the petitioner to have 4 years experience as a Reader/Associate Professor, has not been urged in the Writ Petition; and since the condition stipulated in the guidelines, by the M.C.I. on 24.03.2003, have not been fulfilled, the petitioner has been rightly held ineligible to be appointed as a Professor, since he does not have the minimum required experience of 9 years as a classified specialist.

13. Before examining the rival submissions, urged by learned counsel and learned Senior Counsel on either side, it is useful to take note of the contents of the M.C.I. letter dated 12.09.1977, wherein the Director General, Armed Forces Medical Services was informed by the Secretary, M.C.I. that the Executive Committee of the Council had, in its meeting held on 25.08.1977, decided that the earlier decision be modified permitting the military authorities to adopt the

following criteria for appointment of teachers in Medicine in the Armed Forces Medical College, Poona and other institutions recognized by the M.C.I. for post-graduate training/housemanship. The conditions stipulated are:-

- i. The graded specialists with requisite recognized post-graduate qualifications and 3 years experience as graded specialist may be designated as Lecturer/Assistant Professor.
- ii. The Classified Specialists with requisite recognized post-graduate qualifications and 2 years experience as Classified Specialists may be designated as Reader.
- iii. Advisor/Consultant with a minimum of 5 years experience in that capacity may be considered for being designated as Professor in the Armed Forces Medical College, Poona.

These designations be "Pre-tempo" with respect to the Armed Forces Medical College for the period they are working in that institution.

The persons to be considered for appointment as teacher must possess the requisite recognized postgraduate qualification in his respective subject as per recommendation of the Medical Council of India.

14. As noted hereinabove, the petitioner claims that the Director General, Armed Forces Medical Services had given him the status of a Classified Specialist by proceedings dated 24.10.1995, he was posted as a Classified Specialist 'ENT' at the Army Hospital (R&R) New Delhi, where he worked from March 1998 till March 2000; he was directly appointed as an Associate Professor, in terms of the 1977 guidelines, at the Army Hospital (R&R), New Delhi in April 2000, where he worked as an Associate Professor till he was transferred and posted as an Associate Professor in the Armed Forces Medical College, Pune in September 2002, and he worked at the Armed Forces Medical College, Pune till April 2004, when he was appointed as a Professor 'ENT', and he thereafter worked as a Professor 'ENT' there at till May 2006.

15. Since the petitioner's appointment as an Associate Professor in April 2000, was long prior to the 2003 guidelines coming into force on 24.03.2003, it is only the conditions stipulated in the 1977 guidelines which would apply. Condition (ii) of the 1977 guidelines enables a classified specialist with the requisite recognized post-graduate qualification, and 2 years experience as a classified specialist, to be designated as a Reader. The 1977 guidelines do not require a person to have worked as a Lecturer/Assistant Professor, much less for five years, to be appointed as a Reader/Associate Professor; and, consequently, the mere fact that the petitioner did not work as a Lecturer/Assistant Professor, prior to his appointment as a Reader/Associate Professor, is of no consequence, since, in terms of the 1977 guidelines, it sufficed for a person to be considered for appointment as a Reader/Associate Professor if he was a classified specialist with 2 years experience and a recognized post-graduate qualification. The petitioner

fulfilled both these conditions. He held a post-graduate degree i.e. MS 'ENT', and had put in more than 4 years service as a Classified Specialist i.e. from 24.10.1995 till April 2000, when he was appointed as a Reader/Associate Professor.

16. The certificate issued by the Director General, Armed Forces Medical Services dated 19.11.2015 shows that the petitioner had worked as a Classified Specialist in the Army Hospital (R&R) New Delhi from March, 1998 to August, 2002, and thereafter as a Classified Specialist in the Armed Forces Medical College, Pune from September, 2002 to May, 2006; the said certificate records the petitioner's teaching experience as an Associate Professor to be 4 years, and as a Professor to be 2 years 03 months as on that date. The impugned order, holding the petitioner ineligible to be considered for appointment as a Professor, proceeds on the erroneous premise that a Classified Specialist should have first worked as a Lecturer/Assistant Professor for a period of 5 years; and, thereafter, as a Reader/Associate Professor for a period of 4 years i.e. a total service of 9 years in the prescribed Army Teaching Hospitals. The said order ignores the 1977 guidelines issued by the M.C.I. whereunder a classified specialist with a post-graduate qualification on the relevant subject, and with 2 years experience as a classified specialist, can be appointed as a Reader; and since the petitioner had been working as a Reader even before the 2003 guidelines came into force on 24.03.2003, as the 2003 M.C.I. guidelines enables a classified specialist, working as a Reader/Associate Professor for a minimum period of 4 years, to be eligible to be considered for appointment as a Professor, and as the petitioner has admittedly put in more than 4 years of service as a Reader/Associate Professor in the prescribed Army Teaching Hospitals, the petitioner does appear to be entitled to be declared as a Professor 'ENT' in a medical college in India.

17. Since the impugned order places emphasis on the M.C.I. guidelines issued on 24.03.2003, it is useful to refer to the contents of the letter addressed by the M.C.I. to the Director General, Armed Forces Medical Services dated 28.05.2003 with regards Teacher's Eligibility Qualification, and counting of teaching experience of specialist graded doctors of the Army Medical Corps. The said letter refers to the decision of the General Body of the Council in its meeting held on 24.03.2003, wherein the Council is said to have noted and approved the report of the Sub-Committee, as approved by the Executive Committee, which had recommended the following teaching experience of specialist graded doctors of Army Medical Corps for appointment as teachers. They are as under:-

- i. Special Medical Officers of the Armed Forces having requisite recognized post-graduate qualification in the subject, can be considered eligible for appointment as Lecturer/Assistant Professor in the concerned subject.
- ii. Specialist Medical Officer of the Armed Forces having minimum 5 years teaching experience as Graded/Classified Specialist after possessing recognized post-graduate qualification in the subject or having minimum 5 years experience as Lecturer/Assistant Professor in a teaching hospital of the Armed Forces can be

considered eligible for appointment as Reader/Associate Professor.

iii. Specialist Medical Officers of the Armed Forces appointed as Senior Advisor having minimum 4 years teaching experience as Classified Specialist possessing requisite recognized post-graduate qualification in the subject or having minimum 4 years experience as Reader/Associate Professor in a teaching hospital of the Armed Forces, can be considered eligible for appointment as Professor.

Provided further that other requirements of research publications as contained in the "Minimum Qualifications for teachers in Medical Institutions Regulations, 1998", are also met with.

18. The letter dated 28.05.2003, thereafter, states that the Council had decided that the Armed Forces Medical Services be given teacher experience gained while working in the following four teaching/training hospitals only, they being teaching institutions. However, if any other institution is approved by the Council at a later date for teaching/training purposes, the same would be added to the list. The four teaching/training hospitals as referred in the said letter are:-

- a. Armed Forces Medical College, Pune
- b. Army Hospital (R&R), New Delhi
- c. Indian Naval Hospital Ship Asvini, Mumbai
- d. Command Hospital (Air Force), Bangalore

19. Since the petitioner had worked as a Classified Specialist from March 1998 till May 2006 at the Army Hospital (R&R), New Delhi and Armed Forces Medical College, Pune, this requirement of teaching experience in any one of the above mentioned four teaching institutions, is satisfied in the present case.

20. The said letter of the M.C.I. dated 28.05.2003, thereafter, refers to the decision of the Council that the required experience, gained in recognized institutions for various teaching designations, would be as follows:-

1. Lecturer Recognized post-graduate degree in the concerned subject.
2. Reader/Associate Recognized post-graduate degree in the Professor concerned subject plus (+) five years teaching experience in the concerned subject as Lecturer.
3. Professor Recognized post-graduate degree in the concerned subject plus (+) four years teaching experience in the concerned subject as Reader/Associate Professor.

21. Even in terms of this letter of the M.C.I. dated 28.05.2003, the experience required for appointment as a Professor is only a post-graduate degree in the concerned subject plus(+) four years teaching experience in the concerned subject as a Reader/Associate Professor. Since the petitioner was appointed as an

Associate Professor in the Army Hospital (R&R), New Delhi by the Director General, Armed Forces Medical Services in April 2000, he had the requisite four years' experience as a Reader/Associate Professor by April 2004, when he was appointed as a Professor 'ENT'. As noted hereinabove, the said letter of the M.C.I. dated 28.05.2003 also takes note of the fact that, prior thereto, the existing decisions of the Executive Committee, taken in its meeting on 14.04.1977 and 12.09.1977, would apply. It does appear, therefore, that the petitioner has fulfilled the conditions stipulated by the M.C.I. of having experience of 4 years as a Reader/Associate Professor to be considered for appointment as a Professor of the concerned subject in a medical college in India.

22. Since the impugned order dated 06.04.2018 states that the minimum experience of 9 years as a Classified Specialist is required, it is useful to refer to the contents of the impugned order. It is evident from a bare reading of the said letter that the qualifications, as approved by the General Body of the Council in its meeting held on 24.03.2003, have been relied upon. The said conditions relate to the appointment of Specialist Medical officers as Lecturers/Assistant Professors, Readers/Associate Professors, and as Professors. While Specialist Medical Officers of Armed Forces, having the requisite recognized post-graduate qualification in the subject, are eligible for appointment as Lecturer/Assistant Professor in the concerned subject without having any experience, Specialist Medical Officers of the Armed Forces, having a minimum of 5 years teaching experience as Graded/Classified specialist, after possessing requisite recognized post-graduate qualification in the subject or having minimum 5 years experience as Lecturer/Assistant Professor in a teaching hospital of the Armed Forces, are eligible to be appointed as Reader/Associate Professor. This requirement of having 5 years experience as a Lecturer/Assistant Professor in a teaching hospital of the Armed Forces, to be considered for appointment as an Associate Professor, was introduced for the first time pursuant to the decision of the General Body of the M.C.I. in its meeting held on 24.03.2003.

23. The petitioner was appointed as an Associate Professor in April 2000 nearly three years prior to when the 2003 M.C.I. guidelines came into force. When he was appointed as a Reader/Associate Professor by the Director General, Armed Forces Medical Services in April 2000, it is the 1977 guidelines which were applicable and, thereby, classified specialists, with the requisite recognized post-graduate degree and two years' experience as a Classified Specialist, could be designated as a Reader. Unlike the 2003 guidelines which required a person to have experience as a Lecturer/Assistant Professor of 5 years before being eligible to be considered for being designated/appointed as a Reader/Associate Professor, the 1977 guidelines enabled a persons with the requisite recognized post-graduate degree in the concerned subject with two years experience as a classified specialist, to be designated as a Reader; and these 1977 M.C.I. guidelines did not require such a person to have earlier worked as a Lecturer/Assistant Professor.

24. The decision of the General Body of the M.C.I, taken in its meeting held on 24.03.2003, are that either (i) Specialist Medical Officers of the Armed Forces appointed as Senior Advisors having minimum 4 years teaching experience as classified specialist possessing the requisite recognized post-graduate qualification in the subject; or (ii) having minimum 4 years experience as a Reader/Associate Professor in a teaching hospital of the Armed Forces; can be considered eligible for appointment as a Professor.

25. Since the petitioner fulfils the conditions stipulated in the second limb of clause (iii) of the M.C.I. guidelines dated 24.03.2003, of having a minimum 4 years' experience as a Reader/Associate Professor in a teaching hospital of the Armed Forces, he is undoubtedly eligible for being considered for appointment as a Professor in the concerned subject i.e. 'ENT'.

26. The contention, urged on behalf of the M.C.I, that no such plea has been taken in the writ affidavit is not tenable. In the writ affidavit, the petitioner has specifically asserted that, on 24.10.1995, he was appointed as a classified specialist; between March 1998 to March 2000, he was posted as a classified specialist 'ENT' at the Army Hospital (R&R), New Delhi, which is one of the teaching hospitals of the Armed Forces; in April 2000, he, being in possession of all the requisite qualifications in terms of the 1977 Rules, was appointed by the Competent Military Authority to the post of Associate Professor 'ENT' in Army Hospital (R&R), New Delhi, which post he held till August 2002; in September 2002, he was posted to the Armed Forces Medical College, Pune being as Associate Professor, which post he held till April 2004; thus, he held the post of Associate Professor for a period of 4 years from April 2000 to April 2004; and being in possession of all the requisite qualifications, in terms of 2003 guidelines, he was, in April 2004, while serving at the AFMC, Pune, appointed by the competent military authority to the post of Professor, which post he held till May, 2006. In the writ affidavit, the petitioner has referred to his having been appointed as an Associate Professor in April 2000 in terms of the 1977 Rules; and, since he held the post of Associate Professor for 4 years, to be eligible in terms of the 2003 guidelines to be appointed to the post of Professor 'ENT'. We are satisfied, therefore, that the contention urged before us is based on specific contentions urged in the affidavit filed in support of the Writ Petition.

27. In the light of the submission of Mr. V.K. Kohli, learned Senior Counsel appearing for M.C.I., which we had recorded in our order dated 14.05.2019, that no counter-affidavit is required for an adjudication of the lis, we would have, ordinarily, proceeded on the premise that the assertions in the writ affidavit are true, since they have not been rebutted by way of a counter-affidavit. Since factual aspects, of his being given the status of a Classified Specialist by the Director General, Armed Forces Medical Services on 24.10.1995, his appointment as an Associate Professor in April 2000 while he was working as a Classified Specialist in Army Hospital (R&R), New Delhi, and later as a Professor 'ENT' in April 2004 while he was working in the Armed Forces Medical College, Pune, form

the basis of his claim that he is entitled to be treated as a Professor 'ENT', we consider it appropriate to permit the M.C.I., if it so chooses, to ascertain these factual aspects from the Director General, Armed Forces Medical Services, New Delhi.

28. The impugned order dated 06.04.2018 is set-aside. The first respondent shall, in the light of the observations made hereinabove, reconsider the petitioner's claim for being declared as a Professor 'ENT' in a medical college in India, if need be, after ascertaining the factual details relating to the petitioner being given the status of a classified specialist, of his appointment as an Reader/ Associate Professor, and thereafter as a Professor, from the Director General, Armed Forces Medical Services. The entire exercise, culminating in an order being passed and communicated to the petitioner, shall be completed with utmost expedition and, in any event, within three months from the date of production of a certified copy of this order.

29. The Writ Petition stands disposed of accordingly. No costs.