

(2012) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 6244 of 2010

Dr. Deshraj Jain

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Dentists Act, 1948 — Section 27(2), 3, 3(d), 6, 6(1)

Citation : (2012) 3 MPHT 154

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : A.K. Sethi and Mr. Rahul Sethi, for the Appellant; Praveen Pal, Panel Lawyer for the Respondent Nos. 1 and 2, Mr. Vivek Sharan, Advocate for the Respondent Nos. 3 to 5 and Mr. S.S. Dashore, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This writ petition has been filed by the petitioner challenging the order dated 7-5-2010, by which the Dental Council of India has communicated that the petitioner has ceased to be a member of the Dental Council. The case of the petitioner is that he was elected as member to represent the respondent No. 5—Devi Ahilya Vishwavidyalaya (hereinafter referred as "University") in the respondent No. 4—Dental Council of India in the special meeting dated 29-3-2007. On 28-10-2009 the dental faculty of the University was reconstituted and the petitioner was excluded from the membership of the dental faculty of the University, therefore, the impugned communication dated 7-5-2010 was issued intimating that the petitioner has ceased to be the member of the Dental Council without properly appreciating that the petitioner had not completed his term, as prescribed in the statute.

2. Learned Counsel appearing for the petitioner submits that u/s 6(1) of the Dentist Act, 1948 (for short "the Act"), the term of a member of Dental Council is 5 years or till his successor is duly elected or nominated, whichever is longer and

since the petitioner has not completed 5 years, therefore, he cannot be ceased to be a member of the Dental Council. He further submits that the petitioner has not ceased to be a member of the dental faculty of the University as is clear from Annexure R-5/3 as amended by Annexure P-8.

3. Learned Counsel appearing for the respondents opposing the writ petition have submitted that in terms of the provisions of the Act, the petitioner has ceased to be a member of the Dental Council.

4. I have heard the learned Counsel for the parties and perused the record.

5. The Section 3 of the Act deals with the constitution and composition of the Council and clause (d) of Section 3, which is relevant for the present controversy, provides as under:-

3. Constitution and composition of Council.- *** **

(a) *** **

(b) *** **

(c) *** **

(d) one member from each University established by law in the States which grants a recognised dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the Court, from amongst the members of the Dental Faculty of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof.

6. The election of the petitioner was by the members of the Court since he was one of the member of the dental faculty of the University on 16-3-2007, i.e., at the time of his election.

7. The term of office of the member of the Dental Council is prescribed u/s 6 of the Act, which reads as under:-

6. Term of office and casual vacancies.-

(1) Subject to the provisions of this section an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.

(2) *** **

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member whose name is required to be included in a State register, if his name is removed from such register, or if he has been elected under clause (c) of Section 3, if he ceases

to hold his appointment as the Principal, Dean, Director or Vice Principal of a Dental College, or as the Head of the dental wing of a Medical College, or if he has been elected under clause (b) or (d) of Section 3, if he ceases to be a member of the Medical Council of India or the Dental or Medical Faculty of the University, as the case may be.

(4) *** **

(5) *** **

(6) *** **

8. In terms of sub-section (3) of Section 6, a member elected u/s 3 (d) is deemed to have vacated his seat if he ceases to be a member of the Dental Faculty of the University.

9. The contention of the petitioner that even if a member of the Dental Council elected u/s 3 (d) has ceased to be a member of the Dental Faculty of the University, he would continue to be the member of the Dental Faculty for a period of five years or till his successor is duly nominated or-elected, whichever is longer. Such a contention cannot be accepted since sub-section (1) of Section 6 is subject to the other provisions of the Section, therefore, on occurrence of one of the contingencies provided in sub-section (3) a nominated or elected member of the Dental Council by way of deeming fiction will vacate his seat in the Dental Council and will cease to be a member of dental faculty.

10. In the present case, on 16-3-2007 when the petitioner was elected to represent the University in the Dental Council of India, at that time the petitioner was a member of the Dental Faculty of the University. The Dental Faculty of the University was reconstituted on 28-10-2009, vide Annexure P-5/3. The petitioner's name was not included in the re-constituted Dental Faculty of the University, therefore, on 28-10-2009 on the reconstitution of the Dental Faculty of the University the petitioner had ceased to be a member of the Dental Faculty of the University and he had consequently vacated the seat as an elected member of the Dental Council of India by virtue of the deeming fiction contained in sub-section (3) of Section 6 of the Act.

11. It is also worth noting that the Dental Faculty in the respondent/ University is constituted for a period of 3 years in terms of the provisions contained in Section 27 (2) read with Statute No. 9 of the Vishwavidyalaya Adhiniyam, 1973, After three years if a member of the Dental Faculty of the University on expiry of his term ceases to be the member, the deeming fiction contained in Section 6(3) of the Act comes into operation.

12. Another issue raised by the petitioner during the course of argument is that on 21-9-2011 a corrigendum has been issued by the University amending the order dated 28-10-2009 and including the petitioner in the Dental Faculty, therefore, by virtue of this amendment the petitioner has become the member of the Dental Faculty of the University with effect from 28-10-2009, therefore, he

had not ceased to be a member of the Dental Faculty of the University and is entitled to continue as member of the Dental Council. Such an argument also has not merit since the order dated 21-9-2011 clearly states that the petitioner has been included as member in the Dental Faculty for the remaining period. Thus, he has not been made the member of the Dental Faculty w.e.f. 28-10-2009. He was not a member of the Dental Faculty from 28-10-2009 to 21-9-2011. Keeping in view the aforesaid, I do not find any merit in the writ petition, which is accordingly dismissed.