

(2003) 03 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8515 of 2002

Dr. H.C. Mehta

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Constitution of India, 1950 — Article 226 , 227, 309
Indian Medical Council Act, 1956 — Section 33

Citation : (2003) 03 P&H CK 0046

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : I.S. Balhara, for the Appellant; Rajbir Sehrawat, DAG, Balram Gupta and Shireesh Gupta, for the Respondent

Judgement

Adarsh Kumar Goel, J.—By this writ petition, the petitioner inter alia seeks a direction for his promotion to the post of Professor and head of department (biochemistry) in Post Graduate Institute of Medical Sciences, Rohtak.

2. The case of the petitioner is that he was appointed as Demonstrator on 17.8.1973, as Lecturer through HPSC on 5.1.1976, re-designated as Reader on 4.1.1981, went for foreign assignment in August, 1987, was re-designated as Associate Professor on 19.12.1988. One Dr. G.P. Singh was appointed as Head of the Department, which was challenged by the petitioner along with three others in CWP No. 842/1995, which was allowed on 6.10.1995 against which LPA No. 976/1995 was dismissed on 26.12.1996. He was selected to the post of Floating Professor which post he is still holding. In November, 1999 a post of Professor was advertised for which an interview was held on 17.1.2000 and one Dr. G.P. Singh was selected, who retired on 3.7.2000. His appointment was challenged by the petitioner, but before the writ petition could be decided, he retired. On 4.7.2000, the petitioner made a representation for appointment to the post of Professor and Head of Department and filed CWP No. 3736/2002 in this Court and vide order dated 4.3.2002, the representation was ordered to be decided by

this Court, which has since been rejected on 22.5.2002 vide Annexure P-7. Grievance in the writ petition is that the petitioner is eligible for appointment to the post of Professor and head of department. The respondents are not accepting his eligibility on the ground that he obtained M.Sc. (biochemistry) qualification from Punjab Agriculture University and not from any medical faculty and though, this Court in its judgment dated 6.10.1995 which has become final has held the petitioner to be eligible for the post of Head of the Department rejecting the objection of the respondents that a person must possess medical degree for holding a post of Head of the Department as recommended by the Medical Council of India, which qualification was not prescribed under the service rules applicable to the petitioner. The respondents still insist on going by the advice of Medical Council of India ignoring the service rules. It is also contended that 44 persons, who do not hold medical qualification are working as Head of the biochemistry department in medical colleges and list of such persons is Annexure P-9 to the writ petition.

3. Main contention, on which notice was issued by this Court (as is seen from order dated 30.5.2002) in the writ petition, is that earlier order dated 6.10.1995 was binding between the parties. On 31.5.2002, this Court granted interim order that the post of Professor may not be filled up till the next date of hearing. On 11.11.2002, the writ petition was admitted. C.M. No. 34830/2002 was filed for restoration of interim order, as the case was adjourned. Interim order has been ordered to continue. C.M. No. 18125/2002 has been filed by Dr. (Mrs.) Veena Singh to be added as party and vide order dated 1.11.2002, she was added as respondent No. 4.

4. Written statement has been filed on behalf of respondents No. 1 to 3. Reference is made to Schedule I of the Medical Council of India Regulations, 1998 (Annexure R4/2), which is as under:-

"In the departments of Anatomy, Physiology, Bio-chemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of posts in the department. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate must possess the Ph.D. degree in the subject. The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification. However, in the department of Bio-chemistry, non-medical teachers may be appointed to the extent of 50% of the total number of posts in the department. In case of the paucity of teachers in non-clinical departments relaxation up to the Head of the Department may be given by the appointing authority to the non-medical persons if suitable medical teacher in the particular non-clinical speciality is not available for the said appointment. However, such relaxations will be made only with the prior approval of the Medical Council of India. A non-medical person cannot be appointed as Director or Principal or Dean or Medical Superintendent in the department of Community

Medicine and Pharmacology, Lecturers in Statistics and Pharmacological Chemistry shall possess M.Sc. qualification in that particular subject from a recognized University."

5. Reference is also made to letters dated 14.5.2002 and 16.5.2002 from Medical Council of India stating that since the petitioner was M.Sc. Bio-chemistry from Punjab Agricultural University and not from a Medical Faculty, he was not eligible for appointment as head of the department of Bio-chemistry in a Medical College. Reference is also made to a judgment of the Apex Court in Medical Council of India Vs. State of Karnataka and Others, to the effect that regulations framed u/s 33 of the Medical Council Act, 1956 are binding and it is stated that the said regulations were notified in a gazette dated 5.12.1998 after permission of the Central Government and therefore, judgment of this Court dated 6.10.1995 is no longer operative.

6. Respondent No. 4 has also filed written statement to similar effect apart from relying on a judgment of the Supreme Court in Dr. Preeti Srivastava and Anr. v. The State of Madhya Pradesh and Ors., 1999 (4) SLR 687 and judgments reported in Dr. (Mrs.) Kumud Dharwal v. State of Punjab, 2000 (8) SLR 654 and Dayanand Medical College and Hospital, Ludhiana v. State of Punjab and Ors., 2001 (3) SLR 664. Respondent No. 4 has also relied on inspection report regarding inspection carried out on 14/15.9.2000 by Inspectors of Medical Council of India, which is as under:-

"The Head of the Department of Bio-chemistry is a no-medical man though the department has fully qualified and with adequate experience medical bio-chemistry teacher. One of the Associate Professor who is medically qualified has nine year teaching experience."

and also subsequent report after inspection dated 24/25.7.2001, which is as under:-

"Head of the Department of Bio-chemistry is even now the non medical man."

It has also been stated that the petitioner is holding the charge till regular incumbent joins as Professor and Head of the Department.

7. The petitioner filed reply to the written statement filed by respondent No. 1 to 3 and stated that 75% medical colleges in India are having Professors and Head of the Departments from non medical stream and stand of the respondents was malafide. A list of 44 persons, Annexure P-9, has been filed of non medical teachers working as Head of Bio-chemistry Departments in medical colleges. Reply has also been filed to written statement of respondent No. 4. It has been stated that the petitioner is holding the charge till regular incumbent joins as Professor and Head of the Department.

8. Counsel for the petitioner submitted that judgment dated 6.10.1995 is still operative and for the reasons mentioned in the said judgment, the petitioner was eligible. He also relied on list Annexure P-9 of non medical persons working as

Head of the Department and Professor. He also relied on a judgment of the Apex Court in Dr. R. Murali Babu Rao's case (supra) and State of Bihar and Anr. v. Ramesh Chandra and Anr., AIR 1998 SC 2384 and submitted that regulations framed by the Medical Council of India could not over-ride rules framed under proviso to Article 309 of the Constitution. Counsel for the petitioner also referred to recommendations of the Medical Council made in the year 1982, wherein following note is given:-

"Teachers holding posts of the rank of Associate Professor/Readers and above possessing qualifications and experience as prescribed under the Regulations of the Council as approved by the Government of India vide their letter No. F.4-12/65-MPT dated 5th June, 1971 can continue in their posts and also be eligible for promotion to higher posts."

9. Counsel for the respondents submitted that judgment of this Court stands superseded by regulations notified on 12.5.1998, Annexure R4/2 and letter of the Medical Council of India dated 16.5.2002, Annexure R4/1 stating that the petitioner was not eligible. Judgments in Dr. R. Murali Babu Rao's case (supra) and Ramesh Chandra's case (supra) are prior to coming into force of 1998 regulations and judgment of the Apex Court in Dr. Preeti Srivastava's case (supra).

10. Question to be considered is whether eligibility of the petitioner under the Haryana Medical Education Rules and under judgment dated 6.10.1995 stands superseded by 1998 Regulations and judgment of the Apex Court in Dr. Preeti Srivastava's case (supra) and whether 1998 Regulations do not affect eligibility of persons already working on the post of Associate Professor.

11. I have considered the rival submissions and perused the record of the case.

12. The Haryana Medical Education Service Rules, 1988 are the cadre rules providing for qualification etc of member of such services, which have been given in Appendix B to the said rules. The relevant extract from Appendix B to the said rules is as under:-

Appendix-B

General: In respect of all the posts in the service, persons must possess;

(a) Medical men must be registered under the Punjab Medical Registration Act, 1916 or any other Act, corresponding thereto in force in any other State/Central Medical Registration Act, and non-medical persons must fulfil the qualifications and experience as laid down by Medical Council of India before appointments are made.

(b) In case of Dentistry, must be registered under Dental Council of India Act, 1948 or any other Act corresponding thereto in force in any other State/Central Medical Registration Act. They should be registered with the Haryana State Dental Council.

Sr. No.

Designation of posts

Academic qualifications and experience if any, for direct recruitment and appointment by transfer Deputation

Academic qualifications and experience. If any, for appointment by promotion.

Academic qualifications and "experience on re-designation as Reader Associate Professor

1

2

3

4

5

1 to 67(1)7(11)

XXXXXXProfessor Medical

XXXXXX(1) A basic university qualification including in the schedule in Indian Medical Council Act, 1956

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XXXXXX

(2) MD/MS of equivalent Postgraduate qualifications in the subject concerned.

(2) MD/MS or equivalent postgraduate qualification in the subject concerned.

Experience Five years teaching experience in the speciality concerned as a Reader or an equivalent post.

Experience Five years teaching experience in the speciality concerned as a Reader or an equivalent post.

Professor Non-medical

(1) Post Graduate qualifications in the subject concerned.

(1) Postgraduate qualification in the subject concerned.

(2) Ph.D/D.Se. in the subject concerned.

(2) Ph.D/D.Se. in the subject concerned.

Experience Five years teaching experience in the speciality concerned as a Reader or an equivalent post.

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13. On the other hand, Medical Council of India has framed regulations which have been annexed with the written statement of respondents No. 1 to 3, Annexure R4/2, which have already been extracted in the earlier part of the judgment. In the earlier judgment of this Court dated 6.10.1995, the petitioner was held eligible under the Haryana Rules holding that recommendation of the Medical Council will not affect the said rules for which reliance was placed on judgments of the Apex Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, and *Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another*, . In subsequent judgments particularly the Constitution Bench judgment in *Dr. Preeti Srivastava's case (supra)* in para 49, judgment in *Nivedita Jain's case (supra)* was disapproved. The view taken in *Dr. R. Murali Babu Rao's case (supra)* was also similar and the same also stands impliedly over rules. Since the judgment of this Court dated 6.10.1995 was based on a view taken earlier in *Nivedita Jain's case (supra)* and *Dr. R. Murali Babu Rao's case (supra)*, legal position has changed. Contention of counsel for the petitioner that there is no legal change since the judgment of this Court cannot be accepted. It is also not correct to say that the judgment in *Dr. Preeti Srivastava's case (supra)* was only concerned about admission and the same was not applicable to qualifications of teachers. In para 38 of the judgment in *Dr. Preeti Srivastava's case (supra)*, calibre of teaching staff is one of the items mentioned as being covered by Entry 66 of List-I, which has been held to be within the purview of Section 33 of the Medical Council Act. Judgement in *Ramesh Chandra's case (supra)* relied on by counsel for the petitioner is prior to the judgment in *Dr. Preeti Srivastava's case (supra)* and being at variance with the view taken in *Dr. Preeti Srivastava's case (supra)*, which is a judgment by Constitution Bench, observation that regulations framed by Medical Council are only recommendatory cannot be held to be holding the field. In para 54 of the judgment in *Dr. Preeti Srivastava's case (supra)*, it was held that regulations u/s 33 of the Indian Medical Council Act are binding and the rules framed by the States in conflict with the said regulations will not be operative.

14. There is, however, another aspect of the matter, 1998 Regulations (Annexure R4/2) provide that in a biochemistry department, non medical teachers may be appointed to the extent of 50% and relaxation upto the Head of the Department may be given by the appointing authority, if suitable medical teacher was not available. The relaxation should be given with the prior approval of the Medical Council. Under this provision, the petitioner could be appointed by giving relaxation, if the appointing authority so liked after approval from the Medical Council. The appointing authority vide Annexure P-5 dated 22.5.2002 has rejected the representation of the petitioner on advice of the Medical Council and the law department of the State. From the said order, it is seen that the point considered by the appointing authority was that the earlier judgment of this Court was no longer operative after later view of the Apex Court and after

notification of regulations by Medical Council. From the order, it is not clear whether the questions raised by the petitioner that he had been working since long prior to coming into force of the regulations and in biochemistry department of other medical colleges persons not having medical qualifications are also working have been considered. This aspect of the matter may have to be considered by the appointing authority subject to approval of the Medical Council.

15. For the above reasons, while rejecting the claim of the petitioner to be considered independent of minimum qualification for teachers in medical institutions regulations, 1998 opportunity is given to the petitioner to apply for relaxation by the appointing authority in accordance with the said regulations. The appointing authority will be free to consider any such representation in accordance with law. Final decision by such authority will be taken within three months of the receipt of such a representation. The petition is disposed of accordingly.