
(2002) 12 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2117 of 1991 and 2320 of 1994

Dr. Jagdish Jugtawat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (2003) 3 RLW 1459 : (2003) 2 WLC 581

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : P.P. Choudhary, for the Appellant; V.K. Vyas and R.S. Saluja, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—Both the above mentioned writ petitions are being decided by this common order as in both of them identical questions of law and facts are involved.

S.B. Civil Writ Petition No. 2117/1991

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 27.4.1991 against the respondents with, the prayer that by an appropriate writ, order or direction, the respondents be directed to treat the qualification of M.D. in Pathology possessed by the petitioner as the requisite qualification, as per Notification Annex.P/15 dated 29.12.1987 by which amendment in Schedule-I appended to the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereinafter referred to as "the Rules of 1962") was made, for the purpose of promotion to the post of Assistant Professor (Lecturer) in the Forensic Medicine till the facility of M.D. in Forensic Medicines is available in any of the Colleges in the State of Rajasthan, with all consequential benefits and the respondents be further directed to fill-in up the six vacancies only by way of promotion quota etc. etc.

3. Before proceeding further it may be stated here that initially there were two respondents in this writ petition and by order dated 28.1.1997, Medical Council of India through its Registrar was added as respondent No. 3 by this Court.

It may further be stated here that on 11.2.1992 this Court passed stay order to the effect that respondents were restrained from filling the promotion quota post of Asstt. Professor/Lecturer in speciality of forensic medicine by way of direct recruitment.

4. The case of the petitioner as put forward by him in this writ petition is as follows:-

An advertisement was issued by the Rajasthan Public Service Commission (for short, "RPSC") for recruitment to the posts of Senior Demonstrator in the Specialty in Forensic Medicine and in pursuance of the said advertisement, the petitioner being qualified in all respects submitted his application for the said post before the RPSC and he was duly selected and appointed on the post of Senior Demonstrator in Forensic Medicine vide order dated 17.8.1981, a copy of which is marked as Annex.P/1.

The case of the petitioner is that keeping in view of future chances of promotion on the post of Lecturer (now re-designated as Assistant Professor) in Forensic Medicine, he submitted an application dated 4.2.1983 (Annex.P/2) to the Secretary, Department of Medical and Health (respondent No. 1) through proper channel for registration of his candidature in M.D. (Pathology) as a teacher (in-service candidate) and it was specifically mentioned in that application that the petitioner was working on the post of Senior Demonstrator in Forensic Medicine and M.D. (Pathology) being an approved qualification for further promotion in Forensic Medicine as per the Rules, therefore, looking to his further promotion chances on the next higher post, his candidature might be registered for M.D. in Pathology at Medical College, Jodhpur. On receipt of the petitioner's application and after considering the same and taking in view the definite intention of the petitioner for registration of his name in MD (Pathology) for the purpose of further promotion on the post of Assistant Professor in forensic Medicine, the State Government issued an order dated 10.3.1983 whereby the petitioner was provisionally registered as a candidate for M.D. (Pathology) on the conditions mentioned in that order. A copy of the said order dated 10.3.1983 is marked as Annex.P/3.

However, it was very strange to see that a letter dated 26.12.1983 (Annex.P/5) was issued by the Registrar, University of Rajasthan, Jaipur to the Principal, Dr. S.N. Medical College, Jodhpur for cancellation of the registration of the petitioner in M.D. in Pathology. Thereafter, again a reminder dated 22.2.1984 (Annex.P/6) was issued by the Registrar, University of Rajasthan, Jaipur to the Principal, Dr. S.N. Medical College, Jodhpur for cancelling the registration of the petitioner in M.D. (Pathology) and that order refers the name of the petitioner as well as the name of one Dr. M.P. Joshi, who was also registered as a candidate for M.D.

(Pathology).

It was further submitted by the petitioner that the Principal of Dr. S.N. Medical College, Jodhpur also informed the Registrar, University of Rajasthan, Jaipur to the effect that the candidature of the petitioner could not be cancelled and the reason that MD in Pathology was an approved qualification for the purpose of promotion on the post of Assistant Professor in Forensic Medicine and the petitioner was an eligible candidate for doing MD in Pathology. However, without considering all the facts and circumstances of the case as well as the legal provisions, an order was issued by the Principal of the Dr. S.N. Medical College, Jodhpur, as per the instructions of the Registrar for cancellation of the petitioner's admission/registration in M.D. (Pathology).

Aggrieved from the cancellation of his registration in M.D. (Pathology), the petitioner preferred a civil suit in the Court of Munsiff City, Jodhpur and in that suit, the learned Munsiff directed the University to maintain the status quo.:

Thereafter, during the pendency of the above suit, the petitioner received a letter dated 10.12.1985 (Annex.P/7) issued by Principal and Controller, Dr. S.N. Medical College, Jodhpur wherein it was mentioned that the petitioner's candidature could be registered in M.D. (Pathology) with effect from 21.3.1983 for a period of three years provided the petitioner withdrew the case filed by him in the Court of Munsiff, Jodhpur.

Keeping in view the assurance given to the petitioner vide letter Annex.P/7 dated 10.12.1985, he withdrew the civil suit pending in the Court of Munsiff City, Jodhpur and immediately after withdrawal of that suit by the petitioner, the Principal and Controller of Dr. S.N. Medical College, Jodhpur vide letter dated 21.12.1985 (Annex.P/8) informed the Registrar, University of Rajasthan, Jaipur to the effect that the petitioner has withdrawn his case.

Thereafter, keeping in view the withdrawal of the Court case filed by the petitioner against the cancellation of his registration for M.D. (Pathology), the Principal and Controller of Dr. S.N. Medical College, Jodhpur issued an order dated 10.1.1986 (Annex.P/9) for registration of the petitioner's candidature for M.D. (Pathology) for a period, of three years with effect from 21.3.1983 and that registration was done in pursuance of the order dated 2.1.1986 issued by the Assistant Registrar, University of Rajasthan, Jaipur.

It was further submitted by the petitioner that he passed the M.D. in Pathology examination held in the month of March, 1989 from the University of Rajasthan, Jaipur and the certificate to this effect was issued by the Principal and Controller of Dr. S.N. Medical College, Jodhpur on 16.5.1989, a copy of which is marked as Annex.P/10.

Thus, it was submitted by the petitioner that he got the degree of M.D, (Pathology) with the sole motive and purpose to get the future promotions on the post of Assistant Professor in Forensic Medicine.

The further case of the petitioner is that since the persons having the degree of M.D. in Forensic Medicine were not available in the State of Rajasthan, therefore, the qualification of M.D. (Pathology) was treated as requisite qualification for the post of Lecturer in Forensic Medicine by the University of Rajasthan.

The further case of the petitioner is that some persons were given promotions on the post of Lecturer in Forensic Medicine having the degree of M.D. (Pathology), but this promotion was denied to the petitioner on the ground that the qualification of M.D. (Pathology) possessed by the petitioner was not treated as requisite qualification for the post of Assistant Professor in Forensic Medicine.

The further case of the petitioner is that direct recruitment for appointment to the posts of Assistant Professor in forensic medicine was held in the year 1981 and three persons were provided appointments by way of direct recruitment. Now again in the year 1988, three candidates were provided promotion on the recommendation of the Departmental Promotion Committee on the posts of Assistant Professors in Forensic Medicine. Hence, as per the criteria of promotion laid down vide Notification Annex.P/15 dated 29.12.1987, it is clear that 75% posts were to be filled-in by promotion and 25% by way of direct recruitment. So in case of determination of vacancies for direct recruitment and promotion since 1981 onwards nine posts were available for promotion and three posts for direct recruitment. So far three candidates have been provided appointment by way of direct recruitment in the year 1981 and three persons have been provided promotion on the recommendations of the DPC against the promotion quota in the year 1988. Hence, after this, six posts of Assistant Professors in forensic Medicine were available for promotion to the persons working on the posts of Senior Demonstrators.

The further case of the petitioner is that six posts of Assistant Professors (Lecturers), which should have been filled-in from promotion quota, are going to be filled-in up by the respondents from direct quota and, therefore, it is one of the grounds of the petitioner for filing the present writ petition.

The further case of the petitioner is that keeping in view the Schedule-VII of the Constitution of India with respect to Union List and Concurrent List, the Medical Council of India issued the regulation or recommendation on the qualification for appointment of the persons on the posts of Teachers etc. in Medical Colleges and attached Hospitals for under-graduate and post-graduate teachings. These recommendations of the Medical Council of India have been duly approved as regulations by the Government of India vide order dated 5.6.1971 while exercising the powers conferred u/s 33 of the India Medical Council Act, 1956 (hereinafter referred to as "the Act of 1956"). A copy of the said Regulation is marked as Annex.R/12. A perusal of the said Regulations, Annex.P/12 makes it clear that for the post of Assistant Professor in Forensic Medicine, the qualification of M.D. (Pathology) had also been treated as the requisite and equivalent qualification for the purpose of appointment.

It was further submitted by the petitioner that through letter dated 4.6.1979 (Annex. P/13) issued by the Government of India, it was decided that in order to meet with the immediate requirements of the Medical Institutions to embark upon the programme to start post graduate courses in Forensic Medicine, the Executive Committee resolved that where the persons possessing M.D. (Forensic Medicine) were not available, for the present teachers having post graduate qualifications in subjects e.g. Medicine, Pathology, Anatomy and Surgery etc. and having 5 to 10 years experience in Forensic Medicine might also be recognised as post graduate teachers in Forensic Medicine even though they might not have any post graduate qualification in Forensic Medicine.

The further case of the petitioner is that University of Rajasthan published a Hand-book whereby the qualification for Lecturer (Assistant Professor) in Forensic Medicine was laid down and the post graduation qualification in the subject (i.e. in Forensic Medicine) was treated as the requisite qualification for the post of Lecturer. But in the note it is clearly mentioned that in case the candidates with M.D. in Forensic Medicine are not available then for a period of next five years i.e. upto December, 1987, the teachers having the post graduation qualification in the subject of Pathology etc. and having atleast five years experience in Forensic Medicine may also be recognised as Teacher in Forensic Medicine even though they may not have any post graduation qualification in forensic medicine. A copy of the relevant portion of the Hand book laying down the qualification for the post of Lecturer (Assistant Professor) by the University of Rajasthan is marked as Annex.P/14.

The further case of the petitioner is that the Governor while exercising the powers conferred under Article 309 of the Constitution of India also issued a Notification dated 29.12.1987 (Annex.P/15) whereby the Schedule-I appended to the Rules of 1962 was amended and for the purpose of promotion on the post of Lecturer (Assistant Professor) the persons working on the post of Senior Demonstrator in the speciality in Forensic medicine were also treated as the persons duly qualified. The criteria of promotion was also given in the said Notification (Annex.P/15) dated 29.12.1987 whereby 75% posts were to be filled-in by way of promotion and the remaining 25% posts by direct recruitment. The relevant portion of the said Notification Annex.P/15 is quoted here:-

S.No.

Post

Method of recruitment with percentage

Post from which Remarks selection to be made by promotion

1.

Lecturer

100% by direct recruitment. In case of the speciality of Forensic Medicine of

Denial Surgery 75% by promotion & 25% by direct recruitment.

Senior Demonstrator in the speciality of Forensic Medicine or Dental Surgery

Thus, the sum and substance of the writ petition filed by the petitioner is that a bare perusal of Notification Annex.P/15 dated 29.12.1987 would make it clear that a person working on the post of Senior Demonstrator was eligible for promotion against 75% quota to the post of Assistant Professor in Forensic Medicine. Since the petitioner was Senior Demonstrator in Forensic Medicine since 1981, therefore, from promotion quota, he was eligible for the post of Assistant Professor in Forensic Medicine, though he was having a degree of M.D. (Pathology) and not MD in Forensic Medicine. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents No. 1 and the simple case of the respondent No. 1 was that the qualification of not having M.D. degree in Forensic Medicine for the post of Assistant Professor in Forensic Medicine was relaxed upto December, 1987 and, thereafter, for getting the appointment to the post of Lecturer (Assistant Professor) in Forensic Medicine, a candidate was required to possess degree of M.D. in Forensic Medicine and since the petitioner was not having a degree of M.D. in Forensic Medicine, therefore, he was not entitled to the post of Assistant Professor in Forensic Medicine, even from the promotion quota. It was further submitted by the respondent No. 1 that the post-graduation in Forensic Medicine was started by the University of Rajasthan at S.M.S. Medical College, Jaipur in 1988-89 and R.N.T. Medical College, Udaipur in 1989-90. Hence, the writ petition filed by the petitioner be dismissed.

A reply to the writ petition was also filed by the respondent No. 3 Medical Council of India in the shape of affidavit and it was asserted that the Council is a statutory body created under the provisions of the act of 1956 and the Act of 1956 is a Central legislation and is referable to Entry 66 List I of Schedule - VII to the Constitution of India. The council is under statutory obligation to inter-alia maintain the standards of Medical education through out the country. To achieve this objective, the Council has been empowered under the provisions of the Act of 1956 to frame Regulations with prior approval of the Central Government. It was further submitted that the Regulations framed by the Council under the provisions of the Act of 1956 are binding upon all concerned and have over-riding effect on any legislation and/or regulations and/or rules of any State or University which are contrary to and/or inconsistent with the provisions of the Regulations framed by the Council. The respondent No. 3 placed, reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Dr. Preeti Srivastava v. State of M.P. and Ors.* (1).

It was further submitted by the respondent No. 3 that the Council in exercise of its powers conferred upon it by Section 33 of the Act of 1956 has, with prior approval of the Central Government, framed Regulations called as "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998" (hereinafter

referred to as "the Regulations of 1998") and the same were published in the Gazette of India on 5th December, 1998. The said Regulations of 1998 prescribe minimum qualifications for appointment of Medical Teachers and for the purpose of appointment to Medical Teachers in Forensic Medicine, the following qualifications have been prescribed:-

(A)

Professor

MD (Forensic medicine)

(i) As Reader/Assoc. Professor in Forensic Medicine for four years in a recognised medical college.

Desirable

(ii) Minimum for four Research Publications indexed in index medicus/ national journal and one research publication in international journal.

(B)

Reader/ Associate Professor

-do-

(i) As Asstt. Prof./Lecturer in Forensic Medicine for five years in a recognised medical college.

Desirable

(ii) Minimum for four Research Publications indexed in index medicus/national journals.

(C)

Asstt. Professor/ Lecturer

-do-

(i) Requisite recognised post graduate qualification in the subject.

(ii) Three years teaching experience in the subject in a recognised medical college as Resident/Registrar/Demonstrator/T utor.

Thus, according to the respondent No. 3, the minimum qualification for the post of Lecturer/Assistant Professor in Forensic Medicine is MD (Forensic Medicine) and relaxation, which was made earlier, was available upto December, 1987 and after passing of the Regulations of 1998, no person can be appointed as Lecturer/ Assistant Professor without possessing the degree of M.D. in Forensic Medicine. Since the petitioner was not possessing the degree of M.D. in Forensic Medicine, therefore, he was not entitled for appointment to the post of Assistant Professor (Lecturer) in Forensic Medicine. Furthermore, the contention of the petitioner

that since he was permitted by the State Government/University to pursue MD (Pathology) course, therefore, he was entitled to be appointed/promoted as Teacher in Forensic Medicine even without having the requisite degree of MD in Forensic Medicine, cannot be accepted. Hence, the writ petition filed by the petitioner be dismissed

5. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the material available on record.

6. The admitted position which has emerged from the record may be summarised in the following manner:-

(i). That the petitioner was duly selected and appointed as Senior Demonstrator in Forensic Medicine vide order Annex.P/1 dated 17.8.1981.

(ii) That the petitioner was registered for the degree of MD in Pathology and at the time, when he was admitted or registered for the degree in MD in pathology, that degree was found equivalent qualification for the post of Lecturer/Assistant Professor in Forensic Medicine.

(iii) That vide letter Annex.P/5 dated 26.12.1983, it was communicated by the Registrar, University of Rajasthan, Jaipur to the Principal, Dr. S.N. Medical College, Jodhpur that the petitioner could not be registered in M.D. (Pathology) as candidate working in the Department of Forensic Medicine and as per the direction of Medical council of India the House Job done in the department of Forensic Medicine could not be counted for admission in M.D. (Pathology) Course and it was directed that registration of the petitioner for MD (Pathology) be cancelled and the same was accordingly cancelled.

But, thereafter the petitioner filed a civil suit in the Court of Munsiff City, Jodhpur against cancellation of his registration in MD (Pathology) and the learned Munsiff in that suit directed the University to maintain status quo and thereafter, on withdrawing that suit by the petitioner, he was permitted to pursue the degree of MD (Pathology) while working as Senior Demonstrator in the Department of Forensic Medicine.

(v) That the petitioner got the degree of MD (Pathology) through Certificate Annex.P/10 dated 16.5.1989.

(v) That an advertisement Annex.P/11 dated 13.8.1990 was issued by the Department of Medical and Health, Government of Rajasthan, Jaipur inviting applications for various posts including the posts of Lecturers (Assistant Professors) in Forensic Medicine.

However, it is made clear that in pursuance of the said advertisement Annex.P/11, the petitioner did not apply for the post of Lecturers/Assistant Professor in Forensic Medicine and it is also not the case of the petitioner that he ever applied in pursuance of that advertisement Annex.P/11 and his application

was rejected on the ground that he was not having a degree of MD in Forensic Medicine.

(vi) That the condition of possessing degree of MD in Forensic Medicine for the post of Lecturer/Assistant Professor in Forensic Medicine was relaxed upto December, 1987 and thereafter, for obtaining appointment on the post of Assistant Professor (Lecturer) in Forensic Medicine, a candidate was required to possess the degree of MD in Forensic Medicine.

(vii) That through Notification Annex.P/15 dated 29.12.1987, an amendment was made in the Schedule appended to the Rules of 1962 and as per that amendment, for promotion to the post of Lecturer Forensic Medicine, the persons working as Senior Demonstrator in the speciality of Forensic Medicine were also treated as qualified, for promotion to the post of Lecturer (Asstt.Professor) in Forensic Medicine.

(viii) That in exercise of the powers conferred by Section 33 of the Act of 1956, the Medical Council of India framed Regulations of 1998 and as per the Regulations of 1998, the requisite qualification for the post of Assistant Professor/Lecturer in Forensic Medicine is MD (Forensic Medicine).

7. Now the case of the petitioner is that because of the amendment made in the Schedule-I appended to the Rules of 1962, whereby for promotion to the post of Lecturer/Assistant Professor in, Forensic Medicine the persons working as Senior Demonstrator in the speciality of Forensic Medicine were duly qualified and since the petitioner was performing the duties of Senior Demonstrator in the Department of Forensic Medicine since 1981, therefore, promotion to the post of Lecturer/Assistant Professor in Forensic Medicine be made available to him and requirement of possessing degree of MD in Forensic Medicine should be dispensed with in the cases of the persons like the petitioner because at the time when he was registered for the degree of MD (Pathology), the degree of MD (Pathology) was considered equivalent to the degree of MD (Forensic Medicine) and furthermore, since Rules of 1962 have been framed by the Governor of Rajasthan under Article 309 of the Constitution of India and by virtue of Schedule-I appended to the Rules of 1962, as quoted above, a declaration be made to the effect that in the case of persons working as Senior Demonstrators in the Department of Forensic Medicine for a very long time, the requirement of possessing a degree of MD in Forensic Medicine be dispensed with and the degree of MD (Pathology) should be treated as equivalent to the degree of MD (Forensic Medicine).

8. In my opinion, the above submission though on the very face appears to be appreciable and sound one, but if the same is examined from academic and legal point of view, it cannot be accepted for the following reasons:-

(i) That no doubt Health and Family Welfare (Department of Health), New Delhi wrote a letter dated 4.6.1979 (Annex.P/13) to all the Universities that the teachers having post-graduate qualifications in subjects e.g. medicine, Pathology,

Anatomy, Surgery etc. and having 5 to 10 years experience in Forensic Medicine might be recognized as post-graduate teachers in Forensic Medicine even though they might not have any post graduate qualifications in Forensic Medicine. But, through Annex.P/14, this relaxation was made available only upto December, 1987. Thus, the case of the petitioner that even after December, 1987, such relaxation should be applied and should be made available in favour of those candidates, who have not obtained the degree of MD in Forensic Medicine, cannot be accepted.

(ii) That Medical Council of India in exercise of the powers conferred upon it by Section 33 of the Act of 1956 framed Regulations of 1998 and the same prescribe minimum qualifications for appointment of medical teachers and for the purpose of appointment to medical teachers in Forensic Medicine, the qualification of MD in Forensic Medicine is must, apart from three years teaching experience in the subject in a recognised medical college as Resident/Registrar/Demonstrator/Tutor.

It may be stated here that Entry 66 of the Schedule VII of the Constitution of India deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. No doubt education is a concurrent subject under Entry 25 of List III, as substituted by the Constitution (42nd Amendment) Act, 1976, Entries 65 & 66 of List I give the Union power to secure that the standard of research etc., is not lowered at the hands of any particular State or States, to the detriment of national progress and the power of the State Legislature must be so exercised as not to directly encroach upon the Union power under the present Entry.

Therefore, if the Regulations of 1998 are examined in this perspective, they clearly reflect that they would prevail over any rule made by the State Government which is found inconsistent with them.

In view of the Regulations of 1998, the qualification mentioned as Senior Demonstrator in the speciality in Forensic Medicine for promotion to the post of Lecturer (Asstt. Professor) in Forensic Medicine without having the degree of MD in Forensic Medicine is against the Regulations of 1998 and since these Regulations are to be prevailed, therefore, this qualification mentioned in Annex.P/15 would not be helpful to the petitioner.

The Hon''ble Supreme Court in the case of Dr. Preeti Srivastava (supra) has held:-

"Constitution of India--Schedule VII List III Entry 25 & List I Entry 66 and Articles 245 246 254 and 15(4) -- Post- graduate medical education--Excellence in -- Standards of education and admission criteria --Held, per majority, can be laid down under List I Entry 66 and List III, Entry 25 by Central Legislation -- State's competence under List III Entry 25 to control or regulate higher education is subject to the standards so laid down by Union of India -- States have competence to prescribe rules for admission to post-graduate medical course so long as they are not in consistent with or do not adversely affect the

standards laid down by the Union of India or its delegate."

On the above proposition of law laid down by the Hon"ble Supreme Court, the learned counsel for the petitioner has submitted that this is a correct position of law, but it is with reference to cases of admission to the Medical Colleges and not with reference to appointment of Lecturers in Medical Colleges.

In my considered opinion, this argument is not at all tenable. The Hon"ble Supreme Court in the above case has clearly observed that the State have competence to prescribe rules for admission to post graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India or its delegate. Since in the Regulations of 1998, there is a specific mention of the fact that for the post Lecturer in Forensic Medicine, the minimum qualification is that a candidate must possess the degree of MD in Forensic Medicine, therefore, in such a situation, the so- called rule appears to be inconsistent with the Regulations of 1998 and, therefore, no reliance can be placed on it.

Thus, it is held that the person working as Senior Demonstrator in the Department of Forensic Medicine having a degree of MD in pathology, cannot be appointed as Lecturer in Forensic Medicine even from promotion quota today.

(iii) That during the course of arguments, it has been further submitted by the learned counsel for the petitioner that in case this Court comes to the conclusion that the degree of MD in Forensic Medicine is must for the post of Lecturer in forensic Medicine today, but this was not necessary before January, 1988 and promotional posts were vacant prior to Jan.1988, therefore, the petitioner should have been given promotion for the post of Lecturer in Forensic Medicine which fell due before Jan., 1988.

In my considered opinion, the above argument cannot also be accepted because of the simple reason that the petitioner nowhere has applied for seeking appointment as Lecturer in Forensic Medicine when the vacancies were advertised through Advertisement Annex.P/11. The Hon"ble Supreme Court in State of Rajasthan v. R. Dayal and Ors. (2) has held:-

"The posts which fell vacant prior to the amendment of the rules would be governed by the original rules and not by the amended rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the rules are required to be filled up in accordance with the law existing as on the date when the vacancies arose. Even a carried forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government."

The above observations of the Hon"ble Supreme Court make the position very much clear that even the carried forward vacancy is required to be considered in accordance with the law existing today meaning thereby a person not possessing degree of MD in Forensic Medicine cannot be appointment as Lecturer in Forensic

Medicine today. Therefore, if any vacancy had accrued prior to Jan. 1988 and the same was not determined and filled-in up, even for the past vacancies, the petitioner is not entitled to the relief sought for today.

Apart from this, the State is not bound to notify vacancies as soon as they arose, but it is open, as early as possible to inform existing and anticipated vacancies to the RPSC and every eligible person is entitled to apply and to be considered of his claim for recruitment provided he satisfies the prescribed requisite qualifications. The Hon''ble Supreme Court in J & K Public Service Commission and Ors. v. Dr. Narinder Mohan and Ors. (3) did not accept the suggestion for adoption of chain system of recruitment by notifying each year's vacancies and for recruitment of the candidates found eligible for the respective years. It would be fraught with grave consequences. The Government need not notify vacancies as soon as they arose.

From the above observations of the Hon''ble Supreme Court, the argument that the Government was bound to notify vacancies each year, cannot be accepted. Thus, if the vacancies were not determined and they are going to be determined today, appointment to the post of Lecturer (Asstt. Professor) in Forensic Medicine would be governed by the law which is in force today. From this point of view also, the petitioner is not entitled to any relief sought for.

(iv) That in prayer Clause (d) of the writ petition, there is a specific prayer on behalf of the petitioner that the qualification of MD (Pathology) be treated as requisite qualification for the purpose of promotion to the post of Assistant Professor in Forensic Medicine till the facility of MD (Forensic Medicine) is available in any of the Medical Colleges of the State of Rajasthan. Since now facility of MD in Forensic Medicine is already available in the Medical Colleges of the State of Rajasthan since 1992, therefore, the qualification of MD (Pathology) cannot be treated as requisite qualification for the post of Assistant Professor in Forensic Medicine onwards 1992 as the candidates having the degree of MD in Forensic Medicine are available now in State of Rajasthan and from this point of view also, the petitioner is not entitled to the relief sought for.

9. For the reasons stated above, all the submissions raised earlier by the learned counsel for the petitioner stand rejected and thus, the petitioner is not entitled to any relief sought for in this writ petition.

10. Before parting with this order, one more argument of the learned counsel for the petitioner has to be dealt with and the same is that placing reliance on the decision of the Hon''ble Supreme Court in D.S. Nakara v. Union of India (4), he has argued that non-giving of promotion to the Senior Demonstrator working in the Department of Forensic Medicine, for the post of Lecturer in Forensic Medicine is violative of Article 14 of the Constitution of India and, therefore, the condition which prescribes the degree of MD in Forensic Medicine as minimum qualification for the post of Lecturer (Asstt. Professor) in Forensic Medicine is arbitrary and violative of Article 14 of the Constitution of India and that should

be set aside.

11. In my considered opinion, the above submission is wholly untenable and cannot be accepted. It appears that while making the condition that for promotion to the post of Lecturer (Asstt. Professor) in Forensic Medicine, a candidate must possess the degree of MD in Forensic Medicine, all relevant considerations germane to the fixing of condition of possessing degree of MD in Forensic Medicine, all relevant considerations germane to the fixing of condition of possessing degree of MD in Forensic Medicine for promotion to the post of Lecturer (Asstt. Professor) in Forensic Medicine were kept in mind and thus, there is a well founded basis behind prescribing such condition. Thus, the provision prescribing condition of possessing degree of MD in Forensic Medicine for promotion to the post of Lecturer (Asstt. Professor) in Forensic Medicine, cannot be said to be arbitrary, illegal, unconstitutional and violative of Article 14 of the Constitution of India. Furthermore, it is upto the Rule Making Authority to prescribe the qualifications including the experience for promotion to a particular post, The Court would, not usurp the functions assigned to the executive under the Constitution of India. Thus, this contention also stands rejected.

12. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

S.B. Civil Writ Petition No. 2320/1994

13. This writ petition also raises the same controversy which has been decided above in S.B. Civil Writ Petition 2117/1991 and thus, for the reasons given in S.B. Civil Writ Petition No. 2117/1991 there is also merit in this writ petition and the same is also liable to be dismissed.

In the result, both the above-mentioned writ petitions filed by the petitioners are dismissed. The stay orders passed by this Court on 11.2.1992 in S.B. Civil Writ Petition No. 2117/91 and on 26.7.1994 in S.B. Civil Writ Petition No. 2320/1994 stand vacated.

No order as to costs.