
(1984) 07 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 735 of 1983

Dr. K.M. Sudalman

APPELLANT

Vs

State of Kerala" and Others

RESPONDENT

Date of Decision : 02-07-1984

Acts Referred:

Indian Medical Council Act, 1956 — Section 19, 19A, 33, 33(k)

Citation : (1984) KLJ 795

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M.K. Abdul Khader, for the Appellant; K. S. Rajamony, M. Lalitha Nair, B. Satheesh Chandran and Abraham Vakkanaal, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—The petitioner, and respondents 3 to 5, belong to the teaching staff in Orthopaedics in Medical Colleges of the State. A dispute about the entitlement of the petitioner to be appointed as Professor, in preference to the others, is raised in this writ petition. It is claimed that the petitioner is the senior most Associate Professor in Orthopaedics with experience exceeding 4 years. He had represented to the Government about his grievances by Ext. P-3 dated 6-12-1982. In view of continued inaction, the petitioner approached this court by filing this writ petition. The main attack in the writ petition is directed against Ext. P-2 Government Order dated 22-12-1976 whereunder revised qualifications, and teaching experience for the various teaching posts in the Medical Colleges had been fixed as detailed in the appendixes to that order. According to the petitioner, they are in direct Conflict with the qualifications as prescribed by the Indian Medical Council, the relevant excerpt of which is Ext, P-1. It is contended that the recommendations of the Medical Council framed u/s 33(k) of the Indian Medical Council Act, should prevail over the special rules or the Governmental orders dealing with qualification and method of appointment issued by the State Government.

2. The stand taken by the Government is that there is no conflict between the two.

3. It is useful in this connection to extract the relevant provision in the special Rules relating to the qualification and teaching experience of the various posts in the Orthopaedic Department,

Post

Qualification

Teaching experience

Processor "Associate Professor.

M.S. (Ortho), M.Ch. (Ortho) Speciality Board Orthopaedic Surgery (USA) MS/ FRCS with diploma in Orthopaedics or an equivalent qualification.

As Reader/Asst. Professor in Orthopaedics for 3 years in a College after P.G. qualification.

Reader Assistant Professor.

--do--

As Registrar|Tutor or an equivalent post for at least 3 years in Ortho. or allied subjects in a teaching institution."

Those referred to in the recommendations of the Medical Council are:

"Post

Academic qualifications Orthopaedics

Subject

Teaching Research Experience.

(a) Professor

M.S. (Orthopaedics M.Ch. (Orthopaedics) Speciality Board of Orth. Surgery (USA)

(a)

As Reader in Orthopaedics for five years in a College .

lb) Reader

M.S. (Orthopaedics) M.Ch. (Orthopaedics)

Speciality Board of Ortho

Surgery (USA).

(b)

As Lecturer in Orthopaedics for 3 years in a College .

(c) Lecturer

(c)

The requisite recognised Post Graduate qualification in the subject and 3 years teaching experience as Tutor/Registrar/Resident in Orthopaedics Medical Officer of Rehabilitation of which 1 year should be after post Graduate qualification.

(d) Tutor/Registrar/Resident.

M.B.B.S."

4. It is evident that the academic qualification and teaching experience prescribed by the State Government for the posts of Professor and Associate Professor are the same. The appointment to the posts of Professors has necessarily to be made from the lower cadre of Associate Professors. An Assistant Professor with requisite teaching experience cannot directly become a Professor, skipping the intermediate cadre of Associate Professor.

5. Paragraph 5 of the counter-affidavit of the State Government gives the details relating to the seniority of the petitioner and respondents 3 to 5 in the Cadre of Associate Professors. The order of seniority is:

1. Cherian M. Thomas (3rd respondent)

2. N. J. Mani (5th respondent)

3. V. R. Bhaskaran (4th respondent)

4. K. M. Sulaiman (Petitioner)"

The petitioner and the 4th respondent had been promoted as Associate Professor on the same day.

6. On the basis of the factual position, the petitioner cannot have any grievance whatever, he being the junior most in the category of Associate Professor.

7. I am not able to find any conflict between Ext. P-2 issued by the State Government and the recommendation of the Indian Medical Council. The nomenclature of teachers suggested in the recommendations of the Medical Council include the alternatives of Professor, Associate Professor and Assistant Professors. In Ext. P-2, this basic scheme has been maintained. As noted earlier, as regards the academic qualifications prescribed, there is no divergence in substance between the Ext. P-2 and the Medical Council recommendations.

8. In the view that has been taken, it is unnecessary to consider the question whether the recommendations of the Indian Medical Council could supersede the special rule's or other governmental orders dealing with the qualification and method of appointment of civil servants in the State. State public services come under Entry 41 of List II of the VII Schedule of the Constitution of India. Power of

Legislation including Subordinate Legislation is therefore exclusively with the State Government. No authority shall be entitled to entrench upon the powers of the State Government so conferred under the Constitution. The Indian Medical Council Act, 1956 enacted by the Parliament, has operation in a different field, as is evident from the preamble to the enactment. Section 33 of that Act (as amended by Act XXIV of 1964) enables to make regulations to carry out the purposes of the Act. No doubt, such regulations can cover the standards of staff for medical education. The scope and amplitude of Sections 19A and 33 of the Act have been considered by a Division Bench of the Bombay High Court in *Diploma in Medical Practice Association Vs. The Medical Council of India*, . It was noted therein that even after the amendment in 1964, ".the power that is given to the council is the power to frame Regulations, but the Regulations become effective only after they are sanctioned by the Central Government". The court further held:

It is a well-known principle of construction of statutes that where a power is given to an authority to do a thing and the manner of exercising that power is also indicated, then the authority is expected and required by the law to exercise the power only in the manner and to the extent indicated in the Act.

9. The recommendations of the Medical Council in this regard have to be viewed in that background. It is to be noted that the writ petitioner does not allege that any Regulations have been framed by the Council. The only averment in para 5 of the petition is about the recommendations" of the Council. The recommendations do not affect or attenuate the powers of the State Government in dealing with the civil servants under its control. It may be that the Medical Council is empowered to take action in the manner provided in the Act, including Section 19 thereof, if the Council feels that the courses of study and the examinations undergone by the candidates or the proficiency required from candidates at any examination, do not conform to the standard prescribed by the Council. Such action is permissible even when the staff and other facilities obtaining in a Medical College are not in tune with the requirements prescribed by the Council. It is to be noted that even in such situations, there are considerable constraints and limitations for the action which could be taken by the Medical Council. Section 19 can be pressed into service only in limited contingencies. A review of the scheme would indicate that the recommendations of the Medical Council do not have the effect of over-riding the special rules or other orders framed by the Government if such special rules or other,executive orders are not otherwise infirm or illegal. In that view of the matter, the larger contention that Ext. P-2 will have to be invalidated on the ground of its being in conflict with the recommendations of the Medical Council will have to fail. In the result, the writ petition fails and is dismissed but without any order as to costs.