

(1982) 03 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Dr. (Miss) Subhash Kaushal	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Citation : (1982) 2 LLJ 215

Hon'ble Judges : Tiwana, J

Bench : Single Bench

Judgement

Tiwana, J.—The petitioner, who is admittedly in P.C.M.S. (Class II) and had acquired her M.S. qualification in Anatomy in December, 1980, applied for the post of Assistant Professor (Anatomy) in response to advertisement issued by the Punjab Public Service Commission. The applications for this post were to be submitted by December 28, 1981. The qualifications prescribed for the candidates were as follows :

- (i) Post-graduate degree in the specifically concerned, and
- (ii) Three years teaching experience, whether it is prior to the post-graduation or subsequent thereto.

As per the return of the Public Service Commission, there is an instruction printed on the application form itself that the applicant who is in Government service would have to submit a "No Objection Certificate" (N.O.C.) from its employer that is, the Government.

2. As per the allegations in the petition the petitioner who fulfilled the above noted qualifications, submitted her application within time. As the Public Service Commission found that the petitioner had not submitted any certificate showing her experience and was thus reluctant to interview the petitioner, she submitted two certificates, Annexures P. 1 and 2. from the Professor and Head of the Department of Anatomy showing that while holding the post of Demonstrator in Anatomy from January 18, 1978 to December 31, 1978; then from January 1, 1979 to July 3, 1981 and later as Lecturer in Anatomy w.e.f. July 4, 1981 to the

date of the issuance of the certificate, i.e., July 20, 1981, she had been doing the teaching work. On this the Commission called her for interview subject to the following condition :

You have been called provisionally on the condition that you will prove that you possess the requisite experience otherwise you would be considered ineligible. Your eligibility will be decided in consultation with the expert.

According to the petitioner the Commission later, in consultation with the expert from the Medical and Health Department of the Punjab Government found her to be eligible on the basis of the above two certificates. In spite of this the Governmental authorities somehow found it difficult to issue the requisite "No Objection Certificate" in the case of the petitioner in view of the instructions of the Government dated February . 27, 1979. The relevant part of these instructions reads as follows;

2. The matter regarding grant of teaching experience to the PCMS II Officers working as Medical Officers against the posts of Registrar / Demonstrators had been under consideration of the Government for some time past and it has been now decided that such PCMS II officer who while working as medical officers in the basic and the unpopular clinical departments the services of which are treated as rural service against the posts of Registrars/Demonstrators in a particular department of the Medical College have already registered themselves for the M.D./ M.S. courses or have acquired such qualifications as a result of such posting in that department should be given the benefit of the teaching experience in that subject/department by treating their period of such posting as Registrars/Demonstrators as the case may be. The matter may please be brought to the notice of all concerned medical officers. The departments are specified below:

(i) Basic Departments, Physiology, Anatomy, Pharmacology, Pathology, Microbiology, Biochemistry (Blood transfusion).

The precise defence of the Government as disclosed in the affidavit of Mr. B.R. Kak-kar, Deputy Secretary, is as follows:

The petitioner worked as Medical Officer against the post of Anatomy from 18-1-78 to 31-12-1978 but this period cannot be counted towards teaching experience because according to the Government instructions at Annexure P/4, benefit of teaching experience is to be given only to those Medical Officers who were posted against the posts of Registrar/Demonstrator and had already registered themselves for MD/MS course or had acquired such qualifications as a result of such posting in that Department, by treating their such period as of Registrar/Demonstrator, as the case may be. The petitioner's case does not fall in those instructions as during her posting as Medical Officer who was not registered for MD/MS.

In spite of this the Department, however, forwarded the application of the

petitioner to respondent No. 3, the Commission, on the condition that she fulfilled her teaching experience of three years on December 31, 1981, i.e., three days after the date by which the applications were required to be submitted to the Commission. On account of the absence of this certificate, the result of the petitioner's interview has been withheld by the Commission. It is this action of the respondent authorities that is, the Government and the Commission that has necessitated the filing of this petition to seek a direction to respondent No. 2, the Director of Medical Education and Research, Government of Punjab to issue the requisite "No Objection Certificate" and the Commission, respondent No. 3, to declare her result.

3. Mr. Kuldeep Singh, Bar-at-law, learned Counsel for the petitioner, urges that the above noted action of the respondent authorities is wholly unsustainable on the following grounds:

1. The instructions, Annexure P. 4, the relevant part of which has already been reproduced above, were issued on February 27, 1979, i.e., much after the period January 18, 1978 to December 31, 1978, when the petitioner had been working as a Demonstrator, though designated as a Medical Officer, in Anatomy. in Medical College, Patiala and thus these instructions cannot be made to operate retrospectively and nullify that experience.

2. The appointment to the post of Assistant Professor of Anatomy is governed by the, statutory rules known as "Punjab Medical Education Service (Class I) Rules, 1978 and Rule 7(2) read with Appendix "C" lays down the following qualification:

Post-graduate degree in the speciality concerned; M.D.M.S., Ph. D., M. Sc., F.R.C.P., M.R.C.P., etc.

Three years teaching experience whether it is prior to post-graduation or subsequent thereto.

The above noted instructions of the Government, Annexure P. 4, are not only arbitrary but are also violative of these rules.

3-A. The applicability of the instructions only to the candidates who are in Punjab Government service, is likely to result in not only discrimination, but injustice also.

4. After hearing the learned Counsel for the parties, I find a lot of merit in the above noted three contentions of the learned Counsel for the petitioner.

5. A bare reading of the instructions, Annexure P-4. shows that the decision of the Government contained therein has to be effective with effect from the date these instructions had been issued, i.e., February 27, 1979. These instructions cannot possibly have the effect of washing off the experience a particular incumbent had gained factually by the time these were issued. The petitioner obviously had gained teaching experience as a Demonstrator, though designated as a Medical Officer during the period January 18. 1978 to December 31. 1978.

It is neither disputed nor possibly can be that the Government is not competent to issue any executive instructions with retrospective effect. This is squarely within the legislative sphere.

6. The experience as envisaged by the Rules (Appendix "C") is not defined anywhere. In the absence of any such definition, it cannot possible be held that though a candidat has actually and factually been teaching prior or subsequent to the post-graduation degree, yet it would not be treated as experience for the reason that while so teaching the candidate was given a particular designation. The Rules in a nutshell talk of experience and not of designation. Merely because a candidate is designated as a Medical Officer, though performing the duties of the Demonstrator and thereby teaching the students as the case in hand, cannot be said to be gaining no teaching experience because the petitioner had been designated as a Medical Officer. Further I do not find any warrant or basis for the condition imposed by the Government in these instructions to the effect that the Registrars / Demonstrators in a particular department of the medical college can be said to have gained the experience of teaching only if they had registered themselves for M.D./M.S. courses and not otherwise. To this extent these instructions appear to be wholly arbitrary. The experience which one has gained by performing the duties of a teacher is not dependent on whether he himself is registered or joined the courses for a higher degree, that is, M.D./M.S. In the absence of the definition of the word "experience" as used in the above noted Rules, one has necessarily to have a simple common sense idea of its meaning. This has been so held by the Supreme Court in the State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others, and a Division Bench of this Court in Dr. B.K. Kapila v. The State of Punjab and Ors. S.C.W. No. 3405 of 1979, decided on 2-5-1980 (Punjab) decided on May 2, 1980. Teaching or "to teach" in the ordinary sence means to impart knowledge or to guide the studies or to exhibit or impress something on the mind of the taught. "Experience" in the ordinary sense would mean practical acquaintance with any matter gained by trial. A similar view appears to have been taken by a learned Judge of this Court in Dr. Ravindar Paul Kaur v. The State of Punjab and Anr. wherein the question for decision was as to whether teaching experience gained by an Assistant Professor in Radiology while working on ad hoc basis can be counted towards experience as envisaged by Punjab Medical Education Service (Class I) Rules, 1978. In that case too, the State Government had issued instructions on October 15, 1975 (Annexure P. 6 in that case) that ad hoc service rendered by a Government employee prior to his regular appointment cannot be counted towards experience in the matter of promotion. Nullifying the effect of these instructions the learned Judge held that the Statutory Rules do not confine the teaching experience gained by the petitioner as Assistant professor Radiology on ad hoc basis from May 11, 1973 to February 19, 1976, (it) cannot be ignored to determine her eligibility for appointment as professor in Medical College, Patiala.

7. Further the learned Counsel for the petitioner appears to be wholly right in submitting that the above noted instructions of the Government are violative of

the Rules referred to above inasmuch as these tend to alter or qualify the word "experience" as used in Rules 7(2) read with Appendix "C". By now it is well laid down that the Government through its executive instructions cannot amend, alter or add limitations or qualifications resulting in amendment of the statutory rules. The following three judgments of this preposition can be referred to with advantage:

1. Manmohan Singh Ahlawat v. State of Haryana and Ors. C.W.P. No. 2543/72, dt. 16-1-74.

2. Debinder Singh Grewal v. State of Punjab (1970) 4 S.L.R. 892.

3. Uttam singh v. State of Punjab and Ors. (1975) 2 S.L.R. 814.

For the above noted reasons the instructions of the Government, Annexure P-4, have to be quashed and treated as non est.

8. Equally well merited is the above noted third contention of the learned Counsel for the petitioner. The instruction (Annexure P-4) are only applicable to those candidates who are in the service of the Punjab Government. Thus it is patent that the candidates who may either be in service of any other Government semi-Governmental authority or may not be in service at all, are not required to submit any such "No Objection Certificate" which may be in consonance with the above noted instructions: In their cases the experience gained by them factually and actually would be counted as teaching experience, by the Public Service Commission and no such certificate would be insisted upon. On the other hand, the candidates who were in the service of the State of Punjab and had, as a matter of fact, been performing teaching duties, would not be issued such a "No Objection Certificates" unless covered by the above noted instructions. Thus the operation of these instructions is likely to do injustice to (sic) the candidates who are in the service of the State Government.

9. For the reasons recorded above, I hold that the petitioner is entitled to the "No Objection Certificate" called for by the Punjab Public Service Commission. In the light of this respondent No. 2, Director of Medical Education and Research, Government of Punjab, is directed to issue the requisite certificate forthwith. The Public Service Commission would, on the receipt of that certificate, declare the result of the interview held by it. Keeping in view the facts and circumstances of the case, I do not, however, pass any order as to costs.