
(2008) 05 MP CK 0037
In the Madhya Pradesh High Court

Dr. Omprakash Lakhwani

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Citation : (2008) ILR (MP) 2003 : (2008) 3 MPHT 360 : (2008) 3 MPJR 171 :
(2008) 3 MPLJ 173

Hon'ble Judges : S. Samvatsar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Samvatsar, J.

This writ petition is filed by the petitioner challenging the contractual appointment of respondent No. 6 Dr.S.K.Neema to the post of Assistant Professor in the Department of Orthopedics in G.R. Medical College, Gwalior on the ground that his appointment is contrary to the rules framed by the Medical Council of India.

Facts of the case, briefly stated, are that the petitioner had obtained his MBBS degree from Jiwaji University, Gwalior in the year 1994. He had successfully completed three years post graduate course in Orthopedics from M.G.M. College, Indore in the year 2003. After completing his MS course in the year 2003, he applied for the post of Assistant Professor on contractual basis in pursuance of an advertisement issued by the Directorate of Medical Education, Madhya Pradesh which is Annexure P/8. This advertisement was issued on 22/7/2004 inviting applications for various posts. Petitioner as well as respondent No. 6 applied for the said post. After facing selection process, the selection committee found respondent No. 6 to be more meritorious and appointed him as Assistant Professor in G.R. Medical College at Gwalior. Petitioner was also selected in the said selection, but he was placed lower in merit than respondent No. 6 hence he was posted at Rewa Medical College.

Contention of the learned Counsel for the petitioner is that the course i.e. M.S. (Orthopedics) is not recognised by the Medical Council of India in G.R. Medical College, Gwalior from where respondent No. 6 has obtained M.S.(Orthopedics) degree, hence, he is not eligible for appointment to the said post.

Counsel for the petitioner has invited attention of this Court to Clause 6 of the advertisement (Annexure P/8) according to which, it is necessary that a candidate must have a degree in the subject from the institution recognised by Medical Council of India. Thus, according to the advertisement, it is necessary that the candidate must have got a degree from the institution where the course is recognised by Medical Council of India.

Counsel for the petitioner invited attention of this Court to the document Annexure P/12 which is a list issued by Madhya Pradesh Medical Council, Bhopal of various courses in various colleges in the State of Madhya Pradesh which are not recognised. As per the list Annexure P/12, M.S.(Orth.) is not recognised in G.R. Medical College, Gwalior. Said course, is however, recognised in M.G.M. Medical College, Indore from where the petitioner obtained his degree in MS (Orthopedics). Thus, as per the petitioner, respondent No. 6 is not eligible to be appointed as Assistant Professor.

Respondents 1,2, 5, 3 and 4 and 6 have filed their separate returns. After perusal of these returns, it is virtually an admitted position that MS (Orthopedics) is not recognised in G.R. Medical College, Gwalior, still respondent No. 6 is appointed against the post of Assistant Professor in the Department of Orthopedics. Parties, at the time of arguments, have admitted that said course is being run by G.R. Medical College, Gwalior for more than 25 years and the students who clear the said examination are being appointed by the State Government.

The contention of Shri R.D.Jain, learned Senior Advocate appearing on behalf of the petitioner is, thus, that the illegality which is committed by the Authorities for long years cannot be permitted to be perpetuated. Hence, appointment of respondent No. 6 be cancelled.

Learned Counsel for the petitioner has also invited attention of this Court to the schedule appended to the Indian Medical Council Act, 1956 to demonstrate that the subject of Orthopedics is not recognised in G.R. Medical College, Gwalior.

There is no dispute to the fact, in the present case, that the course of MS (Orthopedics) is not recognised in G.R. Medical College, Gwalior. However, the question is what is its effect.

Learned Counsel appearing for the State of Madhya Pradesh, Medical Council of India, Madhya Pradesh Medical Council and G.R. Medical College, Gwalior have admitted that the course of MS (Orthopedics) is run in G.R. Medical College, Gwalior for large number of years. It is also contended that for recognition of the said course, the Medical Council of India had conducted inspections of the

College vide Annexure R/1 annexed with the return of respondent No. 6 whereby the Medical Council of India had recommended for recognition of the course of MS (Orthopedics) in G.R. Medical College, Gwalior. But till today, no recognition is granted by the Medical Council of India.

In the present case, an advertisement was issued by the State for contractual appointment to the post of Assistant Professor and both - the petitioner and respondent No. 6 - had applied. There is no dispute that the essential qualification for appointment to the post of Assistant Professor is having MS degree from an institution in the course recognised by the Medical Council of India.

Respondent No. 6, in his return, has also contended that petitioner himself is not eligible for appointment as he does not possess requisite three years experience as laid down by the Medical Council of India. Annexure P/5 is the copy of the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 issued by the Medical Council of India. As per the said regulations, the essential qualification for the post of Assistant Professor is requisite recognised post graduate qualification in the subject with three years teaching experience in a recognised medical college as Resident/Registrar/Demonstrator/Tutor. Contention of the learned Counsel for the respondent No. 6 is that the petitioner had obtained degree in MS (Orthopedics) in the year 2003 and therefore, he was not eligible for appointment to the post of Assistant Professor in the year 2004 for want of teaching experience.

So far as eligibility of the petitioner is concerned, this Court need not go into the said question as this petition is not filed challenging the appointment of the petitioner, but is filed challenging the appointment of respondent No. 6.

Having heard learned Counsel for the parties, I find that the Apex Court in the case of Dr. Arun Kumar Agrawal Vs. The State of Bihar and others, has considered the similar situation. In that case also, Patna Medical College and Hospital, Patna had issued advertisement and selection committee had made appointments after considering the merits of the candidates. It was argued that the candidate who is selected did not fulfill criterion of passing post graduate degree from an institution where the said course was recognised and the Apex Court has held that whether the post graduate course is started by the University with the consent of Medical Council of India and where the State has recognised the said degree imparted by the University, plea raised that the candidate has obtained degree in such course which was not recognised in the institution has no value and dismissed the petition.

Contention of Shri R.D.Jain, learned Senior Advocate for the petitioner is that, in that case, there was consent by the State Government and the Medical Council of India which is not present in the present case. Hence, the facts of the aforesaid case are quite distinguishable.

In the present case, I find that respondent No. 6 was a candidate from All India

Quota. He was allotted a seat in MS (Orthopedics) by Director of Medical Education on the basis of his merits. At the time of allotment of seat, the Director of Medical Education must have knowledge that said course is not recognised by Medical Council of India. Thus, the State Government had consented to the admission of respondent No. 6 in G.R. Medical College, Gwalior.

Apart from that, at the time of admission of respondent No. 6, the State Authorities were fully conscious of the fact that said course was not recognised and still the respondent No. 6 was appointed by the State. This clearly shows that there was implied consent by the State Government, firstly at the time of admission and secondly at the time of appointment in service. Now it cannot be said that the State Government had not consented to this fact. It is an admitted position that the course of MS (Orthopedics) is run for the last more than 25 years in G.R. Medical College and candidates who have cleared the said post graduate course are being appointed by the State Government from time to time. Thus, in the present case, objection about not having consent of the State Government cannot be maintained.

So far as Madhya Pradesh Medical Council, respondent No. 4 is concerned, it cannot be presumed that they are not aware of this illegality. It is true that illegality cannot be permitted to be perpetuated, all the same, it is the respondents Authorities which are indulging in continuing such illegality and the innocent students who come from outside the State and getting admission are made to suffer without any fault on their part.

Considering this aspect of the matter, I find that the judgment of the Apex Court in the case of Dr.Arun Kumar Agrawal (supra) is fully applicable in the present case and there is no illegality in the appointment of respondent No. 6. At the most, it can be said that there is some irregularity in his appointment for which respondent No. 6 cannot be held to be responsible.

It is not disputed that there are number of courses which are not recognised by the Medical Council of India. Students are admitted to such courses as per the allotment made by the Director of Medical Education in spite of the fact that the Director of Medical Education is fully aware of the fact that said courses are not recognised by the Medical Council of India. Medical Council of India and the Madhya Pradesh Medical Council are also watching this illegality for number of years as silent spectators and thus, all these Authorities are playing with the career of the students which cannot be permitted to be done. If the Medical Council of India and Madhya Pradesh Medical Council permitted to watch the game as silent spectators and continue the illegality in admissions, then the very purpose of establishing these Authorities will be frustrated. In such a situation, it is for the aforesaid Authorities to see that in future, no candidate is allotted seat in post graduate degree course in the Institutions which are not recognised. Therefore, they are directed not to admit any student in future against any course which is not recognised by the Medical Council of India in a particular Institution.

In the result, this petition deserves to be dismissed and is hereby dismissed with the directions issued in Paragraph 20 herein above.