

---

**(1989) 07 AHC CK 0094**

**In the Allahabad High Court**

**Case No :** Writ Petition No's. 4765, 7252, 7484, 8825 and 9401 of 1988

Dr. (Smt.) Rita Wahal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 05-07-1989

**Acts Referred:**

**Citation :** (1989) 2 AWC 1414

**Hon'ble Judges :** U.C. Srivastava, J;S.H.A. Raza, J

**Bench :** Division Bench

**Advocate :** S.K. Kalia, for the Appellant; S.D. Singh, Sanjiv Srivastava and B.C. Saxena, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

U.C. Srivastava, J.—These five writ petitions, two having been filed by one and the same doctor, are against the order appointing four whole time Anaesthetist in the King George's Medical College, Lucknow as Lecturers who were senior to them having been appointed prior to the appointment in question by the State Government and the subsequent order passed by the State Government cancelling the said appointment. Prior to taking over of the King George's Medical College, Lucknow by the State Government in the year 1981, there were no avenues of promotion of Anaesthetists who apart from being M.B.B.S. generally do fulfil the requisite qualifications of being Lecturer.

2. There were nine posts of whole time Anaesthetists in King George's Medical College, Lucknow. The Secretary, Medical Health and Family Welfare Department U.P. who made inspection in the year 1986 wrote a D. O. Letter dated 27-5-1987/4-6-1987 to the then Director, Medical Education and Training, U.P. Lucknow with copy to the Principal, King George's Medical College, Lucknow proposing conversion of the posts of Anaesthetists (hereinafter referred to as WTAs) into the posts of Lecturers in Anaesthesia regarding which he had spoken at the time of his inspection in view of the fact that few WTAs have been working for more than 8 to 10 years and there was no avenue of promotion. In the letter

it was also mentioned that the scale of pay of posts of WTAs and Lecturers is wholly identical and similar and that there were precedence of such conversion and reference to such conversions at Kanpur was made. The State Government granted its approval to such proposal for conversion of five posts of WTAs in order of seniority and issued Government Order in this behalf on 7-8-1987 and consequently appointment orders of five WTAs in accordance with seniority were issued. These appointments, it seems, have not been challenged and the power of the State Government for converting said posts into that of Lecturers has not been challenged in these writ petitions nor it appears it was challenged earlier. In respect to the remaining four posts of WTAs, the Secretary Medical Health and Family Welfare Department, U.P. in continuation of his earlier D. O. again moved to the Government vide D.O. dated 4-6-1988 who granted sanction for conversion of the said remaining four posts of WTAs into Lecturers. The sanction was to be operative from the date of the issue of the said Government Order or from the date charge was taken over of the converted posts, whichever be later. The said sanction was made subject to the condition that two temporary posts of Lecturers in Anaesthesia sanctioned and created by G. O. dated 27-10-1986 and two posts of Lecturers which were likely to fall vacant on account of promotion to the posts of Reader/Professor in Anaesthesia shall stand abolished, and no appointment on the post of WTAs shall be made in future in the King George's Medical College, Lucknow or its Associated Hospitals and the teaching staff would also look after the job of Anaesthesia in the operation theatre. It seems this was done on the basis of the recommendations of the Head of the Department of Anesthesiology, King George's Medical College, Lucknow dated 18-5-1988 addressed to the Principal King George's Medical College, Lucknow in which it was stated:

The department is already short of staff and practically every one is involved in teaching, training, research and clinical work. Due to shortage both of the categories of staff shoulder all type of work load. Thus some of the teaching activities of the Department is also shared by whole time Anaesthetists which is a purely non-teaching cadre.

It has already been stated that there are no promotional avenues for these whole time Anaesthetists as there is no senior grade sanctioned. The whole time Anaesthetists do not get teaching experience officially, although they are involved in teaching and training of both undergraduate and postgraduates. Thus, these whole time Anaesthetists cannot be selected in other Medical Colleges. It may also be stated that parallel post of Whole Time Anaesthetists does not exist in any other State Medical College in U.P. This leads to stagnation, frustration and reduced output of work.

The conversion of 5 whole time Anaesthetists to Lecturers have definitely improved the climate of the department. There is more healthy and positive contribution both in academic and patient care rendered by the Department. The opening of the Promotional avenue for these whole time Anaesthetists has

improved their moral working incentive.

In pursuance of the sanction, the four remaining persons submitted their joining reports on 7-6-1988.

3. The State Government vide G.O. dated 2-9-1988 cancelled the order dated 4-6-1988. It may be noticed that prior to issuance of G.O. dated 4-6-1988 the U.P. Public Service Commission issued an advertisement dated 22-2-1988 and advertised two posts of Lecturers in Anaesthesia along with other posts. Dr. Shobhna Jafa preferred writ petition No. 6901 of 1988 against the same and the writ petition is still pending. Dr. (Smt.) Rita Wahal appeared before the Public Service Commission. Dr. Shobhna Ma, Dr. Girish Chandra, Dr. Jyotsna Agarwal and Dr. Rajni Kapoor also applied for the said posts out of whom the last three were working as ad hoc Whole Time Anaesthetists in the department while Dr. Shobhna Jafa was appointed as Whole Time Anaesthetist in the year 1983 for a period of one year or till duly selected candidate appointed by the Public Service Commission joins, whichever may occur earlier. These doctors did not appear before the Public Service Commission and they intimated that they have already joined the department a? Lecturers on 7-6-1988 in pursuance of the State Government's order referred to above. It was thereafter Dr. (Smt) Rita Wahal challenged their appointments and filed writ petition No. 4765 of 1988. Against the notification dated 6-9-1988 cancelling the order dated 4-6-1988 Dr. Shobhna Jafa preferred writ petition No. 7252 of 1988. She also challenged the advertisement dated 22-2-1988 referred to above. Subsequently she preferred another writ petition No 8825 of 1988 praying for issue of a writ of quo warranto calling upon the opposite parties to establish the validity of the order of appointment of the opposite party No. 4, Dr. (Smt.) Rita Wahal and a writ of mandamus in this behalf was also prayed. Dr. (Smt) Rita Wahal was appointed as Lecturer in view of the selection made by the Public Service Commission. It was thereafter Dr. Jyotsna Agarwal filed writ petition No. 7484 of 1988 praying for quashing the order dated 6-9-1988 and restraining the opposite parties Nos. 1 to 3 from interfering with the Petitioner's continuance on the post of Lecturer and further restraining them from giving effect to the recommendation of the selection committee, i.e. the Public Service Commission. Dr. Rajni Kapoor also filed writ petition No. 9401 of 1988 praying for some what similar reliefs.

4. It appears that on the basis of interim orders granted by this Court, the remaining four WTAs, whose posts were converted into the post of Lecturers were allowed to continue as Lecturer.

5. On behalf of Dr. Rita Wahal it has been contended that after taking over of the King George's Medical College, Lucknow in the year 1981, the employees of the Medical College became Government servants. The post of Lecturers were, thus, within the purview of Public Service Commission and without the process of interview, no appointment to the post of Lecturer could be made.

6. It is to be noticed that the earlier conversion of the posts has not been

challenged by Dr. Rita Wahal but subsequent conversion alone has been challenged. It has been contended that the State Government has no power whatsoever to issue Government Order dated 14-6-19.<8 converting the post of Whole Time Anaesthetists into that of Lecturers and these persons did not fulfil the requisite qualification of the Lecturers and the only mode is appointment through the Public Service Commission. It is true that after taking over the King George's Medical College and after application of the Government Servant Conduct Rules the employees of the Medical College became Government Employees and normally all appointments should be made through the agency of the Public Service Commission, but the State Government, who has power to create posts has also got power to make appointments. Certain norms have been laid down and mode of appointment is prescribed and the same is to be adhered to. Ad hoc appointments and its regularisation as prescribed under the Rules is yet another way of appointment as provided under the Rules in this behalf. It can be said to be exception of the general rules. Such mode of appointments is obviously resorted to only in case regular appointment is not possible and the situation warrants immediate appointment. There is no provision of law regarding conversion of posts of one cadre into posts of another cadre by bye-passing selection process even if promotion avenues are not available in the former cadre. The State Government, in exercise of its executive powers, can resort to the little known mode of appointment, but the same can be done only in special circumstances.

7. In the present case, five posts of WTAs, were earlier converted into the post of Lecturer because they were fully qualified for being posted as Lecturers and as a matter of fact they were doing teaching work of graduate and post-graduate classes and had experience of eight years or more and there was no chance of their future promotion and, thus, in these circumstances, legal colour was given to their dual duties In these circumstances it cannot be said that the conversion of the said post of WTAs was unjustified. We however, make it clear that our observations in this behalf are only confined to the facts of the present case and we are not generalising it.

8. Before us it was pointed out that in the Medical College Demonstrators and Pool Officers are appointed necessarily not on merits but on extraneous considerations with a future plan to make them lecturers whenever opportunity is available so that the selection process is bye-passed and this is how fraud on the Constitution is being played. The argument cannot be said to be without substance and a farce. Adhocism has been deprecated by the Hon''ble Supreme Court in the case of Rattan Lal and Others Vs. State of Haryana and Others, and Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others, .

9. Conversion of a post like regularisation is a mere concession and cannot be claimed as of right and what was observed by the Hon''ble Supreme Court in the case of Ashwin Nanubhai Vyas Vs. State of Maharashtra and Another, will

obviously apply to the facts of the present case in this behalf. It appears that the conversion of the five posts of WTAs proved successful and is also evident from the letter of the Head of Department of Anaesthesia, which is on the record, and from his letter it appears that apart from the number of years of service, there were other grounds as well which are much in common in between those who were appointed earlier and those for whom proposal was sent later on. The State Government has not filed any counter affidavit and there is no statement by it that these four WTAs were not qualified to become lecturers or that they were not performing teaching job. It is true that regularisation of ad hoc employees cannot take place before a period of three years and that period should be minimum even for conversion of one post into other post. If the State Government has failed to explain the reasonableness and validity of the action taken by it in passing discriminatory order after conversion of the remaining posts, the same may not be valid. In this case reference may be made to the case reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, wherein it has been held:

...It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or not in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

10. What applies to the case of contracts licence etc. also applies to the case of jobs, which would also include conversion of posts of one cadre into posts of other cadre. In the present case, the State Government had passed order dated 4-6-1988 converting the four posts of WTAs into posts of Lecturers but subsequently, three months thereafter, vide G.O. dated 6-9-1988 the G.O. dated 4-6-1988 was cancelled and that too without giving opportunity of hearing to the parties concerned and without assigning any reason for the same which makes the order dated 6-9-1988, in these circumstances, arbitrary and discriminatory, and, thus, the same cannot be sustained. The order is also discriminatory as it has not been explained as to why two different rods have been applied and a group within a group has been created and, as such, their case has got to be reconsidered. If minimum experience is necessary, even then the case of those persons who fulfil the requisite qualification and are performing duties of lecturers simultaneously stand on better footing and can be given due consideration.

11. If the conversion of the remaining four posts of WTAs is valid, the appointment of Dr. Rita Wahal would not stand against either of those four posts even though she was regularly appointed after advertisement and due process of appointment. As she was appointed, she can be retained against some other post existing or created.

12. In view of what has been said above, Writ Petition Nos. 7252 of 1988, 7484 of 1988 and 9481 of 1988 are allowed and G. O. dated 4-6-1988 and G.O. dated 6-9-1988 are hereby quashed and the State Government is directed to consider the question of conversion of said posts again in accordance with law and in the light of observations made above. Writ Petition No. 8835 of 1988, which is against the advertisement is dismissed as having become infructuous. Writ Petition No. 4765 of 1988 deserves to be dismissed partly and is allowed to the extent that a direction is issued to the opposite parties that in case all the incumbents of the said converted posts are not found fit for appointment on the post of lecturer, the appointment of Dr. (Smt.) Rita Wahal against one such post shall obviously stand and in case all those are found fit to be appointed on the converted post, then the State Government will consider the retention of Dr. (Smt.) Rita Wahal, may be by creating a post.

13. There will be no order as to costs.

14. Immediately after the pronouncement of the judgment Sri S.K. Kalia prayed for leave to appeal to Hon"ble the Supreme Court against this judgment. No question of law much less any question of law of general importance is involved in these petitions. Accordingly the prayer for leave to appeal to Hon"ble Supreme Court is refused.