
(2016) 03 RAJ CK 0073

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1878 of 2014

Dr.(Mrs.) Keerti Mathur

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Citation : (2016) 1 WLCRajUC 725

Hon'ble Judges : Mr. Ajay Rastogi and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. Mahendra Gaur, Counsel, for the Appellant; Mr. Aniket Vyas, Counsel on behalf of Mr. S.K. Gupta, Additional Advocate General, Mr. Ashish Tiwari, Counsel on behalf of Mr. R.D. Rastogi, Addl. Solicitor General, Mr. Angad Mirdha, Counsel, Mr. Durga Singh

Final Decision : Dismissed

Judgement

Mr. Ajay Rastogi, J.—Instant intra-court appeal has been filed assailing order of the Id. Single Judge dated 03.05.2014 and so also order dated 19.09.2014 dismissing the review petition preferred by the appellant.

2. In order to appreciate the grievance of the appellant, it will be necessary to glance through the relevant background facts. The appellant earlier preferred S.B. Civil Writ Petition No. 6334/2012 before the Id. Single Judge of this court and it was prayed that the appellant being the senior-most Professor in the department, the respondent may allow her to function as HoD (Physiology) in conformity with policy of the State Government to make senior-most Professor of the concerned discipline the HoD, as conveyed vide order dated 23.02.2010.

3. Indisputably, the appellant is from non-medical wing in the department of Physiology working in the SMS Medical College & attached Hospitals, Jaipur. She initially entered into service as Senior Demonstrator after her selection through the Rajasthan Public Service Commission on 22.08.1983 and thereafter promoted on the post of Assistant Professor and Associate Professor and finally

on the recommendations of DPC on the post of Professor (Physiology) on 09.02.2009.

4. Her grievance is that she has been denied appointment as HoD after the then HoD (Physiology) Dr. R.C.Gupta stood retired on attaining the age of superannuation on 31.08.2009 despite being senior-most in the department of Physiology and had a legitimate expectation to succeed as HoD (Physiology). However, Dr. Amitabh Dubey who was Associate Professor but from the medical wing, vide order dated 28.02.2012, superseding her was handed over the charge of HoD (Physiology).

5. Counsel for appellant submits that the post of HoD is largely an administrative post and there is no restriction in the University Ordinance to appoint non-medicos as HoD and there is no express prohibition even in the MCI Regulations as well and the Regulations so far as they prevent non-medicos for being appointed as HoD are discriminatory, arbitrary & violative of fundamental rights in the light of Article 14 of the Constitution and deny to them equality of opportunity and there is no reasonable and rational relation to the differentiation made in adjudging suitability of non-medicos for the post of HoD and in the past non-medicos have been appointed as HoDs on various occasions and being an administrative post, the HoD allocates work to faculty members, as per assessment of their capabilities and takes care of all the administrative responsibilities of the department whether it relates to allocation of funds and works as a forwarding authority, participates in the selection process of temporary staff for research projects and writes the Annual Confidential Reports of non-teaching staff. Although there is no additional emoluments for all these administrative works and may not be the promotional post in the cadre but still higher in hierarchy and her qualification being equivalent to their medico counterparts and being senior-most in the department of Physiology, denial of appointment as HoD in such circumstances, is not legally sustainable in the eye of law.

6. Counsel for the respondent further submit that she holds a recognised basic University degree qualification prescribed in the first Schedule of the Indian Medical Council Act, 1956 viz., M.Sc.(Medical) Physiology a 3? years course followed by Ph.D. (Medical) and her qualification being an equivalent qualification in terms of Regulations, 1998, denial of appointment as HoD is unjust and arbitrary exercise of power and the Id. Single Judge failed to consider this salient aspect of the matter and the order impugned deserved to be interfered by this court.

7. The respondent along with Medical Council of India (MCI) filed their counter and their joint submission is that as per MCI Regulations, non medicos cannot be appointed as HoD as long as Teacher from medical wing is available in the department and these Regulations being statutory in character, are binding on the State Government and in compliance thereof senior-most Teacher from Medical wing was appointed as HoD of the Department. The Id. Single Judge

after examining the records finally arrived to the conclusion that under the MCI Guidelines, non-medicos could not be appointed as HoD and as long as Teacher from medical wing is available, he/she has to be given priority/preference for being appointed as HoD and placing reliance on the judgment of Division Bench of the High Court of Delhi in WP(C) No. 5692/2008 [Dr. Jaswinder Kaur Gambhir v. UOI & Ors.] decided on 18.09.2012 which has also examined the self same question, dismissed the writ petition under order impugned dated 30.05.2014.

8. The respondent thereafter filed a review petition and argued that certain question regarding the decision of the Division Bench relied upon in the case of M.S. Mathur v. State of Rajasthan & Others was not examine and so also the fact that non-medical degree vis-a-vis recognised equivalent degree and the second MCI report dated 31.01.2014 relating to Physiology Department and Part-II of the report is about teaching staff and both holding recognised degree as per the MCI norms, all these salient facts have not been considered while deciding the writ petition under order impugned dated 30.05.2014. The review petition also came to be dismissed by the Id.Single Judge assigning reasons vide order dated 19.09.2014.

9. We have heard counsel for the parties and with their assistance perused the material available on record.

The appellant is a member of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 and the highest promotional post included in the Schedule appended to the Rules is of Professor and the present appellant was promoted as Professor on 09.02.2009, on the recommendations made by the Departmental Promotion Committee and indisputably, she is the senior-most in the department of Physiology in SMS Medical College & attached Hospitals, Jaipur since 01.09.2009 i.e. after superannuation of the then HoD (Physiology) Dr. R.C. Gupta on 31.08.2009.

10. The post of HoD is not a cadre post under the Rules, 1962 and thus, it is not a promotional post available to the Teachers who are members of service of the Rules, 1962. At the same time, it may not be a promotional post but still it is of higher responsibility in hierarchy and time and again litigation comes to this court whenever there is a deviation made by the authorities in making appointment of HoD in the respective departments since he controls the complete administration of the department in all respect.

11. It is not disputed that the MCI is a statutory authority created and constituted by the Central Government under an Act of Parliament namely the Indian Medical Council Act, 1956 and the Council is constituted under the provisions of the Act and is vested with the responsibility of discharging the duty for maintenance of standards of medical education and with a view to discharge its statutory responsibilities under the Act, the MCI time and again laid down various Regulations with prior approval of the Central Government for laying down the minimum norms and requirements of these Regulations of MCI on

various occasions fell for judicial scrutiny and the Apex Court through its various pronouncements has held that the Regulations framed by the MCI, with prior approval of the Central Government, are statutory in character and, therefore, binding and mandatory on all the concerned Universities and Colleges conducting medicine courses. In discharge of its statutory obligations towards maintenance of higher standard in medical education in the country by virtue of provisions of Section 20 r/w Section 33 of the IMC Act, 1956, the MCI is empowered with prior approval of the Central Government to frame Regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses.

12. In the case of *MCI v. State of Karnataka* reported in (1998) 6 SCC 131 the Apex Court has held that these Regulations are binding and mandatory and further held that all the State enactments, Rules and Regulations framed by the Universities, etc., in relation to conduct of medicine course, to the extent they are inconsistent with the Act and the Regulations framed by the MCI, are repugnant by virtue of Article 254 of the Constitution and this position of law has been finally affirmed by the Constitution Bench of the Apex Court in *Dr. Preeti Srivastava v. State of M.P. & Ors.* reported in (1997) 7 SCC 120.

13. The MCI u/Sec.33 of the Indian Medical Council Act, 1956, after obtaining prior approval from the Central Government, framed the Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 prescribing the minimum qualification for making appointment to a teaching post in medical Institutions. The relevant portion of minimum qualification for Teachers under the Regulations, 1998, which is relevant for the present purpose, are quoted ad infra:-

"3. Minimum qualification for appointment as a teacher: Minimum qualifications for appointment as a teacher in various departments of a medical college or institute imparting graduate and post-graduate education shall be as specified in the Schedules I and II annexed with these regulations.

Schedule-I

Every appointing authority before making an appointment to a teaching post in medical college or institution shall observe the following norms:-

1. All Medical teachers must possess a basic University or equivalent qualification included in any one of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956). They must also be registered in a State Medical Register or Indian Medical Register.

2. In the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of the posts in the department. A non-medical approve medical M.Sc. Qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate

must possess the Ph.D. Degree in the subject. The Heads of these departments must possess recognised basic University medical degree qualification or equivalent qualification. However, in the department of Biochemist, non-medical teachers may be appointed to the extent of 50% of the total number of posts in the department. In case of the paucity of teachers in non-clinical departments relaxation upto the Head of the Department may be given by the appointing authority to the non-medical persons if suitable medical teacher in the particular non-clinical speciality is not available for the said appointment. However, such relaxation will be made only with the prior approval of the Medical Council of India. A non-medical person cannot be appointed as Director or Principal or Dean or Medical Superintendent. In the departments of Community Medicine and Pharmacology, Lecturers in Statistics and Pharmacological Chemistry shall possess M.Sc. Qualification in that particular subject from a recognised University.

3-7. XX XX XX XX XX

8. The names of the teaching posts, academic qualifications and the teaching or research experience required for each teaching post are given in Table I in respect of graduate and postgraduate/higher speciality courses and in Table II in respect of super-speciality courses....."

(Emphasis supplied.)

14. The provisions of minimum qualification for Teachers under the Regulations, 1998, quoted above, clearly envisage that only those candidates who possess recognised basic University medical degree qualification or equivalent qualification for appointment to the post of HoD in a medical Institution is that "Heads of these departments must possess recognised basic University medical degree qualification i.e. MBBS or equivalent qualification".

15. It is further provided that in the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical Teachers may be appointed to the extent of 30% of the total number of posts in the department. However, a non-medical approve medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post, the candidate must possess the Ph.D. degree and there is a complete restriction that the Heads of these departments must possess recognised basic University medical degree qualification or equivalent qualification. In meeting out the exigency and in case of paucity of Teachers in non-clinical departments, relaxation upto the Head of Department may be given by the appointing authority to the non-medical Teacher, if suitable medical Teacher in non-clinical speciality is not available for appointment but that is permissible only after seeking prior approval of the Medical Council of India.

16. In the instant case, Teachers from the medical wing were available and the impleaded respondent No. 5 Dr. Amitabh Dubey, may be junior to the appellant in seniority but being a member of the medical wing and keeping in view the mandate of Regulations, 1998, was handed over the charge of HoD (Physiology),

pursuant to the order dated 28.02.2012.

17. As regard, equating non-medical Teacher with the medical Teacher is concerned, certain salient distinctive factors have been illustrated by the MCI in its counter affidavit at para-18, in particular and it will be appropriate to quote para-18 of the counter affidavit of MCI, which reads ad infra:-

"18. That it is submit that allegations regarding unfair treatment meted out to the non-medical teacher is without any basis. The reasons for not equating medical teachers i.e. a teacher having M.B.B.S. qualification with non medical teacher whose medical qualification is based on rational grounds and they are under:-

MBBS

B.Sc.

Structured course ? 4-1/2 years of Course ? with theory papers, written and practical examination.

Structured Course ? 3 years duration with theory papers, written and practical examinations.

1 year of Internship/practical training ? in patient care applicatory studies and hospital management.

No practical training or internship undergone.

Course curriculum, syllabus, examination pattern, practical training requirements etc are approve by the Medical Council of India ? except statutory body to maintain standards of education.

Medical Council of India which has the statutory duty to maintain standards of medical education has no say in the Course Curriculum, syllabus mode of teaching etc. which definitely has huge impact on standards of education.

Exposure to day to day functioning of Hospitals, its Departments etc. from the very inception of their education.

No such exposure.

Exposure to Patient Cares.

No such exposure.

Trained in clinical and diagnostic methodologies and techniques.

No such training.

Trained in interpretation of clinical diagnostic techniques practically in relation to patients.

No such training.

Trained in different disciplines of medicines i.e. knowledge and exposure to different branches and subjects of medical course.

No such training.

MD/MS

M.Sc.

Structured course ? 3 years duration with theory papers, written and practical examinations.

Structured Course ? 2 years duration with theory papers, written and practical examinations.

Course curriculum, syllabus, examination pattern, practical training requirements etc. are approve by the Medical Council of India ? except statutory body to maintain standards of education.

Medical Council of India which has the statutory duty to maintain standards of medical education has no say in the Course Curriculum, syllabus mode of teaching etc. which definitely has huge impact on standards of education.

Exposure to day to day functioning of Hospitals, its Departments etc.

No such exposure.

Exposure to Patient Cares.

No such exposure.

Trained in clinical and diagnostic methodologies and techniques.

No such training.

Trained in interpretation of clinical diagnostic techniques practically in relation to patients.

No such training.

Trained in different disciplines of medicines i.e. knowledge and exposure to different branches and subjects of medical course (interdisciplinary exposure).

No such training.

Research paper (thesis) in one of the areas of the course.

No such Research paper in most universities.

Super-Speciality

Ph.D.

Structured course ? 3 years duration.

Course no structured ? 2-4 years (normally) duration

Full time research only on a single chosen topic in a particular discipline.

Exposure to day to day functioning of Hospitals, its Departments etc.

No such exposure.

Exposure to Patient Care.

No such exposure.

Trained in clinical and diagnostic methodologies and techniques.

No such training.

Trained in interpretation of clinical diagnostic techniques practically in relation to patients.

No such training.

Specialization in a particular branch of Medicine/Surgery in addition to the knowledge of interdisciplinary research, practise of medicine/surgery and patient care.

Theoretical specialization in one particular topic only.

No interdisciplinary knowledge of medical profession.

OTHER DIFFERENCES

Eligible to practise modern medicine.

Not eligible for the same.

Eligible to give clinical findings and certify the same.

Not eligible for the same.

Eligibility to certify diagnostic and clinical reports.

Not eligible for the same.

Exposure and experience to practical working conditions and management of department of hospitals and medical colleges.

Lacks such exposure and experience.

Mandatory registration required under the provisions of Indian Medical Council Act, 1956.

No such registration required.

Amenable to disciplinary action by Medical Council of India under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

Not covered under the provisions of these Regulations.

They are accountable for their conduct, etiquette and code of ethics for medical

professionals.

No such accountability.

18. The reasons for not permitting Teachers having non-medical qualification as the Head of Department have been given by the MCI in its counter affidavit at para-18 (renumbered) and it will be appropriate to quote para-18 (renumbered) of the counter affidavit of MCI, which reads ad infra:-

"18. That it is submit that the reasons for not permitting a person having non-medical qualification to be the Head of the Department are also on account of following:-

Duties to be performed by the Head of Department in a Medical College

S. No.

Duties

Medicos

Non-medicos

1.

Coordination with the Hospital and other departments in clinical as well as non-clinical activities.

Experience, eligibility and expertise for such works.

Can coordinate teaching activities only.

No experience of clinical activities.

2.

Interdisciplinary research activities.

Well versed with interdisciplinary knowledge of different branches of medicine, medical education, medical courses and profession.

Knowledge and experience limited to teaching theoretically in the concerned branch only. Lacks interdisciplinary knowledge of medical courses.

3.

Having experience both in teaching as well as clinical and non-clinical activities. Practical knowledge of clinical activities.

Having experience in teaching only.

Not eligible to handle clinical diagnosis or giving medical advice. No practical knowledge of clinical activities of hospital.

4.

Medical advice on diagnosis and clinical results.

Eligibility, experience and expertise in diagnosis and advising on clinical reports.

Cannot certify any clinical finding or diagnosis and cannot give medical advice.

5.

Patient care (The most ultimate aim of medical education).

Vast experience in patient care.

No such experience.

6.

Expert medical opinion in emergency and critical situations.

Can contribute immensely with incomparable experience and expertise.

No such experience or expertise.

7.

Managing day to day business of the department in coordination with the Hospital.

From the very first day of their medical education they are trained in coordinating their teaching (studies) in the department and practical work in the attached hospital.

No role in practical works of the Hospital attached to the College, thus cannot coordinate functioning of the department with that of hospital.

8.

Interpretation of clinical tests and giving medical advice.

Eligible having experience and expertise.

Not even eligible to do so.

9.

Management and supervision of OPD services of the Dept. and services provided to the Indoor Patients and their day to day care.

Vast experience and expertise in this field.

No such experience.

19. The decision of the MCI in not appointing non-medical Teachers as the Head of Department is based on various factors, details whereof have been referred in para-19 of the counter affidavit, which reads ad infra:-

"19. That it is submit that the rationale for not appointing non medical teachers

as Head of the Department is also on account of the following factors:-

I. It is submit that Post of Head of Department is not merely an administrative post; it is a post of great responsibilities and duties which require a special kind of training and expertise.

II. The rationale behind giving opportunity to teachers from non-medical background to teach in certain departments was nothing but dearth of qualified teaching faculty from medical background of education and training.

III. A person from non-medical educational background can teach theoretical aspects of certain identified streams where clinical expertise is not prerequisite for all aspects of the course, but such permission is limited to the areas which do not require clinical or medical expertise.

IV. Such persons can be promoted even to the post of Professor with due regard to their academic merit and experience of teaching.

V. Even in such identified disciplines where teachers from non-medical background may be allowed to teach, the Medical Council of India which is the statutory expert body having the statutory duty to ensure the highest standards in medical education, in its wisdom, has limited such appointments upto 30% only (50% in Dept. of Biochemistry).

VI. Such limitation has been put keeping in mind the requirement of expertise and experience in medical field which could not be compromised at any cost.

VII. The post of head of Department is a pivotal post having the responsibilities of coordinating each and every function of the concerned department included clinical as well as non-clinical function for which a person from non-medical educational background has no experience or expertise.

VIII. Moreover, the HoD is required to coordinate with other disciplines and department also in relation to clinical as well non-clinical functions for which a person from non-medical educational background has no experience or expertise. A non-medical person has nil knowledge about other departments and disciplines of medicine except his own area of teaching.

IX. The HoD is required not only to teach in classes and coordinate teaching activities but in addition he/she is required to coordinate clinical activities conducted by the department, OPD of the department, care and treatment of Indoor patients and all related functions for which a person from non-medical educational background has no experience or expertise.

X. The HoD is required to give expert opinions and medical advice to various other departments and in situations of emergency or in a critical case for which a person from non-medical educational background has no experience or expertise and he is not even eligible to do so.

XI. The HoD is required to interpret the diagnostic reports and clinical findings

and give medical advice in several matters in course of day to day functioning of the department for which a person from non-medical educational background has no experience or expertise and he is not even eligible to do so.

XII. The HoD is required to supervise the day to day functioning of the department in coordination of the Hospital attached to the College for which a person from non-medical educational background has no experience or expertise.

XIII. The HoD is required to sign and certify reports based on clinical findings and diagnosis for which a person from non-medical educational background has no experience or expertise and he is not even eligible to do so.

XIV. The HoD is responsible to supervise interdisciplinary functions, such as seminars, symposiums, clinics, research work, projects, etc. for which a person from non-medical educational background has no experience or expertise.

XV. The overall knowledge, experience and expertise of a person from medical educational background cannot be compared to that of a person from non-medical educational background when it comes to managing and coordinating the functioning of a department of a medical college.

XVI. Persons of non-medical educational background are appointed in medical colleges merely in the wake of inadequacy of qualified teaching faculty from medical educational background and their role is limited to classroom teaching and non-clinical practical.

XVII. A person of such limited experience and expertise cannot be handed over the burdensome responsibility of coordination of a department of medical college which requires not only teaching and research but also clinical expertise."

20. The MCI is an expert body to control the minimum standards of medical education and to regulate their observance. The scheme of Regulations indeed permit non-medicos also to teach in certain departments of Medical Colleges but care has been taken to limit the role of non-medico Teachers i.e. they being not eligible to be appointed as HoD and the justification which has been extended by the Medical Council of India, of which reference has been made by us supra, in not appointing non-medical Teachers as HoDs certainly indicates that the non-medical Teachers fall in different class than the medical Teachers and looking to kind of duties assigned to HoD, we do find justification being furnished by the Medical Council of India and it has a reasonable nexus in disqualifying a person of non-medical education background for appointment as HoDs.

21. The submission made by counsel for the respondent that requirement for all the Teachers for being appointed as HoD is to possess recognised basic University medical degree qualification or equivalent qualification and the appellant, as alleged, is holding the equivalent qualification no discrimination could have been made, in our considered view is wholly without substance for the reason that for HoD one must possess recognised basic University medical degree qualification or equivalent qualification and the distinction between a

Teacher having medical degree qualification and equivalent qualification as stressed by the appellant has been distinguished by MCI in its report, of which we have made reference supra, and that being so, the submission made by counsel that appellant is holding an equivalent qualification is not sustainable.

22. As regard submission made by counsel for appellant that the respondent is senior-most in the cadre and denial of appointment to her as HoD in the department of Physiology, is arbitrary and violative of Article 14 of the Constitution may not be of any assistance to the appellant for the reason that as we have observed that HoD is not a promotional post and is not included in the Schedule appended to the Rules, 1962 and apart from it, there is a clear mandate under the relevant Regulations, 1998 of which we have made a reference in detail supra, holding that non-medicos are not eligible to be appointed as HoD being senior in their respective department, thus, the plea of discrimination or higher in seniority may not be sustainable in law.

23. At the same time, in meeting out the exigency, relaxation is provided under the relevant Regulations to appoint a non-medico person by the authority, if suitable medical Teacher in particular is not available for appointment and the authority wants to consider to appoint a non-medico person as HoD but that could have been permissible only after seeking prior approval of the Medical Council of India.

In the instant case, such exigency could not have arisen for the reason that Teacher from the medical wing was available to the respondents to be appointed as HoD of the department of Physiology and the exigency could have been arisen only either there is non-availability of a Teacher from the medical wing or the person is found unsuitable to be appointed as HoD, in absence whereof, the question has not arisen in giving preference to the appellant, who indisputably is a non-medical person, to be considered for appointment as HoD. Thus, the plea raised by the appellant that her name has not been forwarded by the respondents for seeking approval to the Medical Council of India for appointing her as HoD is wholly without substance.

24. The self-same controversy has been considered, in detail, by the High Court of Delhi in *Dr. Jaswinder Kaur Gambhir v. UOI & Ors.* [WP(C) No. 5692/2008] decided on 18.09.2012 and finally it has been observed that the non-medico Teachers clearly fall in a different class than the medical Teachers and thus, the question of discrimination does not arise and so far as the nexus of classification to the object sought to be achieved is concerned, it appears that non-medico HoD would be handicapped in some way or the other and that will ultimately affect the functioning of the Medical College/University and the education of its students and it has been finally held that non-medico Teachers are ineligible to be appointed as HoD.

25. Before we conclude the matter, since the post of HoD is not regulated by the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 and how the

suitability of a Teacher of medical wing is adjudged for appointment of HoD, vide order dated 07.09.2015 we direct the counsel for respondents to seek clarification from the Government as to what is the procedure being followed for appointment as HoD and the Rules/Regulations according to which such appointments are regulated. At the same time, it was also informed that under the University of Rajasthan Ordinance, there is a guideline provided by the Syndicate which relates to the appointment of HoD and why that practise is not being followed by the respondents while appointing HoD in the Medical Colleges.

26. Additional affidavit has been filed by the respondents, in compliance of order dated 07.09.2015 and a note-sheet dated 09.10.2015 has been annexed thereto which according to the Government is the procedure being followed while making appointment of HoD in the departments. It would be relevant to quote extract of the note-sheet dated 09.10.2015, which reads ad infra:-

"The Matter pertains to appointment of HOD in non-clinical subjects. The MCI has indicated that "The Head of these Departments must possess recognised basic University medical degree qualification or equivalent of qualification"..... In case of paucity of teachers in non-clinical departments relaxation up to Head of the Departments may be given by the appointing authority to the non-medical person (the word "medical" derived from the noun medicine is clearly defined as The science of practise of the diagnosis, treatment and prevention of disease (in technical use often taken to exclude surgery).....however such relaxation would be made only after prior approval of the MCI.

Further in the above clause the words "The Head of these Departments must possess recognised basic university medical degree qualification or equivalent qualification" shall be substituted with the following as amended in terms of notification published on 24.07.2009 in Gazette of India. "Head of the Departments of pre and para clinical subjects must possess recognised basic university degree qualification i.e. MBBS or equivalent qualification."

So far as MCI notifications are concerned heads in these Departments should have medical (MBBS) qualification in ordinary conditions. In the Institutions like AIIMS the situation may be different but the Government Medical Colleges of the State are generally abiding by the MCI regulations.

Secondly the State is appointing senior most faculty as HODs in routine practise except in extraordinary circumstances when eligible faculty is not available or there is paucity of medical teachers in the subject or some enquiry is pending against the faculty.

Sd/-

9/10/15

(Dr. Sunil Bhatnagar)

OSD, Medical Education"

27. The note-sheet dated 09.10.2015, quoted above, only indicates that the State is appointing senior-most faculty as HoDs in routine practise except in extraordinary circumstances when eligible faculty is not available or there is a paucity of medical Teachers in the subject or some enquiry is pending against the faculty. This fact has not been controverted that there is no Rule/ Guidelines/ Transparent Procedure available with the respondents for making appointment of HoD of the faculties and the HoD once appointed continues to man the post until his retirement.

28. At least, it may be commonly seen that at the time of recruitment i.e. at the entry level, the Doctors who are appointed in the various faculties, they are by and large of the same age group and the seniority is assigned to them on the basis of their placement in the order of merit which is the basis for their promotion to the post of Associate Professor/Professor included in the Schedule appended to the Rules, 1962 and this fact can commonly be seen that one who is senior-most in the cadre, continues to hold the post of HoD as a matter of course until retirement and several times it create a lot of disharmony amongst the Teachers who are similarly situated and are senior Teachers or senior faculty members and one thing is clear to us that as there is always litigation coming to this court for appointment of HoD, it is high time that some Rules/Regulations/ Procedure may be framed in maintaining transparency in action.

29. We find that in the University of Delhi, as per the Ord. XXIII, appointments of HoD are made on the basis of seniority by observing the principle of rotation for a period of three years. At the same time, the University of Rajasthan has also issued guidelines of the scheme of rotation of Headship as approve by the Syndicate vide its Resolution No.6 dated 16.04.1992 and Resolution No. 12 dated 04.10.1985 read with Resolution No.1 dated 22.12.1985 and it would be appropriate to quote the resolution of Syndicate which is being followed for appointment of HoD in various Departments of University of Rajasthan which read ad infra:-

"Guidelines of the Scheme of Rotation of Headship as approve by the Syndicate vide its Res. No. 6 dated 16-4-92 & Res. No. 12 dated 4-10-85 read with resolution No.1 dated 22-12-85.

(i) The Headship of the Department be rotated only amongst the Professors of the Department concerned provided that :-

(a) Where the number of Professors is two or less, the Headship be rotated amongst four senior most persons (Professors & Readers) in the Department, or less if the number of Professors and Readers in the Department is less than four.

(b) Where there is no Professor the Headship shall be rotated amongst four senior most Readers, or less if the number of Readers in the Department is less than four;

(c) if there is only one Reader in the Department, efforts be made to get one

more post of Reader created in the Department for ensuring adequate and timely growth of the Department, and the Headship be rotated only after the second Reader joins,

(d) In these Deptts. where there is only one post of Associate Professor (Reader) and no post of Professor, the Headship be allowed to be rotated between the Associate Professor and the Senior most Asstt. Professor provided the latter is a permanent incumbent and he has put in at least ten years service in the University.

(e) If there is neither a Professor nor a Reader, in the Department, the Headship of the Department may be assigned to the senior most Lecturer and the Vice-Chancellor may take necessary arrangements for over seating the work of such Department through the agency of the Dean/Director of the Post-graduate School Studies of the University be made.

(ii) the tenure of Headship of the Department be raised from 2 years to 3 years. In case where the Vice-Chancellor at his discretion feels that the retention of a particular person as Head beyond the tenure is necessary for completing any Academic Project/Research Project.

or work in hand, his term may be extended for one academic year or more by the Syndicate. If for any reason the Vice-Chancellor at his discretion feels that a change in the Headship or a Department even prior to the completion of the term of the exist incumbent is necessary in the interest of the Department a change in Headship of the Department be made.

(iii) It shall be a part of duty of the Professor to work as Head of the Department when entrusted to undertake the same unless the Vice-Chancellor is convinced with the reasons for exempting him from Headship of the Department when his turn is due.

(iv) During the period of absence or leave of the duly appointed Head of the Department the senior most teachers in the Department shall carry on the office of the Head of the Department provided that if the absence extends over a period of three months or more, the Vice-Chancellor, may keeping in view the circumstances entrust the work to a next senior teacher in the Department. If however, the vacancy in the office of the Head of Department is to last or likely to last over a period of a year or more, the Vice-Chancellor may appoint another Head of the Department in accordance with these rules in the vacancy.

(v) For implementation of these recommendations, the Headship should start from the senior most teacher in the Department concerned."

30. Rotation amongst three/four senior-most Teachers in the department for appointment of HoD would always be in the interest of Institution and since everyone has his own vision and with a long experience in the medical profession whosoever is given this opportunity to serve as HoD, certainly will come out with his innovative ideas to introduce better clinical and managerial skills for the

betterment of the Medical Institutions in general and the Department, in particular. This will certainly add to the improvement in the quality of providing better medical facilities and this what has been referred to by the University of Delhi under its Ord. XXIII, which reads ad infra:-

"Ord. XXIII. Head of Departments

1. The Head of the Department shall be appointed by the Vice-Chancellor by observing, as far as possible, the principle of rotation. Such appointments shall be reported to the Executive Council.

2. Notwithstanding anything contained in clause 1, if for any reason it has not been possible to appoint a person as Head of the Department who is senior to the person (persons) who has already served or is serving as Head of the Department, it shall be open to the Vice Chancellor to appoint that person as Head of the Department whenever a vacancy next occurs if he can otherwise be so appointed.

3. The Head of the Department shall hold office for a period of three years. A person shall not ordinarily be appointed as Head of the Department for a second consecutive term.

4. Notwithstanding anything contained in Clause 2, pending the appointment of a Head of the Department or during his absence on leave, the Vice Chancellor may ask any Professor or any Associate Professor in the Department either to discharge the current duties of the Head of the Department or to act as Head of the Department, as the case may be, as a purely temporary measure.

Note:- The principle of rotation will apply from the person who is next in order of seniority to the person who has already served or is serving as Head of the Department."

31. Since there is no written procedure/Regulation/guidelines for appointment of HoD, in absence whereof such situation cannot be ruled out that the teacher from medical wing might be senior-most but if he is facing any enquiry u/R.17 or R.16 of CCA Rules or judicial enquiry or his record of service is not satisfactory or upto the mark but still eligible for being appointed as HoD and as we have already observed the HoD is not a cadre post included in the Schedule appended to the Rules, 1962 but still it is higher in hierarchy and as always said higher the post?higher the responsibility, one has to be upright in taking care of the Department and which is possible only if one has a good clinical and managerial skills at his command for being appointed as HoD and if the practise of rotation amongst three/four senior-most Teachers of the Department as being followed by the University of Rajasthan for appointing HoD in the Departments is followed by the respondents in the Medical education it may certainly ensure development and maintenance of high standards of professional conduct in terms of quality in medical education, health care and smooth functioning of the department as set forth by the regulatory bodies of the Medical Council of India.

32. Consequently, we find no substance in the appeal. It is accordingly dismissed with the observations made supra. No costs.

33. Let a copy of this order be sent to the Chief Secretary, Government of Rajasthan and the Principal Secretary, Department of Medical & Health, Government of Rajasthan for necessary compliance.