
(2014) 05 RAJ CK 0191
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6334 of 2012

Keerti Mathur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 20, 33

Citation : (2014) LabIC 3407

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Mahendra Gaur, Advocate for the Appellant; S.K. Gupta, Addl. Advocate General, S.S. Raghav, Angad Mirdha and Vishnu Gupta, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by Dr. Keerti Mathur inter alia with the prayer that the respondents be by writ of mandamus directed to allow the petitioner to function as Head of the Department (Physiology) in conformity with policy of the State Government to make senior most Professor of the concerned discipline the Head of Department as conveyed by communication dated 23rd February, 2010. Petitioner is working as Professor in the department of Physiology, SMS, Medical College, Jaipur. She originally filed the writ petition No. 278/2011 challenging order of the Principal-cum-Controller, SMS Medical College and attached Hospital, who thereby directed that charge of the Head of the Department (for short-"HOD") be handed over to Dr. Amitabh Dubey, Associate Professor and that in his absence, charge of that post be handed over to Lecturer. Petitioner relied on the letter of the Government dated 23.2.2010 and contended that the Government therein has issued general guidelines that senior most available Professor in the department should be given charge of HOD. The Government in that writ petition took the stand that clause-2 of Schedule I of the MCI Regulations, 1998 has provided that a teacher for being HOD must possess recognised basic university medical degree qualification or equivalent qualification. In the departments of Anatomy, Physiology,

Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total strength of department. However, such relaxation can be granted only if there is paucity of teacher and if suitable medical teacher in non-clinical specialty is not available. A non-medical teacher can in no situation be put in-charge of the HOD. This Court by interim order dated 12.1.2011 directed that no person junior to the petitioner or lower in rank than her shall be handed over the charge of HOD of the Department of Physiology.

2. Argument of the petitioner was that representation submitted by her to the Medical Council of India as also to the Members of its Board of Governors on 8.6.2010 has not yet been decided. The Joint Secretary of the Medical Council of India by its letter dated 18.6.2010 conveyed to the petitioner that the Board of Governors was ceased of the matter and would decide his representation as early as possible. This Court therefore while disposing of the aforementioned writ petition vide judgment dated 4.2.2011 directed the Medical Council of India to decide the said representation and communicate its decision to petitioner within thirty days and directed continuation of the interim order for that period. When the Medical Council of India (in short-"MCI") failed to decide the representation within the aforesaid period, petitioner filed contempt petition (No. 356/2011). It was during the pendency thereof that the representation of the petitioner was rejected by MCI vide order dated 21.3.2011 conveying that her representation was already disposed of vide order dated 8.6.2010. This Court therefore dismissed the contempt petition however with liberty to the petitioner to file fresh writ petition challenging the order dated 21.3.2011. Hence this writ petition.

3. I have heard Shri Mahendra Gaur, learned counsel for the petitioner, Shri S.K. Gupta, learned Addl. Advocate General for State and Shri Angad Mirdha, learned counsel for the MCI.

Shri Mahendra Gaur, learned counsel for the petitioner argued that petitioner holds the recognised basic degree qualification prescribed in First Schedule of the Indian Medical Council Act, 1956 (for short "the Act"). She on being selected through RPSC, was appointed as Senior Demonstrator on 22.8.1983. She holds all the required qualifications of HOD as per the MCI Regulations, 1998. As per prescribed norms in the Act and the Regulations, the petitioner acquired further qualification of Ph.D. (Doctor of Philosophy), which is awarded only upon completion of MD, MS or PG Diploma or M.Sc. in Medical Subjects. Petitioner was successfully promoted at appropriate intervals to the post of Assistant Professor on 24.1.1995, Associate Professor on 1.9.2001 and Professor on 9.2.2009. Petitioner was senior most Professor in SMS Medical College, Jaipur since 1.9.2009 after superannuation of the then HOD Dr. R.C. Gupta on 31.8.2009. Action of the respondents in giving therefore charge of the HOD to an Associate Professor, junior in rank and service to the petitioner, is wholly arbitrary and illegal. It is argued that duties of the HOD consists of approving leave, making academic time table of the department, scheduling examination and writing APAR

and in academic duties, taking classes, supervising examination and research work etc. from both medical and non-medical streams. Earlier, the respondents gave charge of the HOD to Dr. Amitabh Dubey, Associate Professor. And thereafter they brought Dr. Rajesh Pathak, Associate Professor in JLN Medical College, Ajmer by promoting him as Professor and posted him in SMS Medical College, Jaipur in place of Dr. Amitabh Dubey. It is contended that Dr. Rajesh Pathak has throughout been junior to the petitioner.

4. Shri Mahendra Gaur, learned counsel for the petitioner further argued that clause-2 of Schedule I of MCI Regulations, 1998, which is relied by the respondents itself provides 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. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned. The petitioner possessed the degree of Master of Science i.e. M.Sc., a degree in medical, which is evident from the degree issued to the petitioner by University of Gujarat on his having studied in the B.J. Medical College affiliated to it. Duration of this degree course was three and half years. Petitioner then obtained degree of Ph.D. from University of Rajasthan.

5. Learned counsel for the petitioner has in particular invited attention of the Court towards the letter of the Government dated 6.6.2011 addressed to the Secretary, Medical Council of India, New Delhi in which recommendation was made for allowing Dr. Praveen Sharma, a non-medical Professor to act as Head of the Department of Biochemistry, even though an Associate Professor from medical side, Dr. Gulab Kanwar was available. This recommendation was made because Dr. Praveen Sharma was senior most Professor. In fact, he was allowed to work as HOD till he retired.

6. Shri Mahendra Gaur, learned counsel for the petitioner has cited the letter dated 23.2.2010 addressed to him by the Deputy Secretary of the Government in its department of Medical Education under the Right to Information Act, conveying that in answer to his query relating to HOD of the Neurology Department that senior-most Professor has to be made HOD and there is no question of his joining as HOD. Learned counsel on that basis sought to convey that the day petitioner became senior-most Professor, she should be deemed to be HOD, there being no requirement of any order of appointment or joining.

7. Learned counsel for the petitioner has submitted that the respondent MCI themselves maintained that in the present Rules there is no restriction for a non-medico Professor to become HOD by seniority. It is therefore that the MCI recommended amendment to the Minimum Qualification of Teacher in Regulations, 1998. Insertion of Clauses 12, 13 and 14 was proposed to the Government of India vide letter of MCI dated 22.2.2011. This move was stemmed by representation of the petitioner. Clause 14 proposed that non-medical qualification of M.Sc. or Ph.D. degree in non-clinical branches from MCI

recognised medical colleges/institutions shall not be differentiated from those medical colleges/institutions which provide the M.Sc. or Ph.D. degree with prefix "medical". Accordingly, such non-medical faculty shall be treated at par with medical faculty for the respective post except for the post of HOD. The Government in response to their letter wrote back to the MCI on 19.7.2011 informing that the matter of appointment of non-medical teachers as HOD was taken up in earlier Board of Governors and it was requested to reconsider the issue in the light of prevailing scenario. However, the matter has yet to be reconsidered by the Council, therefore, the Ministry has not approved aforesaid proposed amendment in respect of non-medical teacher. The Government therefore conveyed that the matter be reconsidered by the present Board of Governors and comments thereof be furnished to the Ministry. Learned counsel therefore submitted that when the Government itself has not approved the proposed amendment seeking to debar non-medical teachers to act as HOD, it should be deduced therefrom that the petitioner would be entitled to act as HOD.

8. Shri Mahendra Gaur, learned counsel for the petitioner has argued that non-medical Professors are being promoted to act as HOD in the non-clinical branches like Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology in different AIIMS and PGI Chandigarh, which are outside the purview of MCI. However, those institutions have been declared role model for MCI. Non-medical teachers working as HOD therein have expertise in their field.

9. Shri S.K. Gupta, learned Additional Advocate General submits that neither any legal, nor fundamental right of the petitioner has been infringed by mere reason of the fact that petitioner has not been made HOD. The respondent No. 5-Dr. Amitabh Dubey was permitted to act as HOD because according to the provisions of MCI Regulations only a person with recognised medical degree can be HOD. In other words, he should have first acquired MBBS degree in graduation and then MD in post graduation. Those possessing degree of M.Sc. in non-clinical subjects like medical physiology, medical biochemistry, human anatomy etc. are eligible for the post of Senior Demonstrator and can get benefits of promotion as per norms upto Professor after acquiring the qualification of Ph.D. in a specific qualified topic. But they are not eligible to become HOD. MCI Regulations, 1998 clearly stipulates that only holder of medical degree or equivalent qualification can be made HOD. Reference in this connection is made to clause 2 of Schedule-I of the MCI Regulations, 1998, which provides that in 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. Heads of these departments must possess recognised basic university medical degree qualification. However, relaxation has been granted only in the subject of Biochemistry in which non-medical teachers may be appointed to the extent of 50% of total posts and such relaxation may be given by the appointing authority upto the Head of the Department if the suitable medical teachers is not available. But, this relaxation too can be provided only with the prior approval of the MCI. However, a non-medical person cannot be

appointed as Director or Principal or Dean or Medical Superintendent and he is therefore also entitled to hold the charge of HOD, particularly when there are Professors and Associate Professors available from the medical wing in that department.

10. Shri Angad Mirdha, learned counsel appearing for MCI submitted that in view of provisions contained in Section 20 read with Section 33 of the Act of 1956, which is relatable to Entry 66 of List 1 of the Seventh Schedule of the Constitution, the MCI with the prior approval of the Central Government is empowered to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses. He referred to judgment of the Supreme Court in Medical Council of India Vs. State of Karnataka and Others, and argued that the MCI Regulations of 1998 with reference to which the impugned decision was taken by the MCI, have been held to be binding and mandatory by the Supreme Court in the aforesaid case. This position has been reaffirmed by Constitution Bench judgment of the Supreme Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, . Learned counsel referred to Clause-2 of Schedule-1 of MCI Regulations, 1998 to justify the decision of MCI that heads of even a non-clinical department must possess requisite basic university medical degree qualification or equivalent qualification. He argued that only those candidates, who fulfill the eligibility criteria or minimum eligibility qualification and teaching experience, are qualified to hold the respective teaching post. Only MBBS and MD or equivalent degree can be considered as a medical qualification. The degree of M.Sc. even if the word "medical" has been indicated therewith in the degree, awarded to the petitioner, has to be treated as non-medical degree for that purpose. Learned counsel denied the allegations of unfair treatment meted out to the non-medical teachers. On the question of equivalence, learned counsel referred to the table given in para. 18 of the counter affidavit filed by MCI indicating equivalence of medical and non-medical qualifications. It is argued that post of HOD is not just administrative post, but is a post of great responsibility which require a special kind of training and expertise. The person from non-medical education can only teach the theoretical aspects of certain identified streams where clinical expertise is not prerequisite. Such persons can be promoted even upto the post of Professor with due regard to their academic merit and experience of teaching. But even in such identified disciplines, the MCI has in its wisdom restricted the appointments only upto 50% in the subject of Biochemistry and 30% in other non-clinical subjects keeping in mind the requirement of expertise and experience in the medical field. Learned counsel has referred to various academic functions of the HOD detailed out in the counter affidavit of MCI to bring home the point that only a person with medical education can be appointed as HOD.

11. Shri Angad Mirdha, learned counsel further argued that this question was raised before Delhi High Court where vires of the aforesaid Regulations were also challenged. Reference in this connection is made to judgment of division bench of Delhi High Court in Dr. Jaswinder Kaur Gambhir v. UOI & Ors., W.P.(C) No.

5692/2008 and Professor V.G. Ramachandran v. University of Delhi & Ors., W.P. (C) No. 94/2009. The division bench of Delhi High Court vide judgment dated 18.9.2012 upheld the Regulations and dismissed the petitions. It is therefore argued that the controversy in the present case is squarely covered by the aforesaid judgments.

12. Shri Angad Mirdha, learned counsel for the MCI has argued that the petitioner cannot seek to make a roving enquiry through the present writ petition by alleging that non-medical teachers are being promoted to act as HOD in AHMS and PGI Chandigarh. Firstly, as per the petitioner's own showing, they are outside the purview of MCI and secondly petitioner has not given any particular instance in his pleadings and vaguely suggested so. Regarding Dr. Praveen Sharma, learned counsel argued that no relaxation was granted by the MCI even in his case. If the Government on its own has allowed him to act as HOD till he retired, though that was a stop gap arrangement, yet it was against the specific provisions of MCI Regulations, 1998.

13. Clearly, the issue that is raised in this writ petition fell for consideration before the Delhi High Court in Dr. Jaswinder Kaur Gambhir and Professor V.G. Ramachandran, supra, wherein validity of Clause 2 of First Schedule of MCI Regulations, 1998 was challenged. Petitioners therein were also non-medical Professors in the Department of Biochemistry and Microbiology respectively. Their grievance was that despite being senior-most in their respective department, they were denied appointment as HOD. The Medical Council of India pleaded that M.Sc./Ph.D. in Biochemistry and Microbiology are being conducted in certain medical colleges, yet other medical colleges have provided the nomenclature of M.D. in Biochemistry or Microbiology as a post graduate medical course for candidates possessing MBBS degree. Only the latter category of the candidates are eligible for appointment as HOD in any medical college in the subjects of Biochemistry or Microbiology.

14. This Court is in respectful agreement with the view expressed by division bench of Delhi High Court in aforesaid case. The Delhi High Court in Dr. Jaswinder Kaur Gambhir v. UOI & Ors., W.P. (C) 5692/2008 and Professor V.G. Ramachandran v. University of Delhi & Ors., W.P.(C) No. 94/2009 decided on 18.9.2012 dismissed the writ petitions with the following observations:

"(1) The MCI Act has constituted the MCI as an expert body to control the minimum standards of Medical Education and to regulate their observance. Obviously the high powered Council has power to prescribe the minimum standards of medical education (See State of Kerala Vs. Kumari T.P. Roshana and Another,). MCI thus has implicit power to supervise the qualifications or eligibility standards for teachers and staff in Medical College.

(ii) The requirement under the Regulations aforesaid is for the said teachers to be having qualifications in the field of medicine.

(iii) The Regulations, in so far as they permit non medicos to also teach in certain

Departments of Medical Colleges are an exception to the general rule. While carving out the said exception, care has been taken to limit the role of such non-medico teachers i.e. of their being not eligible to be appointed as HOD.

(iv) The letter dated 25th March, 2008 was issued on receipt of representation from non-medico teachers appointed as per the MCI Teacher Eligibility Qualifications Regulations 1971 who had become ineligible upon the coming into force of the 1998 Regulations and were being removed from their posts. The same has nothing to do with the matter in controversy.

(v) The legislature constituted the MCI as the expert body to lay down the standards of education in a medical college, the Government does not have any authority to alter the Regulations framed in this regard. The communication dated 25th March, 2008 of the Government of India is thus of no avail.

(vi) Just like there was a reason for permitting non-medico teachers in certain Departments, similarly it can safely be assumed that there was a reason for preventing them from becoming HOD.

(vii) The Regulations also prohibit a non-medico from being appointed as Director or Principal or Dean or a Medical Superintendent. No challenge thereto is made. The HOD is the lowest step in the ladder to Director, Principal, Dean and Medical Superintendent. When the non-medico teachers are not to climb the ladder, there can be no discrimination in their being denied to take the first step thereto.

(viii) The non-medico teachers clearly fall in a different class than the medical teachers. The question of discrimination thus does not arise. As far as the nexus of the classification to the object sought to be achieved is concerned, it appears to have been felt that a non-medico HOD would be handicapped in some way and which handicap will ultimately affect the functioning of the medical college and the education of its students.

(ix) Each of the petitioners joined employment with full knowledge of the limitation as far as appointment as HOD is concerned.

(x) This Court, for the sake of providing equality to teachers distinctly belonging to separate class, cannot put the fate of the students at risk. Even otherwise, in a medical college the emphasis is on imparting knowledge to enable the students to become good doctors and it is felt that a medico teacher in the subjects of Biochemistry or Microbiology can provide a more wholesome guidance than a non-medico teacher in the same subject.

(xi) Appointment of non medico teacher as HOD is also likely to result in discipline issues in the Department."

15. Stand of the MCI in this behalf has to be accepted as valid because medical colleges impart education and award degree of M.D. in different non-clinical subjects including Physiology are admitting only such students, who possess MBBS degree. However, the medical colleges conducting M.Sc. in Biochemistry or

Microbiology are granting admission to even such candidates possessing B.Sc. qualification from general science colleges. It is therefore that they are considered non-medical candidates holding B.Sc. qualification. Such degree of M.Sc. and thereafter even of Ph.D. in non-clinical branch, cannot be considered as a medical degree even though it may be from medical college. Their appointments as teachers in non-clinical subjects cannot at any given point of time exceed 30% except in subject of Biochemistry where it can be upto 50%. This relaxation, however, does not entitle them to become HOD. Even if therefore the degree of Master of Science (Medical) may have been obtained by the petitioner from B.J. Medical College affiliated to University of Gujarat University, but this has to be for the present purpose treated as non-medical degree.

16. Insofar as examples of AHMS and PGI, Chandigarh given by petitioner are concerned, they are, besides being not specific, cannot be of any help to her because as per his own showing, they are outside the purview of MCI of India. However, SMS Medical College, Jaipur is obliged to abide by the MCI Regulations, 1998. But the communication dated 23.2.2010 of the Government addressed to the petitioner under Right to Information Act by itself does not determine the correctness of the order of MCI as the matter has to be judged from the stand point whether the MCI was justified in rejecting the representation of the petitioner. The MCI has rejected the representation of the petitioner relying on Clause-2 of First Schedule of the Regulations of 1998, which provides as under:

"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. A non-medical approved 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 Biochemistry, 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 particular non-clinical specialty 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."

17. As is clearly evident, the aforesaid clause specifically provides that non-medical teachers in the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology may be appointed to the extent of 30% of the

total number of posts. A "non-medical approved medical M.Sc. qualification" shall be a sufficient qualification for appointment as Lecturer in the subject concerned but a candidate must possess the Ph.D. degree in the concerned subject for promotion to higher teaching post. The said provision emphatically provides that "the Heads of these departments must possess recognised basic university medical degree qualification or equivalent qualification". Slight deviation has been made only in the department of Biochemistry, where the scarcity of a qualified teachers appears to be higher than other. It is therefore provided that non-medical teachers in that stream, may be appointed to the extent of 50% of the total number of posts in the department and in case of the paucity of teachers in non-clinical departments, relaxation upto the HOD may be given by the appointing authority to the non-medical persons if suitable medical teacher in particular non-clinical specialty is not available for the said appointment. However, such relaxation may be made only with the prior approval of the Medical Council of India. It is thus been emphasized that a non-medical person cannot be appointed as Director or Principal or Dean or Medical Superintendent. Requirement of a candidate appointed on the post of Lecturer in any of these non-clinical subjects on obtaining Ph.D. for promotion to the higher posts only upto Associate Professor or Professor, is a pointer to the fact that they cannot acquire the post of HOD and that Professor is the ultimate promotion upto which they can reach, which is why in the last part of the aforesaid clause, it has been further clarified that they cannot be appointed as Director or Principal or Dean or Medical Superintendent. It is therefore the insistence that the HOD must possess recognised medical degree qualification or equivalent qualification.

18. Mere non approval of the proposed amendment by the Central Government, as evident from the communication dated 19.7.2011, does not in any manner undermine the supremacy of the MCI Regulations of 1998 and the conditions contained therein so long as those regulations in the present form, especially in Clause-2 of Schedule-I of Regulations, debars a non-medical teacher from acquiring the position of HOD and thereafter much higher position of Medical Superintendent/Dean/Director with the emphasis that they must possess the recognised medical degree qualification or equivalent qualification. Mere non-approval of the proposed amended would not result in dilution of the aforesaid restriction. The referred communication merely indicates that the issue with regard to appointment of non-medical candidate as HOD was taken up in the earlier meeting of the Board of Governors and the Government of India requested them to reconsider the issue in the light of present scenario. It was therefore that the Ministry in their letter dated 19.7.2011 required that the matter should be considered by the Medical Council of India because the proposal of amendment was emanated from the Board of Governors on the suggestion of the equivalence committee. This only shows that the matter was/is still at the stage of consultation between the Central Government and the MCI. The Government, therefore, requested the matter to be considered by the present Board of Governors and then the Council. The issue as to incorporation

of the proposed amendments in the Regulations of 1998 does not in any manner improve the case of the petitioner because Clause 2 of Schedule I of Regulations of 1998 by itself debars the petitioner from holding the post of HOD. Upshot of the above discussion is that, there is no merit in this writ petition, which is accordingly dismissed.