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**(1969) 09 SC CK 0073**

**In the Supreme Court Of India**

**Case No : Civil Appeal No's. 1818-1820 of 1968**

Ram Pal Chaturvedi

APPELLANT

Vs

State of Rajasthan & Ors

RESPONDENT

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**Date of Decision : 24-09-1969**

**Acts Referred:**

Constitution of India, 1950 — Article 309

Rajasthan Medical and Health Service (Collegiate Branch) Rules, 1962 — Rule 30(4)

**Citation :** (1970) 1 SCC 75 : (1970) 2 SCR 559 : (1969) WLN 59

**Hon'ble Judges :** J. M. Shelat, J;I. D. Dua, J;C. A. Vaidyalingam, J

**Bench :** Full Bench

**Advocate :** H.R. Gokhale, D.P. Gupta and B.R. Agarwala, for the Appellant; G.C. Kasliwal, AdvocateGeneral, Vijay Krishna Makhijja, I.M. Bhardwaj and K.B. Mehta for respondent No. 1 and 3, for the Respondent

**Final Decision :** dismissed

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## **Judgement**

I.D. Dua, J.—These three appeals (Civil Appeals Nos. 1818-1819 and 1820 of 1968) with certificate of fitness presented by Dr. Ram Pal Chaturvedi are directed against a common judgment of the Rajasthan High Court and as they raise common questions, they are being disposed of by one judgment. Civil Appeal No. 1818 of 1968 is concerned with the challenge to the appointment of Dr. D. G. Ojha as Principal of Sardar Patel Medical College, Bikaner. He was appointed a Professor of Surgery and Officiating Principal of the said College on March 2, 1964. At the time of his appointment, he was officiating as Director of Medical and Health Services, Rajasthan at Jaipur. Civil Appeal No. 1819 of 1968 is concerned with the challenge to the appointment of Dr. P. D. Mathur on July 13, 1965 as Professor of Surgery and Officiating Principal of Rabindra Nath Tagore Medical College, Udaipur. This order of appointment was subsequently superseded and Dr. Mathur was appointed as Professor of Surgery and Principal of Rabindra Nath Tagore Medical College, Udaipur with effect from the date of his taking over charge. It may be pointed out that Dr. Mathur's appointment as a Professor of Surgery was not challenged either in the High Court or before us and

his appointment as Principal alone was assailed in this Court. Civil Appeal No. 1820 is concerned with the challenge to the appointment of Dr. Rishi dated July 28, 1966 as Principal of Medical College, Jodhpur. The appointment was made on a purely temporary and ad hoc basis till further orders. On December 31, 1966, this order was partially modified in so far as Dr. Rishi's remuneration is concerned, but his appointment as Professor of Surgery and Principal of Medical College was re-affirmed to be on a purely temporary and ad hoc basis. The challenge to these three appointments by means of writ petitions failed in the Rajasthan High Court and the present appeals are directed against the common order of that Court. In the High Court, it was common ground between the parties that Dr. Ojha, Dr. Rishi and Dr. Mathur did possess academic qualifications prescribed by the University Ordinance and it was also not disputed there that these respondents had acquired the qualifications prescribed by Rule 30(4) of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereafter called the Collegiate Branch Rules). The High Court made the following observations in the impugned order :

We would, however, observe that Rule 30(4) empowers the State Government to make only a temporary or officiating appointment and the appointments of Dr. Ojha, and Dr. Rishi will be deemed to be temporary or officiating even though these words may not have been used in the orders of their appointments as Professors of Surgery. Learned Advocate General has also conceded that the Government cannot make permanent appointments under Rule 30(4) and the omission of the words 'temporary' or 'officiating' in the orders was by mistake. It is, therefore, not necessary to pursue the matter any further as these appointments will be considered only as temporary or officiating.

These observations deserve to be borne in mind while dealing with the present appeals. The High Court further took the view that the qualifications relating to teaching experience were directory and not mandatory and in view of the fact that the University was not objecting to the impugned appointments, that Court did not consider it proper, in its judicial discretion, to interfere in proceedings for quo-warranto at the instance of the appellant. In this connection, it was observed that the breach of the relevant Ordinance No. 65 could have afforded a ground for the University to withdraw affiliation of the Colleges concerned, but it was not open to the appellant to found his claim on this grievance.

2. In this Court, the question raised principally centers round the validity and effect of the proviso to Sub-rule (4) of Rule 30 contained in Part VIII of the Collegiate Branch Rules. These rules were made by the Governor of Rajasthan under Article 309 of the Constitution of India and were duly published in the Rajasthan Gazette (Extraordinary) dated November 5, 1962 and came into force with effect from the date of their publication. The argument canvassed before us was that these rules could not override the provisions of Ordinance No. 65 made under the University of Rajputana Act of 1946. This Ordinance lays down the minimum qualifications for teachers of various stages of University Education in

the affiliated Colleges. Part VIII deals with the Faculty of Medicine etc., and according to paragraph (A)(3), teachers in Medical Colleges for M.B.B.S. and Post-graduate Courses must possess the special academic qualifications and teaching experience prescribed therein. The requisite qualification by way of teaching experience prescribed for Professors/Additional Professors/ Associate Professors in Surgery is, to reproduce the language of the Ordinance, "at least five years as Assistant Professor or Reader or Lecturer in a Medical College." The minimum qualifications for Principals of affiliated Colleges in the Faculty of Medicine etc., are prescribed in Part X(B)(3) and they read as under :

Master's Degree or equivalent Post-Graduate qualification or a higher one in one of the branches in which the College is affiliated with a minimum professional experience of 20 years, of which at least 10 years must have been spent as a teacher of Post-Graduate Classes and 5 years in administrative work.

3. We may now turn to the Collegiate Branch Rules and examine the appellant's argument. These Rules framed under Article 309 of the Constitution for regulating the recruitment to posts in, and the conditions of service of persons appointed to, the Rajasthan Medical Service (Collegiate Branch) directly govern the impugned appointments and their binding character is beyond question. Rule 6 providing for the composition and strength of the Rajasthan Medical Service (Collegiate Branch) lays down that the Service shall consist of two wings viz., Clinical and non-Clinical and the right of promotion shall be confined to each wing. The nature of conditions included in each wing are as specified in column 2 of the Schedule attached to the Rules. Procedure for promotion is dealt with in Part V of these Rules. Rule 23 provides that the persons enumerated in column 4 of the Schedule shall be eligible, on the basis of seniority-cum-merit, for promotion to posts specified in column 2 subject to their possessing' minimum qualifications and experience as laid down by the Rajasthan University for the teaching staff in Medical Colleges. In selecting candidates for promotion, regard is to be had to six factors mentioned in Sub-rule (2) which include, inter alia academic qualifications and experience. In the Schedule in the non-Clinical wing, the selection posts consisting of Professors and Additional Professors are to be filled 100 per cent by promotion from Readers. There is nothing specific in this Schedule in regard to the posts of Principals and these rules do not provide specifically for their appointments. Rule 30, on the basis of which arguments were principally addressed in these three appeals, may now be reproduced in extenso :

30. Temporary or officiating appointments. (1) A temporary vacancy in a Senior or Selection post, may be filled by Government by appointing thereto in an officiating capacity an officer whose name is included in the list prepared under Rule 24(3) or in the lists under Sub-rules (2) and (3) of Rule 23 :

Provided that till the preparation of the first list or in case the list is exhausted, a vacant post may be filled by Government by appointing thereto a member of the Service eligible for appointment to the post by promotion or by appointing

thereto temporarily person eligible for appointment by direct recruitment to the service under the provisions of these Rules.

(2) A temporary vacancy in the Junior posts may be filled by Government by appointing thereto temporarily a person eligible for appointment by direct recruitment to the service under the provisions of these Rules.

(3) No appointment made under Sub-rule (1) and (2) above, shall be continued beyond a period of six months without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur.

(4) Notwithstanding anything contained in Sub-rules (1) or (3) above or any other provisions in the rules, any selection or senior posts falling vacant may be filled in temporarily by appointment of any Specialist (Jr. or Senior) in the service of the State, who is a postgraduate and has teaching experience and practice in the speciality, for such periods as are required by the University Ordinance for the time being in force on the date of such appointment-

Provided that :

Two years of service rendered in the speciality shall be reckoned as equivalent to one year teaching experience gained in the Speciality.

4. Sub-rule (4), it may be pointed out, was added on August 22, 1966 with retrospective effect during the pendency of the writ petitions in the High Court, with the result that the writ petitions were allowed to be amended so as to include a challenge to the validity of this amendment. The amendment was assailed on the grounds of mala fides and unConstitutional discrimination. The validity of the retrospective operation of this Sub-rule was not questioned before us by Shri Gokhale, though a lukewarm challenge was suggested before the close of the arguments on the grounds of mala fides. It may be noted that the requirement of teaching experience as laid down in the University Ordinance also finds place in Sub-rule (4) of Rule 30 as added in 1966 and it is only the proviso which has the effect of modifying to some extent this condition. The narrow question requiring consideration therefore is whether the proviso, according to which two years of service rendered in the speciality is to be reckoned as equivalent to one year's teaching experience gained in the speciality, must, as contended on behalf of the appellant, yield to the requirement in the Ordinance which prescribes the minimum qualification of teaching experience and, therefore, must be ignored. We are unable to uphold the contention. The Collegiate Branch Rules having been made pursuant to the power conferred by Article 309 of the Constitution, they must be given full effect subject to the provisions of any Act made by the appropriate Legislature regulating the recruitment and conditions of service of persons appointed to the Rajasthan Medical Service (Collegiate Branch). Such Act need not specifically deal with the aforesaid Medical Services but it must be an Act as contemplated by Article 309 by or under which provision is made regulating the recruitment and conditions of service taking within its fold the said Medical Services.

5. This takes us to the question of scope and effect of Ordinance No. 65. The University of Rajputana Act of 1946 (hereafter called the Act) under which Ordinance No. 65 was made was enacted to incorporate the University of Rajputana. The name of the University was changed in 1956 to the University of Rajasthan. The Syndicate of this University constituted u/s 21 of the Act is empowered u/s 29 read with Section 30 to make ordinances, consistent with the Act and statutes, to provide for the matters listed in Section 29. These matters include in Clause VI "emoluments and conditions of service of University teachers." But on this basis alone it is not easy for us to hold that Ordinance No. 65 is a provision under an Act, regulating the recruitment and conditions of service of persons appointed to Rajasthan Medical Service, as contemplated by Article 309 of the Constitution. Shri Gokhale referred us to entry 41 in List II of 7th Schedule of the Constitution which deals with the subject, inter alia, of "State Public Services" and submitted that the Act fell within this entry and therefore came within the purview of Article 309. We are not impressed by this submission. In our opinion, on a consideration of the pith and substance of the Act and on a comparison of the language used in the entries Nos. 11 and 49 of List II, the field of legislation of the Act more-appropriately falls under entry No. 11 which deals with the subject of "education including university." The appointments of Dr. Ojha, Dr. Mathur and Dr. Rishi thus seem to us to be fully justified by the Collegiate Branch Rules and their appointments cannot be held to be invalid by reason merely of non-compliance with the provisions of Ordinance No. 65 in regard to the condition of teaching experience. The field of operation of this Ordinance appears to us to be restricted to the question of affiliation of the Colleges concerned with the Rajasthan University. It is noteworthy that the University has not thought fit to object to these appointments. If there is violation of a provision of this Ordinance then that may appropriately be taken into account by the Rajasthan University for the purpose of withdrawing or refusing to continue affiliation of the colleges in question. But clearly that would not render the impugned appointments null and void; a fortiori that cannot confer any right on Dr. Ram Pal Chaturvedi to approach the High Court by means of petition for writ of Quo-warranto to challenge the appointments of these three persons. We are unable to hold that these persons are usurpers and are holding the posts of Principals without the sanction of authority.

6. On the view that we have taken on the scope and effect of the Collegiate Branch Rules it is unnecessary to consider the argument strongly pressed by Shri Gokhale that the provisions of Ordinance No. 65 are mandatory and we refrain from expressing any opinion either way.

7. The appellant's challenge on the ground of mala fides is also unsustainable. Except for the bald assertion at the Bar nothing convincing has been said to persuade us to hold that Rule 30(4) added in 1966 was made for a collateral purpose in colourable exercise of the rule making power.

8. The appeals must, therefore, fail and are dismissed with costs. One set of

costs.