
(2011) 05 AHC CK 0191
In the Allahabad High Court
Case No : Writ Petition No.946 (S/B) of 2011

Shehashish Bhunia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Uttar Pradesh Rural Institute of Medical Sciences and Research Act, 2005 — Section 22, 31

Citation : (2011) 05 AHC CK 0191

Hon'ble Judges : Devi Prasad Singh, J and S.C.Chaurasia, J

Judgement

1. Learned Chief Standing Counsel has accepted notice on behalf of respondent no. 1.
2. Vakalatnama filed by Sri D.K. Upadhyay on behalf of respondent no. 2 and 3 is taken on record.
3. Let the notice be issued to the respondent nos. 4 and 5.
4. Six weeks" time is allowed to respondents to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks, thereafter.
5. List thereafter for peremptorily hearing.
6. Uttar Pradesh Rural Institute of Medical Sciences and Research, Saifai, Etawah, is created by Institute namely Uttar pradesh Rural Institute of Medical Sciences and Research, Saifai Act, 2005 in short "Act".
7. Admittedly, the petitioner was appointed as Professor in the department of Physiology and after appointment, in the year 2008 he was given charge of HOD vide order dated 12.01.2008 passed by the Director of the department and thereafter he was continuing on the post of HOD. It has been pleaded in the writ petition that the petitioner was suspended by Director vide order dated 23.3.2009, but, later on the order of suspension was revoked vide order dated 11.11.2009 passed by Principal Secretary, Medical Education, Govt. of U.P.,

Lucknow. The Director of the department has reinstated the petitioner as Professor only, but he was restrained to discharge duty of the HOD. Later on, same order was withdrawn and the Director of the department has directed the petitioner to take over the duties of HOD vide order dated 01.02.2010 contained as Annexure No. 11 to the writ petition.

8. By the impugned order dated 02.05.2011 passed by the opposite party no. 3/ Director of the department, the petitioner has been removed from the post of HOD and respondent no. 5 has been appointed to discharge obligation of the HOD. Admittedly, the respondent no. 5 was appointed on contractual basis by the respondent University, a copy of appointment letter has been filed as Annexure No. 13 to the writ petition. Appointment letter of the respondent no. 5 reveals that he was appointed on contractual basis to the post of Associate Professor in the Department of Physiology Medicine. The Clause 1 of the appointment letter itself shows that the appointment of the respondent no. 5 shall be treated as on contractual basis. The reason for removal from the post of HOD is stated by Sri D.K. Upadhyay, learned counsel for the respondents is that the Medical Council of India raised objection that NonMedico cannot be appointed as HOD.

9. Attention of this Court has been invited to Regulation namely Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 in short "Regulation" wherein Schedule II deals with the matter with regard to appointment on the post of HOD, but, Before taking into the account the aforesaid Regulation, it shall be appropriate to consider the Section 22 of the Act, which is reproduced as under:

22. Appointment of teachers and other employees (1) Subject to the provisions of this Act, such number of Principals, Professors, Associate Professors, Assistant Professors and Group "A" Officers, as may be necessary, shall be appointed by the President and such number of Group "B" officers, as may be necessary, shall be appointed by the Director.

(2) Save as otherwise provided in subsection (1) the officers, teachers and other employees of the institute shall be appointed in such manner and with such designations and grades as may be laid down in the regulations.

(3) The officers, teachers and other employees of the Institute appointed under this Act shall be entitled to such salary and allowances and shall be governed by such conditions of service as may be laid down in the regulations.

(4) No person shall be appointed as a teacher of the Institute, unless he fulfils the qualifications laid down in the regulations in this behalf and except as provided in subsection (9) no person shall be recommended for such appointment by a Selection Committee constituted in this behalf under this Act.

(5) The selection Committee for the appointment of a Principal or a Professor shall consist of:

(a) the Director;

- (b) the Director of Medical Education, Uttar Pradesh;
- (c) three experts to be nominated by the President;
- (d) such other persons as may be prescribed:

Provided that in the case of the appointment of a Professor, the Head of Department concerned shall also be a member of the Selection Committee:

Provided further that the seniority Professor of a department shall be designated as the Head of the Department.

(6) The Selection Committee for the appointment of a teacher, other than a Principal or a Professor shall consist of:

- (a) the Director;
- (b) the Director of Medical Education, Uttar Pradesh;
- (c) Heads of the Departments;
- (d) two experts nominated by the President;
- (e) such other persons as may be prescribed.

(7) The Selection Committee constituted under this Act shall follow such procedure as may be prescribed or laid down in the regulations.

(8) No recommendation made by the Selection Committee shall be considered to be valid unless it is supported by a majority of the members present:

Provided that in the case of a Selection Committee constituted under subsection (5), the presence of at least two experts, and in the case of Selection Committee constituted under subsection (6), the presence of at least one expert shall be necessary.

(9) Where the Selection Committee fails to make recommendation in accordance with the provisions of subsection (7), the minutes of the Selection Committee shall be submitted to the President for his decision and the decision of the President shall be final.

(10) Where the recommendations of the Selection Committee constituted under subsection (6) are not acceptable to the appointing authority, it shall refer the case to the president specifying the grounds of objection to such recommendations in precise terms, and the decision of the President thereon shall be final:

Provided that it shall be lawful for the President to refer the case to the Selection Committee for reconsideration or to require another Selection Committee to be constituted for consideration of the case.

Explanation For the purpose of this section, Group "A" officers and Group "B" officers shall be such officers as are specified or designated as such in the

regulations.?

10. Admittedly, the petitioner was appointed in pursuance of provision contained in Regulation 22 of the Act which relates to appointment on the post of Principals, Professors, Associate Professors, Assistant Professors and so on. It is admitted by learned counsel for the petitioner that the appointment of the petitioner on the post of HOD is done in order of seniority subject to rules contained in clause (II) of the Regulation. Clause (II) of Regulation is reproduced as under:

?2. In the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, nonmedical teachers may be appointed to the extent of 30% of the total number of the posts in the department. A nonmedical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to subject. The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification. However, in the department of Biochemistry, nonmedical 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 nonclinical departments relaxation upto the Head of the Department may be given by the appointing authority to the nonmedical persons if suitable medical teacher in the particular nonclinical 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 nonmedical 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 recognized.?

11. A plain reading of the of Clause (II) of Regulation shows that ordinary HOD shall be medico, but, there is no bar to appoint a nonmedico as HOD.

12. Attention of this Court has been invited by the learned counsel for the petitioner to Government Order dated 15.12.2008, a copy of which has been filed as Annexure No. 15 to the writ petition. The Government order provides that a person appointed on the contractual basis should not be given administrative charge for the post like HOD, Superintendent and so on. For convenience, the relevant portion of the Government Order is reproduced as under:

13. Sri D.K. Upadhyay learned counsel for the respondents has submitted that the Government Order shall not be applicable in regard to present case. Plain reading of it shows that the same is applicable in the Government Allopathic Medical Colleges and newly established colleges in District Azamgarh, Kannauj and Jalaun. Meaning thereby, the Government Order shall be applicable in all Government Allopathic Medical colleges.

14. Apart from above, Section 31 of the Act provides that the institute shall carry out such directions not being inconsistent with the provisions of this Act as may

be issued to it from time to time by the State Government for the efficient administration of the affairs of the Institute under this Act. For convenience, Section 31 of the Act is reproduced as under:

31. Control by State Government The Institute shall carry out such directions not being inconsistent with the provisions of this Act as may be issued to it from time to time by the State Government for the efficient administration of the affairs of the Institute under this Act.

15. Prima facie, the argument advanced by Sri D.K. Upadhyay, learned counsel for the respondents seems to be not correct. Government Order is very well applicable to the institution in question subject to repugnance with the statutory provision contained in Act, Rules and Regulation. In any case, the Government Order is not in conformity with the Statutory Rules or Regulation then it is open for the Institute to apprise the State Government with regard to repugnancy, if any, so that State Government may amend the Government Order. So far, Medical Council of India is concerned, undoubtedly for standard of education the Medical Council of India is final authority, but, keeping in view the fact that there is no absolute bar to appoint a nonmedico HOD, prima facie, the petitioner should not have been removed from his office that too without opportunity of hearing. Though the petitioner alleged malafide against the Director, but since he has not been impleaded as party while preferring the writ petition, it is not open to make any observation on the question at this stage. It is open to the petitioner to amend the petition impleading the Director as party in view of the pleading on record.

16. In view of the above, we stay the further operation of the impugned order dated 02.05.2011, passed by Director, Rural Institute of Medical Sciences & Research, Saifai, Etawah/opposite party no. 3, contained as Annexure No. 1 to the writ petition, till further order of this Court.

17. It shall be open to the Medical Council of India to look into the matter and after due opportunity to the institute in question with regard to HOD. So far as the appointment of the respondent no. 5 on the contractual basis is concerned, in case, his services are required, it shall be open to retain him on the post of teacher.