
(1968) 07 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 858 and 913 of 1967

S.T. Venkataiah Thimmaiah and Another

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 26-07-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309
Mysore Government Servants (Seniority) Rules, 1957 — Rule 1A

Citation : (1968) ILR (Kar) 835 : (1968) 2 MysLJ 491

Hon'ble Judges : M. Sadasivayya, J; D.M. Chandrashekhar, J

Bench : Division Bench

Judgement

Chandrashekhar, J.—In these petitions under Art. 226 of the Constitution, the petitioners have challenged the validity of the order of the Government dated 28-6-1966 regularising the services of Respondents 2 to 9 who had been appointed as local candidates to certain teaching posts in the Government Medical Colleges and the Government Dental College. In W. P. No. 858 of 1967 the petitioner had also asked for quashing the Government Order dated 28-2-67 promoting Respondent 8 as Assistant Professor in medicine; and for a mandamus directing the State Government to appoint him as an Assistant Professor in Medicine with effect from 28-2-1967.

2. At the outset it is convenient to trace the development of rules regulating recruitment to teaching posts in the Government Medical Colleges and the Government Dental College.

3. In exercise of the powers conferred by the proviso to Art. 309 of the Constitution, the Governor of Mysore made on 1-12-1960 rules called the Mysore Medical Department Services (Recruitment) Rules, 1960 (hereinafter referred to as the 1960 Rules). Under these rules, the posts of Professors, Assistant Professors and Lecturers existed only in non-clinical subjects in the Government Medical Colleges. For clinical subjects, Surgeons and Assistant Surgeons were posted as Professors, Assistant Professors and Lecturers.

4. Subsequently the Government created the posts of Professors, Associate Professors, Readers, Assistant Professors, Assistant Associate Professors, Lecturers and Registrars, in clinical subjects in the Government Medical Colleges and the Government Dental College. Presumably these posts were created in exercise of the executive power of the State under Art. 162 of the Constitution. The method of recruitment and the qualifications for these posts were not governed by any rules made under the proviso to Art. 309 of the Constitution.

5. On 17-5-1964 the Governor made, under the proviso to Art. 309 of the Constitution, rules called the Mysore Medical Services (Teaching and Technical Personnel in Medical and Dental Colleges) Recruitment Rules, 1964 (hereinafter referred to as the 1964 Rules). These Rules prescribed the method of recruitment and the qualification for the posts of Professors, Associate Professors, Readers, Assistant Professors, Assistant Associate Professors, and Lecturers in clinical as well as non-clinical subjects in the Government Medical Colleges and the Government Dental College. The qualifications prescribed for these posts consisted of certain academic qualifications and also teaching experience, except for the posts of Lecturers for which only academic qualifications but not teaching experience, were prescribed. Teaching experience for different posts prescribed in these Rules was stated as being the teaching experience as required by the Medical Council of India.

6. It has been explained in the counter affidavit filed on behalf of the State, that the State Public Service Commission opined that the mention in these rules, of the teaching experience prescribed for several posts, as that required by the Medical Council of India, was vague and it was desirable that such teaching experience should be specified in the Rules themselves instead of referring to what the Medical Council of India might require.

7. On 18-9-1967, the Governor made, under the proviso to Art. 309 of the Constitution, rules called the Mysore Health Services (Collegiate Branch) Recruitment Rules, 1967 (hereinafter referred to as the 1967 Rules). These rules have specified what the teaching posts except for the posts of Lecturers and Lecturers-cum-Registrars for which posts no previous teaching experience is prescribed.

8. Most of the material facts in these petitions are not in controversy. Even before the 1964 Rules, were made, the Government found it necessary to appoint a number of persons to the posts of Associate Professors, Readers, Assistant Professors, Assistant Associate Professors, Lecturers and Registrars in clinical subject also in order to maintain in the Medical Colleges staffing standards as prescribed in the Indian Medical Council. These appointments were made both by promoting temporarily persons who were already in service and who had acquired post-graduate qualifications, and by directly appointing as local candidates persons who possessed post-graduate qualifications.

9. Of the nine persons whose services were sought to be regularised by the

impugned order, Dr. K. R. Krishna Murthy has since resigned from service and he has not been impleaded in these two petitions. Between 17-6-61 and 29-4-1964 respondents 2 to 8 were appointed as local candidates to the posts of Assistant Associate Professors while respondent 9 was appointed as a local candidate to the post of Reader in the Government Dental College. Respondents 2, 6 and 8 were appointed as Assistant Associate Professors in Medicine, while respondent 7 was appointed as Assistant Associate Professor in Oto-Rhino-Laryngology (hereinafter referred to as E. N. T.). On 24-4-1964 respondent 2 was appointed temporarily as Assistant Professor in Medicine. On 28-2-1967 respondent 8 was appointed temporarily as Assistant Professor in Medicine.

10. It is common ground that respondents 2 to 5 and 7 to 9 had obtained post graduate degrees before they were appointed as local candidates. In the impugned order it is stated that respondent 6 secured a post-graduate degree in 1964 whereas he was appointed as local candidate to the post of Assistant Associate Professor on 15-6-1963. Subsequently the Government issued a Corrigendum dated 28-7-1967 (marked Enclosure I to the Additional Counter-affidavit on behalf of the State) in which it is stated that the figures "1962" should be substituted for the figures, "1964" after the letters M. D. in the impugned Government Order. That means that respondent 6 had secured M. D. degree in the year 1962. The only ground on which the corrigendum has been assailed by the learned counsel for the petitioners, was that it was issued subsequent to the filing of these petitions. That circumstance by itself is not sufficient to doubt the truth of what is stated in the Corrigendum. In the counter-affidavit filed on behalf of respondent 6, it is averred that he studied for the M. D. course from January 1961 to December 1962. Thus it is clear that respondent 6 had secured a post graduate degree before he was appointed as a local candidate to the post of Assistant Associate Professor.

11. The petitioner in W. P. No. 858 of 1967 who secured M. B. B. S, Degree was appointed as a temporary Lecturer in the year 1960. Later he was selected by the State Public Service Commission and was appointed regularly as Lecturer in December 1961. He secured M. D. Degree by the end of the year 1964. He was appointed temporarily as Assistant Associate Professor in Medicine on 19-3-1966.

12. The petitioner in W. P. No. 913 of 1967 who had secured M. B. B. S. Degree was appointed on 12-5-1960 as a local candidate to the post of Assistant Surgeon, Grade II. He obtained the diploma of D. L. O. in Oto-Rhino-Laryngology in April 1961. He was selected by the State Public Service Commission and was regularly appointed on 30-6-1961 as Registrar in E. N. T. He obtained M. S. Degree in October 1963. By the Government Order dated 29-4-1964 he was temporarily promoted as Assistant Associate Professor in E. N. T.

13. Both the petitioner in W. P. No. 913 of 1967 and Respondent 7 were temporarily appointed on 14-8-1967 by the Government as Associate Professors in E. N. T. until further orders, pending finalisation of fresh Cadre and Recruitment Rules to the posts in the Department of E. N. T. in the Medical

Colleges.

14. During the course of the arguments the learned Special Government Pleader stated that subsequent to the coming into force of the 1967 Rules, the Government constituted a Selection Committee consisting of eminent Doctors to select candidates for promotion to the posts of Associate Professors, that this Selection Committee interviewed candidates already in service, considered their qualifications, experience, experience and record of service, and made the selection to the posts of Associate Professors, and that in pursuance of the selection made by that Committee the Government promoted a number of persons as Associate Professors. The learned Special Government Pleader showed us the Government order constituting the said Selection Committee. The learned counsel for the petitioners did not dispute this statement of the learned Special Government Pleader. It was also not disputed that both the two petitioners appeared before the Selection Committee and that the petitioner in W. P. No. 858 of 1967 was not selected for the post of Associate Professor in Medicine while the petitioner in W. P. No. 913 of 1967 was selected for the post of Associate Professor in E. N. T.

15. Both the petitioner in W. P. No. 913 of 1967 and Respondent 7 were promoted to officiate until further orders, as Associate Professors in E. N. T. by the Notification of the Government dated 14/16-12-1967 (Enclosure II to the Additional Counter-affidavit on behalf of the State). On 14-12-1967 respondent 3 was promoted to officiate as Associate Professor until further orders. On 29-2-1968 respondent 5 was promoted to officiate as Associate Professor until further orders. On 30-3-1968 respondents 2 and 8 were promoted to officiate as Associate Professors in Medicine until further orders. In April 1968 respondent 6 was promoted to officiate as Reader in Medicine until further orders. The petitioner in W. P. No. 858 of 1967 is continuing as Assistant Associate Professor and he has not been further promoted.

16. The contentions of the Petitioners are:

(i) that the Government has no competence to regularise the services of local candidates;

(ii) that such regularisation of services of local candidates is violative of Articles 14 and 16 of the Constitution; and

(iii) that regularising the services of only respondents 2 to 9 is discriminatory and offends Art. 14.

17. Elucidating the first contention, Mr. C. B. Motiah learned counsel for the petitioners argued that neither any statute nor any rules made by the Government under the proviso to Article 309 of the Constitution, provides for regularisation of services of local candidates, and hence it is not competent for the Government to regularise the services of local candidates.

18. To appreciate this contention, it is necessary to understand the meaning and

significance of the terms "Local Candidates" and "regularisation".

19. The term "Local candidate" has been defined as follows in Rule 8(27-A) of the Mysore Civil Service Rules, 1957, made by the Governor under the proviso to Art. 309 of the Constitution.

"8(27-A). Local Candidate.

A local candidate in service means a temporary Government servant not appointed regularly in accordance with the rules of recruitment to that service."

20. In Clause (cc) of sub-rule (1) of R. 2 of the Mysore Civil Services (General Recruitment) Rules, 1957, it is stated that the term "Local Candidate" shall have the same meaning as in the Mysore Civil Services Rules.

21. The expression "regularisation" has not been defined in any rule made by the Governor under the proviso to Art. 309. The power of the Government to regularise the services of local candidates, has been recognised in Rule 1-A of the Mysore Government Servants' (Seniority) Rules, 1957, made by the governor under the proviso to Art. 309 of the Constitution. As to how the seniority of a person whose services have been regularised, should be determined, this is what Rule 1-A provides:

1-A, Nothing in these rules shall be applicable to any person appointed as a local candidate so long as he is treated as such:

Provided that where his appointment is treated as regularised from any date, his seniority in the service shall be determined in accordance with these rules as if he had been appointed regularly as per the rules of recruitment to the post held by him on that day.

Explanation: In this rule "local candidate" shall have the same meaning as in the Mysore Civil Services Rules, 1968.

The Government Order No. GAD 46 SRR 59 dated 22-9-1961 providing for regularisation of services of local candidates appointed prior to 31-12-1959 for Class III posts, came up for consideration before this Court in Writ Petn. No. 2173 of 1964 S. V. Narayanappa v. State of Mysore, Considering the effect of that Government order, this Court said:

"When the Government Order by fiction of law provides for regularisation of services with effect from a date anterior to 31-12-1959, the local candidates who satisfy the qualifications and conditions prescribed by sub-paras (i) and (ii) are deemed to have been permanently appointed with effect from a date anterior to 31-12-1959....."

22. In the appeal from that decision before the Supreme Court, in State of Mysore and Another Vs. S.V. Narayanappa, , the Supreme Court observed:

"The High Court also equated regularisation with permanence of service and therefore held that once a local candidate's service was regularised he had to be

treated as permanent servant."

"Before we proceed to consider the construction placed by the High Court on the provisions of the said order we may mention that in the High Court both the parties appear to have proceeded on an assumption that regularisation meant permanence. Consequently it was never contended before the High Court that the effect of the application of the said order would mean only regularising the appointment and no more and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. It seems that on account of this assumption on the part of both the parties the High Court equated regularisation with permanence."

23. Though the term "regularisation" has not been defined in any rule made under the proviso to Art. 309 of the Constitution, the true meaning of that term appears to us to be that the deficiency in the appointment of a local candidate, namely, that his appointment has not been made in accordance with the rules of recruitment, is cured by regularisation, and the local candidate whose services are regularised shall be deemed to be appointed in accordance with the rules of recruitment. Regularisation, by itself, does not confer permanency in the appointment. Even if the services of a local candidate are regularised, his appointment cannot be considered to be permanent until there is confirmation of his appointment by the appropriate authority.

24. Mr. Motaiah argued that unless the power to regularise the services of a local candidate, is expressly conferred by any legislative enactment or by the rules made under the proviso to Art. 309 of the Constitution, the Government does not have the power to regularise the services of a local candidate. According to Mr. Motaiah, the services of a person who has been appointed as a local candidate, should be terminated; he can only make a fresh application for regular appointment; and his application for appointment should be considered afresh in accordance with the rules of recruitment.

We think this argument of Mr. Motaiah overlooks the ambit of the executive power of the State under Art. 162 of the Constitution. In *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , explaining the scope of the executive power of the State in matters of the State Public Services, Sikri, J. who spoke for the Court, said thus:--

"First is not obligatory under proviso to Art. 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in *Rai Sahib Ram Jawaya Kapur and*

Others Vs. The State of Punjab, that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Art. 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that Act or rules and it cannot in exercise of the executive power under Art. 162 of the Constitution ignore or act contrary to that rule or Act."

25. The executive power of the State extends to all matters relating to the State Public Services, and the power to regularise the services of local candidates is, in our opinion only ancillary or incidental to the power of the State to manage its public services. It is not necessary that there must be a law already in existence before the Government can exercise its executive power to regularise the services of local candidates. No doubt such executive power cannot be exercised contrary to, or inconsistent with, any provisions of the Constitution, legislative enactment, or rules made under the proviso to Art. 309. Unless it is shown that the power to regularise the services of local candidates, is opposed to, or is inconsistent with, any provisions of the Constitution, legislative enactment, or rules made under the proviso to Art. 309, we think it is competent for the Government to regularise the services of local candidates even in the absence of any express provision of a legislative enactment or rule under the proviso to Art. 309, empowering the Government to do so.

26. Elucidating the second ground of attack, Mr. Motaiah argued that regularisation of services of local candidates will, offend equality of opportunity guaranteed under Art. 16 of the Constitution, to citizens in matters relating to appointment to public services, because persons other than local candidates, whose services are regularised, will be prevented from applying for those posts and from being considered on merits for those posts.

27. Mr. Motaiah added that unless posts in public services are advertised so as to give opportunity to all eligible aspirants to apply for those posts, and unless a selection is made on the merits of those applicants, there will be violation of Articles 14 and 16 of the Constitution. In support of this contention, Mr. Motaiah strongly relied on the following observations of the Supreme Court in B.N. Nagarajan and Others Vs. State of Mysore and Others, :--

"If the Government advertises the appointments and conditions of the appointments and makes selection after advertisement, there would be no breach of Art. 15 or 16 of the Constitution because everybody who is eligible in view of the conditions of service shall be entitled to be considered by the State."

28. From the above observations the Supreme Court, Mr. Motaiah sought to establish the converse proposition that if the Government does not advertise posts to which appointments are to be made, and does not make selection to

these posts after such advertisements, Art. 16 would be infringed.

29. The above quoted observations of Sikri J., were made while repelling a contention advanced in that case to the effect that if the executive is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Articles 309 of the Constitution, Articles 15 and 16 would be breached because appointment in that case would be arbitrary and dependent on the mere whims of the Executive. But, from the proposition stated by Sikri, J., in the above quoted passage, the converse proposition propounded by Mr. Motaiah, does not, in our opinion, follow.

30. It is true, the fundamental right guaranteed by Art. 16 of the Constitution includes, as explained by Sinha, C. J., in *Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others*, a right to make application for posts under the Government, and a further right to be considered on merits for the posts for which application has been made; though those rights do not extend to being actually appointed to the post for which application may have been made. In order to afford equality of opportunity in matters of public employments, ordinarily it is desirable that posts for which appointments are to be made, should be advertised so that eligible aspirants for such posts may have opportunity of making applications for those posts and so that such applications are considered on merits. It is in recognition of this principle that Rule 3 of the Mysore State Civil Services (Recruitment) Rules 1957, provides that initial recruitment to the State Civil Services, shall be made by competitive examination, or by selection, and that Rule 4(2) provides that in case of recruitment by selection, adequate publicity shall be given to the recruitment and the selection shall be made in order of merits of candidates as determined by the Public Services Commission, the Advisory or the Selection Committee, or the Appointing Authority, as the case may be.

31. Nevertheless, it does not follow that omission to advertise posts for which appointments are to be made, necessarily results in infringement of Art. 16 of the Constitution. Such omission may amount to violation of Article 16 in certain circumstances, while in certain other circumstances, it may not.

32. If some persons are appointed as local candidates to certain posts without advertising those posts and without notifying to the Employment Exchange, the existence of vacancies in those posts, and later if the services of those local candidates are regularised ordinarily other persons who are eligible for those posts and who aspire those posts, will be denied the opportunity for applying for those posts and for being considered for those posts. For example, if there are 100 persons who possess requisite qualifications and who are desirous of being appointed to public services, if the appointing authority appoints some 10 persons to 10 posts as local candidates, without advertising those posts and without notifying those vacancies to the Employment Exchange, and if some time later the services of those local candidates are regularised the remaining 90 persons who were equally well qualified, will be effectively prevented from

applying for those posts and from being considered for those posts. In such circumstances, the process of appointment as local candidates and subsequent regularisation of services of such local candidates, may be violative of Art. 16 of the Constitution.

33. But if local candidates are appointed to certain posts after duly advertising those posts, and after considering applications received for those posts, or after notifying to the Employment Exchange the vacancies in those posts and after considering the persons whose names are sent up by the Employment Exchange, and subsequently if the services of such local candidates are regularised, it is difficult to see how there will be violation of equality of opportunity for employment to public offices. Again, if there are only a limited number of persons possessing the requisite qualifications for certain posts, and if the Appointing authority appoints all of them who are prepared to be appointed, without advertising those posts and without notifying those vacancies to the Employment Exchange, it is difficult to see how equality of opportunity under Art. 16 of the Constitution, is offended.

34. Thus we are unable to accept the broad proposition put forward by Mr. Motaiah that the regularisation of services of local candidates must in all circumstances, necessarily be offensive to Art. 16.

35. Each of the petitioners who complains of infringement of Arts. 14 and 16 of the Constitution, has to establish that he was denied of opportunity for seeking appointment to the posts to which respondents 2 to 9 were appointed as local candidates, in spite of his being qualified for those posts on the respective dates on which respondents 2 to 9 were so appointed. The learned special Government Pleader contended that neither of these petitioners was qualified for being appointed as local candidate to the post of Assistant Associate Professor when any of respondents 2 to 9 was so appointed.

36. It is common ground that the petitioner in W. P. No. 858 of 1967 and Respondents 2, 6 and 8, possess post graduate degrees in Medicine, while the petitioner in W. P. No. 913 of 1967, the respondent 7 possesses post graduate degrees in E. N. T. Let us examine whether the petitioner in W. P. No. 858 of 1967, was qualified to be appointed as Assistant Professor in Medicine on any of the respective dates on which respondents 2, 6 and 8 were appointed, as local candidates, to the posts of Assistant Professors. Likewise let us examine whether the petitioner in W. P. No. 913 of 1967 was qualified to be appointed as Assistant Associate Professors in E. N. T. on the date on which respondent 7 was appointed to that post as local candidate.

36-a. In the additional counter-affidavit filed on behalf of the State, the respective dates on which respondents 2 to 9 were appointed as local candidates to several posts, have been set out. It is stated that respondents 8, 6 and 2 were appointed to the posts of Assistant Associate Professors on 3-7-1961, 29-4-1964 and 30-4-1964 respectively. As stated earlier, all the three of them had obtained

post-graduate degrees in Medicine before they were so appointed. Admittedly the petitioner in W. P. No. 858 of 1967 obtained the post graduate degree of M. D. in Medicine by the end of the year 1964, that is, subsequent to the dates on which respondents 8, 6 and 2 were appointed. Thus he did not possess the qualification of a post graduate degree, to be eligible for appointment to the post of Assistant Associate Professor on any of the respective dates on which respondents 2, 6 and 8 were appointed.

37. It is seen from the additional counter-affidavit of the State that respondent 7 was appointed as Assistant Associate Professor in E. N. T. on 17-6-1961. By then he had obtained the post graduate qualifications of M. S. in E. N. T. Admittedly the petitioner in W. P. No. 913 of 1967 obtained M. S. Degree in E. N. T. in October 1963, that is, long subsequent to the appointment of respondent 7 to the post of Assistant Associate Professor as local candidate. Thus this petitioner did not possess the post graduate qualification to be eligible for appointment to the post of Assistant Associate Professor as local candidate on the date on which respondent 7 was appointed to that post as local candidate.

38. Neither of the petitioners can therefore, complain of denial of equality of opportunity for appointment to the post of Assistant Associate Professor in his respective subject when any of the respondents was appointed to that post.

39. However, Mr. Motaiah contended that the material point of time at which opportunity should be afforded for making applications for posts and for being considered for such posts, is when the services of local candidates are proposed to be regularised, and that it is not sufficient that when appointments were made to certain posts as local candidates, such opportunity was afforded to eligible aspirants for those posts. It was also argued by Mr. Motaiah that on the date on which services of respondents 2 to 9 were regularised i.e. 28-6-1966, both the petitioners were eligible for being appointed as Assistant Associate Professors and that the regularisation of services of respondents 2 to 9 without advertising those posts and without giving an opportunity to the petitioners to apply for those posts, amounted to denial of equality of opportunity for employment to public offices.

40. If at the time of initial appointment to certain posts, as local candidate, equality of opportunity for appointment to such posts, had not been denied, we do not see how either Articles 14 and 16 of the Constitution requires that such posts should again be advertised and that applications should be called for such posts before services of such local candidates are regularised. While it is open to the State to terminate the services of local candidates, to advertise the posts held by them, and to make fresh appointments to those posts in accordance with the rules of recruitment, we do not think such a course should necessarily be followed if at the time of initial appointment of local candidates there was no denial of equality of opportunity to eligible aspirants for those posts, and if such local candidates possessed the prescribed qualifications when they were appointed. Regularisation of services of such local candidates without advertising

the posts held by them, will not be offensive to Articles 14 and 16.

41. Acceptance of the proposition of Mr. Motaiah that even where initial recruitment of local candidates is not offensive of Articles 14 and 16, the posts held by them should necessarily be advertised before regularising their services, will often lead to very strange and unjust results. Persons appointed as local candidates, may be continued for several years before the government considers the question of regularising their services. If before regularising their services, they are asked to apply again for those posts, they may not fulfill all the qualifications and recruitments prescribed for fresh appointments to those posts at that time. They might have exceeded the maximum age prescribed for direct recruitment when they are asked to apply again. Subsequent to their appointment as local candidates, qualifications prescribed for those posts might have been altered. Though they possessed the requisite qualifications for those posts when there were appointed as local candidates, they might not possess the altered qualifications prescribed for those posts, at the time of regularisation of their services. This may result in local candidates who have worked satisfactorily for several years, not being eligible for being appointed afresh. If they are thrown out of employment after serving for several years, they will be put to hardship, and the State will be deprived of the benefit of their experience.

42. The above point may be illustrated by taking the case of respondent 8. She had obtained the post graduate qualification of M. R. C. P., when she was appointed to the post of Assistant Associate professor as a local candidate on 3-7-1961. It is stated in the counter affidavit filed on behalf of the State that she was so appointed there were no eligible candidates who could be appointed immediately. By the time her services were regularised, she had put in nearly five years service as local candidate. It would have been unreasonable to advertise the post held by her to require her to apply for that post and to expose her to the risk of being thrown out of service after nearly five years of satisfactory service.

43. We are unable to understand the requirement of Articles 14 and 16 as compelling the State to advertise the posts held by local candidates and to consider afresh applications for those before regularising the services of such local candidates even when their initial appointment did not offend Arts 14 and 16 and they possessed the requisite qualifications.

44. It was next contended by Mr. Motaiah that respondents 2, 6 and 8 on one hand and respondent-7 on the other, did not possess the requisite qualifications of teaching experience on the respective dates on which they were appointed as local candidates to the posts of Assistant Associates Professors in Medicine and in E. N. T. respectively. It was said that on those respective dates they did not have the minimum teaching experience as specified by the Medical Council of India for being appointed as Assistant Associated Professors.

45. In the additional counter-affidavit filed on behalf of the State, it has been

explained that at about the time when respondents 2, 6, 7 and 8 were appointed to the posts of Assistant Associate Professors as local candidates, there were no eligible candidates who could be immediately appointed to those posts and that the Medical Council of India recommended that in specialties such as Medicine and Surgery, wherever there was difficulty in having teachers with the required qualifications

46. In the counter-affidavits filed on behalf of some of these respondents, it is averred that while they were studying for post graduate courses, they were also teaching under graduates for some time and that the period during which they were also teaching, should also be counted towards teaching experience prescribed as qualification. It is also averred by some of these respondents that in partial fulfillment of the requirements for the post graduate courses, they had to submit a dissertation or a thesis containing the results of some research conducted by them while studying for these post graduate courses, and that according to Note 1 to the Schedule to the 1967 Rules, 50 per cent of the time spent in recognised research in the Medical Council of India, University or Medical College, may be counted towards teaching experience. But it was contented for the petitioners that even if such dissertation or thesis embodied the results of any research conducted while studying for post graduate courses, such research cannot be regarded as recognised research as contemplated by Note 1 to Schedule to the 1967 Rules.

47. The reasons stated hereinafter, we think it is not necessary in these petitions to go into the questions whether teaching stated to have been done by any of these respondents while studying for post graduate degrees can be counted towards teaching experience specified for the post of Assistant Associate Professors, or whether research said to have been conducted by any of these respondents before submitting dissertation or thesis, can be regarded as recognised research which can be counted in lieu of teaching experience specified for the said posts.

48. At the time respondents 7 and 8 were appointed to the posts of Assistant Associate Professors i.e. on 17-6-1961 and 3-7-1961 respectively, the 1964 Rules prescribing the qualifications for the posts of Assistant Associate Professors had not been made. In the absence of prescription of qualification made under the provision to Art. 309, there was no legal impediment to the Government appointing them even if they did not possess teaching experience of any particular period, on the dates of their respective appointments.

49. It is true that respondents 2 and 6 were appointed to the posts of Assistant Associate professors on 30-4-64 and 29-4-1964 respectively, that is subsequent to the 1964 Rules coming into force (i.e. on 17-3-1964). According to the 1964 Rules qualifications prescribed for the posts of Assistant Associate Professors were post graduate qualifications in the respective subject, and teaching experience as required by the Medical council of India. Through the Medical council of India had prescribed teaching experience of certain number of years,

for the posts of Assistant Associate Professors, it (the Medical council of India) recommended that this qualification might be relaxed if persons with required qualifications were not available. Hence even if respondents 2 and 6 did not have teaching experience of the period specified by the Medical Council of India generally, they cant be regarded as not having fulfilled the qualification prescribed by the 1964 Rules in as much as the Medical Council of India had itself permitted relaxation of the qualifications specified by it.

50. Thus we are unable to accept the contention of Mr. Motaiah that respondents 2, 6, 7 and 8 did not possess the prescribed qualifications when they were appointed as local candidates to the posts of Assistant Associate Professors.

51. The third ground on which the order of regularisation was assailed, was that regularisation of services of only some local candidates among many such local candidates among many such local candidates is discriminatory and violative of Art. 14 of the Constitution. It was contended by Mr. Motaiah that in picking nine local candidates only among several local candidates, for regularisation of their services, there was no rational criterion or criteria for classification of local candidates into those whose services were regularised and those whose services were not regularised and hence regularisation of services of only some local candidates would offend equality of treatment befo

52. It is well settled that the person who come before the Court complaining of violation of Art. 14 of the Constitution, must show that he is personally aggrieved by the alleged discrimination, and the burden is on him to place sufficient material to establish there has been hostile discrimination against him. Neither of the petitioners was a local candidate. As stated earlier, both of them were regularly appointed either as Lecturer or as Registrar. It is true that on the date of the impugned Government Order regularising the services of respondents 2 to 9, they had been officiating as Assistant Associate Professors. But they cannot be regarded as local candidates in the posts of Assistant Associate Professors, because they held substantive appointments in the lower cadres one as Lecturer and another as Registrar. In our opinion, the term "local candidate" has no application to a person who has been substantively appointed to a post in certain cadre and has been officiating in a post in higher cadre. In the case of an pointed to a post in certain cadre, the question of regularisation of his services does not arise.

53. No person who had been appointed as local candidate to any of the categories of posts to which respondents 2 to 9 were so appointed, has come before us complaining that his services have not been regularised when services of respondents 2 to 9 were regularised on 28-6-1966 and that there has been hostile discrimination against him. The petitioners who are not local candidates, cannot be heard to say that among several local candidates the Government have picked and chosen only respondents 2 to 9 for regularisation of their services, and that there has been discrimination as between respondents 2 to 9 on one hand and the rest of the local candidates on the other.

54. As we stated earlier, regularisation merely cures the deficiency in the initial appointment as a local candidate, namely, that such appointment is not in accordance with rules of recruitment, and regularisation of services of a local candidate does not confer on him permanency of his services. Even after such regularisation it is open to the appropriate authority to confirm or not to confirm him in that post. As regularisation of services of respondents 2, 6, 7 and 8 did not have the effect of confirming them in the posts of Assistant Associate Professors, we think the learned Special Government Pleader was right in contending that neither of the petitioners was aggrieved by the regularisation of services of respondents 2 to 9.

55. However, Mr. Motaiah argued that regularisation of services of respondents 2 to 9 conferred on them seniority over the petitioners who were still officiating as Assistant Associate Professors on the date of such regularisation i.e. on 28-6-1966. The learned Special Government Pleader submitted that subsequent to the filing of these writ petitions the petitioner in W. P. No. 913 of 1967 and respondent 2 to 5, 7 and 8 have been further promoted to officiate as Associate Professors, that respondent 6 has been further promoted to officiate as Reader, and that the inter se seniority between them in the cadre of Associate Professor and Reader, has not been fixed by the authorities. The learned Special Government Pleader also submitted that as the petitioner in W. P. No. 858 of 1967 has not been promoted, and is still continuing as Assistant Associate Professor, the question of seniority as between him and respondents 2 to 8 who are in a higher cadre would not arise.

56. But Mr. Motaiah referred to the proviso to Rule 1-A of the Mysore Government Servants" (Seniority) Rules 1957, which provides that where the appointment of a local candidate is treated as regularised from any date, his seniority in service shall be determined in accordance with the rules of recruitment to the post held by him on that date. Mr. Motaiah complained that the effect of regularisation of services of respondents 2 to 9 would be that for the purpose of seniority, respondents 2 to 9 would be deemed to have been regularly appointed in accordance with the rules of recruitment on 28-6-1966, while the petitioners who were officiating as Assistant Associate Professors on that date, would be treated only as officiating in the posts of Assistant Associate Professors.

57. As stated earlier, regularisation of services of local candidates, will not by itself, amount to confirmation of such local candidates. In spite of such regularisation, respondents 2 to 9 cannot be regarded as being confirmed in the posts to which they have been appointed as local candidates, unless there are specific orders confirming them. Even after such regularisation, respondents 2 to 9 can only be regarded as officiating in their respective posts in the absence of orders confirming them in those posts. Hence such regularisation, by itself has conferred any advantage on respondents 2 to 9 over the petitioners, nor has adversely affected seniority of the petitioners, vis a vis respondents 2 to 9.

58. It appears to us that the relative seniority of the petitioners and respondents

2 to 9 should be determined without reference to the impugned Government Order dated 28-6-1966 by which the services of respondents 2 to 9 were regularised.

59. The petitioner in W. P. No. 858 of 1967 has also assailed the promotion of respondent 8 as Assistant Professor on 28-2-1967. It was said that while he (this petitioner) was regularly recruited as Lecturer and had been officiating as Assistant Associate Professor, respondent 8 had been recruited only as a local candidate to the post of Assistant Associate Professor. It was contended that this petitioner who been recruited regularly should have been preferred to respondent 8 who was recruited only as a local candidate. This petitioner also complained that his case was not considered for promotion to the post of Assistant Professor when respondent 8 was promoted on 28-2-1967.

60. The learned Special Government Pleader has explained that the promotions, including that of respondent 9 made by the Government Notification dated 28-2-1967, were purely temporary and have been superseded by the selection made by the aforesaid Selection Committee. As stated earlier, respondent 8 was selected by the said Selection Committee for the post of Associate Professor and the Government have promoted her as Associate Professor on 30-3-1968.

61. In view of respondent 8's subsequent promotion as Associate Professor, it becomes unnecessary to consider the validity of the Government Notification dated 28-2-1967 promoting her temporarily as Assistant Professor. But it appears to us that while determining the relative seniority between the petitioner in W. P. No. 858 of 1967 and respondent 8, her temporary promotion to the post of Assistant Professor by the Government Notification dated 28-2-1967 would not be relevant; and the seniority as between them will have to be determined without reference to her temporary promotion as Assistant Professor on 28-2-1967.

62. All the contentions of the petitioners fail. With the observations that the seniority as between the petitioners and respondents 2 to 9, shall be determined without reference to the Government Order dated 28-6-1966 regularising the services of respondents 2 to 9, and the Government Notification dated 28-2-1967 temporarily promoting respondent 8 as Assistant Professor, these petitions are dismissed.

63. But in the circumstances of these petitions we make no order as to costs.

64. Petitions dismissed.