

(2017) 08 MP CK 0033
In the Madhya Pradesh High Court
Case No : 3932 of 2014

Surendra Mehani S/o the late S.M.Mehani Vs Smt. K.N.Khan,? W/o Mohd. Maksood Khan,

Date of Decision : 31-08-2017

Acts Referred:

Constitution of India, Article 309, Article 16, Article 335 - Recruitment and conditions of service of persons serving the Union or a State - Dissolution of a District or a

Citation : (2017) 08 MP CK 0033

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : Prashant Sharma, ?Vivek Jain,?Yogendra Khare,?C.R.Roman

Final Decision : Dismissed

Judgement

1. Petitioner has filed this writ petition being aggrieved by order dated 3rd June, 2014 passed by respondent No.1, whereby promoting respondents No.4 and 5 as Professors in the Department of Anesthesia on the ground that Medical Council of India has issued a notification dated 21st July, 2009 wherein it is provided that in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India with the previous sanction of the Central Government makes the Regulations to amend the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998. Thus, vide aforesaid notification, Regulations called as Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009 have been brought into force. It is further provided that teaching/Research experience requirements in all the subjects broad specialties shown in Table -I shall be substituted as under :-

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"for Professor it is provided that as Associate Professor in the subject concerned one should have three years experience in the recognized medical college and there should be minimum of four research publications in indexed/ national

journals." This notification was clarified by publication of another notification dated 15th December, 2009 called the Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009- Part III and Clause 4(A)(ii) provides that for the transitory period of four years w.e.f. 24th July, 2009, the appointment /promotion to the post of Professor can be made by the institutes in accordance with the Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 as prevailing before notification of Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009. It is submitted by learned counsel for the petitioner that in fact M.P. Medical Education (Gazetted) Service Recruitment Rules, 1987 in Schedule IV provides that essential qualification, experience, if any will be as per the current norms of the Medical Council of India, and therefore, the current norms of Medical Council of India which had come into operation after the period of transition w.e.f. 24th July, 13 should have been applied for the DPC which was convened in the year 2014. Therefore, the promotion orders issued in favour of the private respondents need to be set aside as they did not fulfill the mandatory qualification of having four publications to their credit on the date of DPC.

2. Learned counsel for the respondent/State on the other hand submits that DPC was convened as on 1.1.13, as it could not be convened in the year 2013 itself as there was a ban on convening such DPC in view of election notification which was issued on 1 st November, 2013 in view of the elections to the State Legislative Assembly, and therefore, since the DPC was though convened on 1.3.14, but was in the position of 1.1.13, therefore, the DPC considered the candidature and eligibility of Associate Professors in terms of the Rules of 1998 as on the date of vacancy, transition

period was in operation. Learned counsel for respondent No.5 has supported the case of the State Government, whereas the learned counsel for the Medical Council of India has supported the case of the petitioner. Learned counsel for the State has also placed reliance on the judgment of the Supreme Court in the case of Kulwant Singh and Ors. Vs. Daya Ram and Ors. as reported in (2015)3 SCC 177 wherein it has been held that what will be the temporal effect of amended rules. It has been held that it will be ordinarily prospective i.e. vacancies which had accrued prior to amendment would be governed by un-amended rules and the vacancies which had accrued after amendment would be governed by amended rules. Therefore, no interference is called for in the impugned order.

3. Issues which arise for consideration of this Court are as to the meaning and import of word transition period and whether the case of promotion of the petitioner and private respondents will be dealt with under the provisions of amended rules of 2009 or will be governed by the rules of 1998. In this regard, it will be necessary to have consideration to the provisions contained in M.P. Public Services (Promotion) Rules, 2002 which has been brought into force in exercise of the powers conferred on the State of M.P. through Articles 16, 335 read with Article 309 of the Constitution of India, wherein the word year has been defined

and according to which under rule 7, which deals with promotions based on the criteria merit cum seniority, it is provided in sub rule 4 that a year shall be defined as under :

"(4) the number of vacancies for promotion during the course of the year i.e. from 1st January to 31st December shall be worked out after taking into account the existing and anticipated vacancies on account of retirement and promotions to higher cadres/part of service/higher pay scale of posts. Vacancies arising out of deputation for periods exceeding one year shall also be taken into account. The number of vacancies to be reserved for public servants belonging to Scheduled Castes and Scheduled Tribes shall be worked out on the basis of the roster which is required to be

maintained in accordance with the provisions of rule 9 of these rules."

Therefore, it is apparent that posts were vacant for the year 2013 and such vacancies had accrued prior to 23rd July, 2013 inasmuch as in the DPC proceedings dated 1.3.14 itself it is mentioned that it was convened as on 1.1.13 and out of six posts which were to be considered for promotion of eligible Associate Professors to the post of Professor were defined in part, as two were existing from a prior date, two posts accrued on 28.10.11 and 24.5.07 and two posts had accrued on account of superannuation of Professor on 31.3.10 and 31.9.12. In fact, only three persons were recommended for promotion under the general category, out of which one Dr. V.S.Bhatia had given up his claim for promotion, and therefore, substituted respondent No.4 Dr. K.K.Arora whose name was in the wait list at serial No.1 was given promotion to the post of Professor. It is apparent that all the persons promoted were senior to the petitioner and petitioner had not even attained the prescribed bench mark of securing 10 marks. In this regard, learned counsel for the petitioner has though submitted that except for one person, ACR's for the year 2012 were not produced by the respondents and had ACR's for the year 2012 would have been produced for other persons including the petitioner, then he would have qualified for promotion by attaining the bench mark fixed by the DPC, but notwithstanding that, the fact remains that M.P. Public Service (Promotion) Rules, 2002 itself provides in rule 7(7) that if ACR for a particular year is not available for any reason, then DPC/Screening Committee can consider ACRs for previous years. There is no challenge to such provision of rules as is contained in rule 7(7) of rules of 2002, and therefore, no grievance can be raised for consideration of ACRs of the previous year. Besides not attaining the bench mark, it is also apparent that vacancies were existing prior to the cut off date of transition i.e. 24th July, 13, a fact which is apparent from DPC proceedings of the year 2012 filed by the respondents/State as Annexure D which demonstrates that there

were 8 posts available in the zone of consideration, out of which five were for unreserved category and five persons were recommended for promotion, but again one Dr. Bhatia had not joined, and therefore, only four persons had joined, therefore, there was a vacancy of one post from the previous year i.e. 2012 in

the zone of consideration. Besides this, one post of Professor Anesthesia was created in the year 2012 for Rewa Medical College which was not taken into consideration by the DPC of the year 2012, and therefore, three posts were available prior to cut off date.

4. Webster's Third New International Dictionary of the English Language Unabridged defines word transition as noun; a passage or movement from one state, condition or place to another. Therefore, to understand the true meaning of the word transition, meaning of words state, condition or place has to be understood. State has been defined in the same dictionary as "to fix or settle in a position, rank or condition". In that context, promotion is to be understood in terms of the position which was existing as on 1.1.13. Therefore, the Rules of MCI which were allowed to be implemented during the period of transition is to be understood in the sense that posts which accrued or were created during the transition period are to be filled in terms of the rules which were applicable during the transition period. As per the notification dated 15th December, 2009 it is provided that for the transitory period of 4 years w.e.f. 24 th July, 2009 the appointment/promotion to the post of Professor can be made by the institutions in accordance with Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 as prevailing before notification of Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009. Thus, transition is to be understood in two dimensional plane where one dimension is time and another dimension is position or posts. In this two dimensional plane, time is moving and during that movement, it is touching the facet of position/posts occurring during that time frame. Thus, if a post or position happens to accrue or created during this period of transition, then un-amended rules will be applicable because the

purpose of prescribing transition period is not to take any prospective Associate Professor in the present case by an element of surprise but in fact to provide him/her a transitory period of four years to publish 4 research papers as per the requirements of 2009 Regulations notified on 21st July, 2009, that is if a third dimension is introduced to the above example, i.e. of writing/publishing research papers, then that third dimension is in relation to a post accrued / occurring after 24th July, 2013 i.e. the period of transition because by that time it is expected that a Associate Professor if he had not completed four research papers to his credit, will complete such research papers so to make him eligible for promotion to a post occurring after the eclipse of transition period of four years as has been inserted in clause 4A as clause 4A (ii) of the Amendment of 15th December, 2009.

5. If the argument of the petitioner is to be accepted as on the face of it which is not only attractive but sounds reasonable, then it will mean that in the spatial plane of three dimension if a post is created prior to transition period, then also an Associate Professor was required to have 4 research papers as if expecting promulgation of 2009 notification prescribing a new qualification for the first

time. This will mean that an Associate Professor will be required to travel back in time and complete his research papers so to fulfill the requirements of the amendment which is not humanly possible, and therefore, cannot be the intention of the legislators or the authority acting under such delegated legislation while issuing notification dated 24th July, 2009. Thus, a vacancy which had accrued prior to 23rd July, 2013 i.e. before end of transition period was required to be filled only in terms of the Regulations of 1998 and not in terms of the Regulations of 2009. Thus, petition fails and is dismissed.