

(1982) 07 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 998 of 1981

Vijay Kumar and Others

APPELLANT

Vs

The Post-Graduate Institute of Medical Education and
Research and Others

RESPONDENT

Date of Decision : 12-07-1982

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 166(3)

Citation : (1983) 1 ILR (P&H) 323

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J

Bench : Division Bench

Advocate : Kuldip Singh and R.S. Mongia, for the Appellant; D.N. Awasthy and J.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—This set of four Civil Writ Petitions bring into lime-light the somewhat sad spectacle of the healing faculty being itself afflicted with internecine strife, engendered perhaps by a nonchalant attitude of authorities to the mandates of the statute which meticulously governs the working of one of the prestigious national medical institutes of this region.

2. The Post-Graduate Institute of Medical Education and Research, Chandigarh, was ambitiously planned and executed in the new Capital City of the erstwhile State of Punjab in the late fifties and the early sixties. Originally it functioned under the wing of the Department of Health of the State of Punjab, but after the reorganization in 1966, it has become a creature of an Act of Parliament both as regards its corporate existence and its subsequent continuance and governance. The Post-Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 (hereinafter called the "Act"), was enforced on December 17, 1966. As its preamble declared, the object was to declare the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh (hereinafter called the "P.G.I.") to be an institution of national importance and to provide for

its incorporation and matters connected therewith. Section 31 of the said Act empowers the Central Government to make rules to carry out its purposes and in accordance therewith the Post-Graduate Institute of Medical Education and Research, Chandigarh Rules, 1967 (hereinafter called "the Rules") were promulgated on March 29, 1967. Equally, it is common ground that by virtue of the power conferred by Section 32 of the Act, the Post-Graduate Institute of Medical Education and Research, Chandigarh, Regulations (hereinafter called "the Regulations") were enforced on April 18, 1967. The aforesaid provisions exhaustively and in minute detail regulate the working of the P.G.I. It is within the frame-work of the above-mentioned statutory provisions that the issue calls for examination in these cases.

3. The controversy herein rages hotly around the creation of the post of a Professor of Clinical Nutrition and the appointment of Respondent No. 2, Dr. Saroj Mehta thereto. The challenge is focused on item No. 3 of the proceedings of the 47th meeting of the governing body of the P.G.I. held on December 22, 1980. Learned Counsel are agreed that the issues of fact and law are broadly common in the four Civil Writ Petitions and this judgment would, therefore, govern all of them. It, therefore, suffices to make a detailed reference to the facts in C.W.P. 998 of 1981 Doctor Vijay Kumar etc. v. P.G.I. etc.

4. The six Petitioners (barring Petitioner No. 3, who is an Assistant Professor) are Associate Professors in their specialities in the P.G.I. and claim to have achieved commendable eminence, and distinction in their respective fields. Respondent No. 2, Dr. Saroj Mehta is also admittedly working as an Associate Professor in the Department of Paediatrics. It is the case of the Petitioners that Respondent No. 2 is overly zealous for anointment to the post of a Professor in the P.G.I. She had applied for the Post of a Professor in the Department of Social and Preventive Medicines; Hepatology; Community Medicines; and Tropical Medicines and Communicable diseases, in September, 1977; April 1978; August 1979; and August, 1980, respectively, but was rejected by the Selection Committee on all four occasions. Similarly, she Unsuccessfully applied for the post of Director of National Institute of Nutrition. Hyderabad in October. 1980. In September, 1977 Petitioner No. 1 Dr. Vijay Kumar and Respondent No. 2 along with others had competed for the post of Professor of Social and Preventive Medicines. The Selection Committee selected the Petitioner Dr. Vijay Kumar but before he could join the said post, the appointment was challenged by Respondent No. 2 and was quashed on the ground that the Selection Committee did not have adequate quorum--wide judgment in Dr. Saroj Mehta v. P.G.I. 1978 P.L.R. 688. After the said decision, the two rival contenders again competed for the said post and Dr. Vijay Kumar was selected afresh in August, 1979 but has so far not been given any appointment order. On behalf of the Petitioners this is attributed to the influence and obstruction of Respondent No. 2 and her husband Dr. S.K. Mehta, who is also working in the P.G.I.

5. The 47th meeting of the Governing Body of. the P.G.I. was held on December

22, 1980 at 11 A.M. in the office of the Union Minister for Health and Family Welfare, Nirman Bhawan, New Delhi. It is the stand of the Petitioners that no item with regard to either the creation of the post of Professor of Clinical Nutrition or appointment thereto was on the agenda of this meeting. Nevertheless, the governing body, therein resolved as under:

In view of the extensive discussions held during the Governing Body Meeting of 14th March, 1980 and 15th September, 1980 in regard to the representation of Dr. (Mrs.) S. Mehta, Associate Professor of Paediatrics, it was decided that:

(i) the appointment of Dr. Vijay Kumar as Professor of Community Medicine, as per the recommendations of the Selection Committee held on 20th/21st August 1979 be approved;

(ii) in view of the importance of Clinical Nutrition, a post of Professor of Clinical Nutrition be created in the Department of Paediatrics with immediate effect:

(iii) Dr. (Mrs.) S. Mehta, Associate Professor of Paediatrics be appointed as Professor of Clinical Nutrition in the Department of Paediatrics. The post of Assistant Professor of Paediatrics would be held in abeyance; and

(iv) the appointment orders of Dr. (Mrs.) Mehta and Dr. Vijay Kumar be issued simultaneously.

The primary grievance of the Petitioner is against the above-quoted resolution which is sought to be quashed on both legal and factual grounds. It is averred that the post of the Professor, Clinical Nutrition has to be filled by way of direct recruitment but the same was never advertised and in fact not even a circular was issued in the P.G.I. for inviting applications therefor. It is the claim that in fact there is no Department of Human Nutrition in the P.G.I. and therefore, the very question of appointing any one to the post of Professor in the non-existing Department-would hardly arise and in any case the creation of the said post and the Appointment thereto is arbitrary and discriminatory and is violative of Article 16. All the six Petitioners claim that being Associate Professors in the F.G.I. they were entitled to be considered for the appointment of the post of a Professor and not one of them has even remotely been taken into consideration for the same. It is highlighted that Dr. O.N. Bhakoo, an Associate Professor working in the "same Department of "Respondent No. 2 is "senior to her and even he has not been at all considered for the post.

6. It is then averred that Rule 7 of the Rules provides for the creation of posts and appointments thereto has been blatantly violated in so far as the previous approval of the Central Government was not at all secured Further, a violation of Rule 6 and the relevant Regulations is alleged in so far as the matter was not referred to the statutory Standing Finance Committee and the Academic Committee. Further, it has been averred that the Selection Committee, has; been entirely by passed against the statutory provisions. In paragraph 8 of the Writ petition, the stand is that even the matter of the creation of a Department of

Human. Nutrition was not approved by the Academic Committee in its meeting held on February 28, 1981 and, therefore, the question of creating any post of Professor in the said Department could not arise.

7. Lastly, it has been even claimed in paragraph 27 that neither the governing body nor that Institute body at all considered the question of appointment of Respondent No. 2, to the, post of Professor on the date of the meeting on December 22, 1980, but surprisingly when the minutes were sent to the P.G.I. the same contained two lines that Dr. Saroj Mehta, Respondent No. 2, was appointed to the post of Professor of Clinical Nutrition and she is thus being inducted to the prestigious, post by the back-door.

8. The return on behalf of the P.G.I. has been filed on affidavit by Shri D.R. Gulati, the then acting Director of the Institute. It is the admitted position that he did not attend the meeting of the Governing Body on the 22nd of December, 1980, and thus could not personally depose to the proceedings thereof. None of the other members of the said-meeting even though impleaded as Respondents have chosen to file any affidavit controverting the allegation of the Petitioner with regard to the record to its proceedings. This return on behalf of the official Respondent is refreshingly candid. Therein the broad factual position is not sought to be controverted and paras 1 to 3, 5 and 6 are in terms admitted. It is conceded that no teaching post above the rank of an Associate Professor can be created except with the previous approval of the Central Government and that the post of a Professor Clinical Nutrition falls within this category and yet no permission of the Central Government either prior or subsequent has been obtained under Rule 7(1). It has also been averred that all matters relating to the creation of new teaching departments in the Institute or new teaching posts are first considered by the Standing Academic Committee of the Institute and thereafter they are placed before the Standing Finance Committee for its recommendation which are then laid before the governing, body for ratification. In the present case no such procedure, was even remotely followed. In fact long after the Governing Body's decision of 22nd December, 1980 the matter was considered by. the Academic Committee on the 28th of February, 1981, with regard to the creation of a Centre for Training and Research in Human Nutrition in the P.G.I. (the detailed decision whereof has been quoted). Further it is conceded that under the Rules and Regulations all teaching posts including that of the Professor of Clinical Nutrition are to be filled by direct Recruitment and not by way of promotion. Yet neither the said post was advertised nor any application thereof was at all invited. It has been averred that the Selection Committee of the Institute has been constituted with effect from 3rd of August, 1977, for a period of five years and has been interviewing and selecting candidates for appointment; to the various faculty and non-faculty posts. This Selection Committee has not considered Respondent No. 2 and for that matter any other candidate for appointment to the post of Professor of Clinical Nutrition. Indeed the said post has not yet been sanctioned by the Central Government at all. It is also the admitted fact that Dr. O.N. Bhakoo is working as an Associate Professor

of Paediatrics in the same Department as Respondent No. 2 and is senior to her but is averred to be away on a foreign assignment in Kuwait for a period of two years.

9. On behalf of fee official Respondent it has been conceded that no proposal whatsoever with regard to the creation or the filling up of the post of Professor of Clinical Nutrition was on the agenda of the meeting of the Governing Body held on 22nd of December, 1980. A bald cryptic denial of para 27 of the petition with regard to the proceedings of the Governing Body meeting has only been made. It has, however, been averred that the Governing Body in its aforesaid meeting had created a post of the Professor of Clinical Nutrition on that very day and the Institute Body in its meeting held subsequently on the same day approved the same. The stand of the official Respondent is that the aforesaid decision of the Governing Body was unauthorisedly leaked out and Respondent No. 2 wrote a letter to the Director saying that she had taken over charge of the post of Professor of Clinical Nutrition as per the decision of the Governing Body. Apparent disapproval and surprise are expressed in this regard because the said decision admittedly had as yet to be conveyed formally to both Petitioner No. 1 and Respondent No. 2 and the appointment of the letter could have been done only after getting the approval of the Central Government to the creation of the post against which she was to be appointed. In view of the acute controversy raised in this context it has now been averred that the Governing Body met on 25th of April, 1981 (after the filing of the present petition) and did not confirm the proceedings in respect of item No. 3 of the earlier meeting of 22nd December, 1980 pertaining to the appointment of Petitioner No. 1 and Respondent No. 2 and the matter has now to be considered afresh in due course.

10. The only other return has been filed on behalf of Dr. Saroj Mehta, Respondent No. 2 wherein apart from the legal and incontrovertible factual averments, the rest of the Petitioner's case is sought to be denied.

11. Before one enters an arena thick with controversy it seems to be apt to prominently notice matters about which there is no dispute whatsoever. As is manifest from the above resume of facts and pleadings the whole issue centres around the creation of the post of a Professor of Clinical Nutrition and the simultaneous appointment thereto of Respondent No. 2. That the said post is a prestigious one under the Institute and is at the zenith of the teaching faculty in its own branch is indeed manifest. Undoubtedly there are higher posts of the Director of the Institute and its Dean but this has more a nuance of administration added thereto rather than the pristine quality of medical teaching and practice. It was common ground that the post of a Professor has the pride of place within the teaching field and this seems to be manifest from the Schedule to the Rules, in which the post of the Professor (Medical) immediately follows that of the Director. That the Act, the Rules and the Regulations provided in great detail for both the creation and the mode and manner of the filling up of the post of a Professor is common ground. Further it is admitted position that the creation

of such a post is enjoined by the Regulations for the considerations of the Standing Academic Committee and the Standing Finance Committee as also of the Governing Body and still cannot reach finality except by the prior approval of the Central Government. Further the post of the Professor has to be filled by direct recruitment and not by promotion and admittedly neither the same was advertised nor even a circular inviting applications therefor was issued. "Nor is it in dispute that neither of the Petitioners nor anyone else was considered for appointment to the said post including Dr. Bhakoo who admittedly was senior to Respondent No. 2 in the same Department of Paediatrics. Despite the constitution and existence of a Selection Committee the matter was never placed before it and to crown it all it is the common stand that the issue the creation of this post or filling up was not even on the agenda of the meeting of the Governing Body held on the 22nd of December, 1980.

12. It is against the aforesaid background that the forceful two-pronged, attack of the learned Counsel for the Petitioners has to be evaluated. Lucidly the challenge was first directed against the very legality of the creation of the post of a Professor; and with equal plausibility to the mode and manner of its filling up. For clarity's sake it seems apt to deal with these two issues separately though in the ultimate analysis, they will coalesce to invalidate the impugned proceedings of the Governing Body.

13. Though the learned Counsel for the Petitioners argued the issue in a slightly different sequence it appears to me as more

14. logical to first advert to the attack based on the violation of regulation 23(2) (c) with regard to the very creation of the post. In order to appreciate the contention it is apt to first read the relevant provision of Rule 6 and regulation 23.

R6. Standing Committee : (1) There shall be constituted a standing Finance Committee, an Academic Committee and a Building Committee.

(2) The Finance Committee shall include the member representing the Ministry of Finance and the Academic Committee shall consist of at least three members of the staff of the Institute.

Regulation 23

Standing and Adhoc Committees : (1) The Standing and adhoc Committees shall consist of the Director of the Institute as ex officio member and such number of other members as are considered necessary:

Provided * * *

(2) The following matter shall be referred to the Standing Finance Committee which shall consider them and make its recommendations thereon, namely:

(a) * * *

(b) * * *

(c) all proposals for the creation of posts

(d) * * *

(e) * * *

(3) The Standing Academic Committee shall consider all matters relating to the administration of the academic affairs of the Institute.

It is patent from the above that Rule 6 creates a statutory Standing Finance Committee and an Academic Committee for the Institute. It is not in dispute that these Statutory Committees have been duly constituted and were, functioning at the time. Now the plain language of Regulation 23(2)(c) mandates that all proposals for the creation of posts shall be referred to the Standing Finance Committee. The language is wide and encompasses every proposal for the creation of a new post. As has already been highlighted earlier herein we are dealing with no minuscule ministerial job but the prestigious post of Professor of Medicine for the teaching faculty. Equally it has to be borne in mind that the language of the regulation is pre-emptory and provides not only that the proposal shall be referred to the Standing Finance Committee but further it is enjoined that it shall make its recommendations thereon. On the language of the aforesaid provisions it seems to follow that the very pre-condition of the creation of a post of a Professor of medicine at its very inception would require reference, consideration and the recommendation of the Standing Finance Committee which admittedly not only exists but has been functioning continuously and conterminously with the Institute itself.

14. It goes to the credit of Mr. D.N. Awasthy learned Counsel for the Respondent-Institute that he did not mince matters in fairly taking the stand that in the present case the aforesaid procedure prescribed by Rule 6 and regulation 23 has not even remotely been followed. Far from any strict or substantial compliance thereof it would appear that the authority was apparently oblivious thereof because it is not easy to contemplate that they would deliberately consider a frontal violation of the same. Before us it was conceded that far from the proposal of the creation of the post having been referred or considered by the Standing Finance Committee it was only after the impugned action of the creation of the post and even the appointment of Respondent No. 2 thereto that the matter was later sought to be put before the Standing Finance Committee. Even here despite the passage of a year and a half the said Committee has still declined to agree to any such proposal and has insisted upon further information and material for its justification. At the very threshold, therefore, it is plain that both the letter and the spirit of Regulation 23(2)(c) in respect of the creation of the post of a Professor (Medical) seems to have been plainly violated.

15. With equal candour, Mr. D.N. Awasthy admitted that the provisions of Clause (3) of Regulation 23 have again not been complied with. It is true that the language of this provision is somewhat general in terms but herein the matter has to be viewed in the light of the stand taken by the Respondent-Institute and

it goes to its credit that it was admitted that the significant question of the creation of a post of a Professor (Medical) is undoubtedly a matter relating to the administration of the academic affairs of the Institute and, therefore, worthy of the consideration of the Standing Academic Committee. It bears reiteration that this Standing Academic Committee is also a statutory body under Rule 16 and undisputedly the same was duly created at the inception of the Institute and has functioned continuously thereafter. A reading of Paras 7 and 8 of the written statement on behalf of the P.G.I. plainly indicates that at no stage prior to the creation of the post and even its filling up by appointment of Respondent No. 2 in the same meeting of the Governing Body was the Standing Academic Committee either consulted or had occasion to consider the matter. Indeed the stand of the Respondent-Institute that it deserves its consideration is further buttressed by the fact that it was attempted belatedly to put the matter before the Standing Academic Committee after the fact of the creation of the post itself and even the appointment of Respondent No. 2 against the same. Herein again it is the admitted position that the Standing Academic Committee has until now declined to lend its final approbation or approval to both the creation of a Centre for training and research for Human Nutrition or the creation of the post and asked for further material and the matter is still hanging fire. On the stand of the Respondent-Institute itself, therefore, a violation of Regulation 23(3) seems to be manifest.

16. Now apart from Regulation 23 it would appear that the creation of a post of a Professor appears to be equally in blatant violation of and in head long conflict with Rule 7(1). In order to appreciate this position it is apt to read the relevant part thereof:

7. Creation of Posts and appointments thereto:

(1) The Institute may create posts, subject to specific provision in the budget, on such scales of pay as are approved by the Central Government classify them into grades and specify their designations:

Provided that no teaching post above the rank of Associate Professor may be created except with the previous approval of the Central Government.

Provided further that no non-teaching post carrying an initial salary of Rs. 800 or more, per mensem may be created except with the previous approval of the Central Government.

(2) The Director General of Health Services shall be a member of all Selection Committee (s) constituted by the Institute for recruitment of Class I and Class II teaching posts (Lecturer and above).

(3) Appointment to the post of Director shall be made by the Institute with the prior approval of the Central Government.

The aforesaid provision has to be considered in the context of Section 3(c) and Section 5 with regard to the definition of the Institute and its composition.

17. Before considering the core of the attack under this head it seems best to dispose of a challenge which because of the pleadings may not be incisively maintainable. Relying heavily on the opening words of Rule 7(1) learned Counsel for the Petitioners has argued that the Institute itself alone is empowered by the rules to create a post and, therefore, not only its creation but the filling up of the same by the Governing Body impetuously in its meeting of 22nd of December, 1980, was a violation of the said rule. Though a hypertechnical construction of this provision might perhaps be possible but I am disinclined to take so narrow a view of the matter. It is true that the Governing Body had post-haste not only created a post of a Professor of Clinical Nutrition but simultaneously appointed Respondent No. 2 against the same. However, it is common ground that on that very day the Institute Body had itself met later and accorded its seal of approval to the action of the Governing Body. Though the inverted procedure herein may perhaps be not worthy of emulation but in view of the unreserved adoption of the action of the Governing Body by the Institute itself it cannot be said in strictitude that the creation of the post was not by the Institute itself and, therefore, violative of Rule 7(1). Even though some infirmity might attach to the procedural aspect I am disinclined to hold that this by itself can in any way be fatal.

18. However, the blatant, violation of Rule 7(1) is rested primarily on the infraction of the first proviso to Sub-rule (1) thereof. On behalf of the Petitioners, emphasis was rightly placed on the preemptory language used in the proviso. The words highlighted were "except with the previous approval of the Central Government". Undeniably the post of Professor (Medical) comes within the ambit of the proviso to Rule 7(1). Learned Counsel for the Petitioners was, therefore, able to forcefully contend that the creation of such a post is prohibited by this provision except on the pre-condition of the Central Government's approval. This is further highlighted by the fact that whereas Sub-rule (1) contemplates approval by the Central Government the language whereof may be consistent with a subsequent approval being accorded, the proviso in terms reverses that situation by laying down that the approval must be previous and the creation of the post subsequent thereto. This seems to be further elaborated by reference to Sub-rule (3) which lays down that the appointment of the Director was to be made with the prior approval of the Central Government. It inevitably follows that the first proviso to Rule 7(1) envisages a previous approval of the creation of a post and not merely a subsequent ratification thereof.

19. Once that is so, it was factually conceded before us that no previous approval of the Central Government was taken, for the creation of the post. Not only that it is the admitted position that even after a passage of a year and six months no approval of the Central Government has as yet been accorded whether retrospectively or by way of ratification. There seems to be thus no manner of doubt that the provisions of Rule 7(1) are plainly infringed.

20. Faced with the aforesaid position the somewhat tenuous and half-hearted stand of the learned Counsel for the Respondents was that these provisions are

merely directory and not mandatory. However, this appears to me as a mere bald assertion unsupported by either principle or precedent and plainly contrary to the unequivocal language used in Rule 7. It deserves highlighting that the proviso negatively states that no teaching post above the rank; of an Associate Professor may be created except with the, previous approval of the Central Government. There is thus a prohibition with regard to the creation of such a post and negative words, have been used to spell it out. The matter appears to be plain on principle. If authority were needed reference may be made, to *Haridwar Singh Vs. Bagun Sumbrui and Others*, . Therein Lordships were construing Rule 10 of the Rules of executive business framed under Article 166(3) which bars the passing of the particular orders without previous consultation with the Finance Department. Therein it was observed:

Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory.

In view of the above, I am unable to subscribe to the Respondents' stand that Rule 7(1) is merely directory and even a total and blatant violation thereof is of no legal significance. To conclude on this aspect it has necessarily to be held that the creation of the post of a Professor of Clinical Nutrition is violative of Rule 7(1). and equally of regulation 23 and is consequently tainted with illegality and has to be quashed.

21. On the aforesaid finding it would logically follow that appointment to the said post would equally fall. However, even apart from this it would appear that such an appointment is independently also on an equally if not even on a worse, footing. In this context what has to be prominently borne in mind is the fact that both by virtue of the schedule to the Regulations and the pleadings of is the admitted position that the post of Professor of Clinical Nutrition has to be filled by direct recruitment. Equally it is common ground that the said post was neither advertised nor any applications invited therefor and indeed" even a circular within the P.G.I. was not issued. It is not the case of the Respondent-Institute that all the six Petitioners herein were altogether ineligible for consideration for this post and indeed being Associate Professors themselves they would ordinarily" be so. Even Dr. Bhakoo, who, undisputedly is senior to Respondent No. 2 Dr. Saroj Mehta in the same very Department of Paediatrics was also not considered for appointment at all. Therefore in this situation in sustaining his challenge on the ground of Article 16 counsel has rightly relied on the following observations of the Full Bench in *Daljit Singh Minhas and Ors. v. The State of Punjab and Ors.* 1978 (1) S.L.R. 32.

Having held as above, one must sound a note, of caution that it is not to be

understood that appointments to public office are to be made in a cloistered manner. What is clearly implied is this that the mode and manner of giving adequate publicity for the posts to be filled either to the public at large or to the class or source to which recruitment may be contained, has necessarily to be left judicious discretion of the authority concerned; Probably, in the majority of the cases public advertisement may still be the best mode of reaching out to the candidates concerned. However, that, by itself would be a far-cry from holding that it should be made a constitutional requirement under Article 16, and thus invalidating all appointments in the absence of press advertisements. Whether in a particular case, there has been a hostile discrimination or arbitrary exclusion of the citizen for the purposes of public employment under the State, resulting in violation of Article 16, has necessarily to be decided on its peculiar facts.

indeed the above enunciation fits the present case like a glove. It is common ground that neither the creation nor the appointment to the post of a Professor of Clinical Nutrition was on the agenda of the Governing Body. Yet in its closed-door meeting of the 22nd of December, 1980 the post was both created and an appointment made against it. No other person including the six Petitioners was considered against the same apart from Respondent No. 2. If ever an appointment to public office can be said to have been made in cloistered manner the present is a classic case thereof. In the light of the enunciation of the law by the Full Bench the action is therefore, plainly violation of Article 16. Indeed it seems to follow that where this Article is attracted to a specific post then the simultaneous creation of a post and appointment thereto without considering the claims of those eligible would be plainly discriminatory and in breach of the mandate of the equality of opportunity in matter of public employment.

22. Viewed from another angle also the appointment of Respondent No. 2 seems to be equally unsustainable. From the somewhat brief proceedings of the Governing Body under item No. 3 (annexure P.2) it would appear that in the context of the representations made by Respondent No. 2 Dr. Saroj Mehta, it was thought expedient to create the post simultaneously with her appointment thereto. That such a procedure has been judicially disapproved is plain from the observations in *Mrs. Davinder Brar Nee Sandhu v. State of Punjab* 1969 S.L.R. 613.

The appointment of Miss Manjit Walia, was, however, quite illegal as, in my opinion, in our present set-up under the Constitution, no post can be created just to accommodate some person howsoever prominent or outstanding he or" she may be. The posts in Government departments or offices are created for administrative exigencies and in the interest of the official work. They are not created to accommodate particular persons. If there is a necessity of creating a post and manning it, it should be thrown open to all eligible candidates after prescribing the qualifications which the candidates aspiring to hold that post should possess. To appoint a particular person alongwith the creation of the post and debarring other eligible candidates to compete. for the same, directly

contravenes the fundamental rights of the other eligible candidates guaranteed by Article 16(1) of the Constitution.

The aforesaid view has then been followed in *Copt. R.S. Tiwana v. The Punjab Agricultural University etc.* C.W.P. 8306/76 decided on 24-2-82. Therefore on this added ground as well the appointment of Respondent No. 2 is unsustainable.

23. Before parting on this aspect of the case it is necessary in fairness to they learned Counsel or the parties to advert to an ancillary contention as well. Relying on Section 10(5); Rule 7(2) and Regulation 2(h) and 23(5) and (6) Mr. Kuldip Singh hold contended that the appointment of Respondent No. 2 was untenable also on the ground because it had never been considered by the Selection committee appointed by the Institute. This stand was sought to be buttressed on the concession that apart from the case Respondent No. 2, no other precedent could be cited where the appointment to the prestigious post of a Professor had not been referred to a Selection Committee. I, however, find myself unable to go to the extreme length of holding that the non-reference of the post of Selection Committee by itself taints it with illegality. It was not disputed that the appointing authority for the post is the Governing Body or the Institute. No provision could be pointed out, on behalf of the Petitioners which makes it absolutely obligatory on the appointing authority to refer the matter of appointment to the post of a Professor to the Selection Committee. Whilst as a matter of practice it might well be apt that the advice and recommendation, of the Selection Committee would be relevant, yet it cannot be inflexibly laid down that the appointing authority itself is denuded of the power of appointment directly in the absence of a statutory provision to the contrary. Consequently this stand of the Petitioners in this context is unsustainable and has to be rejected.

24. For the detailed reasons recorded above, item No. 3 of the proceedings of the Governing Body (annexure P. 2) is plainly unsustainable and is hereby quashed. C.W.P. No. 998/1981 is hereby allowed with costs.

25. C.W. 3001 has been preferred by Dr. Vijay Kumar claiming a somewhat identical relief. Learned Counsel for the Petitioner was categorical that in the event of relief being granted in C.W.P. 998/1981 he would not press the same. This writ petition is, therefore, disposed of as infructuous.

28. C.W. No. 1192/1981 has been presented by Dr. Onkar Nath Bhakoo again seeking to quash the appointment of Respondent No. 2 to the post of the Professor Clinical Nutrition. In view of the detailed reasons recorded in C.W.P. No. 998/1981 this writ petition is also hereby allowed with costs.

C.W. No. 2350/1981 has been preferred by Dr. Saroj Mehta to challenge the appointment of Respondent No. 3 Dr. Vijay Kumar as Professor in Community Medicine primarily on the ground that he does not possess the requisite qualifications allegedly prescribed under the Post-Graduate Institute of Medical Education and Research, Chandigarh, Rules, 1967 and the schedule attached thereto. This writ petition was presented on the 30th of May, 1981 and is

apparently in the nature of a counter-blast to C.W.P. 998/1981 preferred by Dr. Vijay Kumar and others. The core of the attack herein is that in the amended schedule the essential prescribed qualifications for the post of Professor of Community Medicine are a Post-Graduate degree in that very speciality. The claim is that the very prescription of the qualifications by the Governing Body itself and the advertisement issued in accordance therewith was contrary to the schedule. The claim is that because Respondent No. 3 Dr. Vijay Kumar did not have Post-Graduate qualification in Community Medicine itself he was ineligible for appointment as a Professor in that Speciality.

27. In fairness to the Respondents it must be noticed that a number of preliminary objections were strenuously pressed with regard to the very maintainability of this writ petition. It was contended that the Petitioner having throughout participated in the selection proceedings on the basis of that very advertisement was estopped from challenging the same. Further because the Respondent had not assumed office at all in pursuance of the impugned appointment, therefore, the relief by way of quo-warrant was pre-mature. It was also the stand that in view of the earlier writ petition in Dr. Saroj Mehta v. The Post Graduate Institute of Medical Education and Research and Ors. 1978 P.L.R. 688, which was a matter inter parties, the issue was now res-judicate betwixt them. Lastly it was alleged that there had been a deliberate suppression of facts in so far as the factum of the resolution of Governing Body prescribing the qualifications was not disclosed and this would disentitle the Petitioner to any relief. I would notice that the counsel for the Respondents herein had cited number of precedents in support of the aforesaid preliminary objections but I am inclined to take the view that as there is otherwise no merit in this petition, it is unnecessary to advert to the peripheral though intricate questions raised in the preliminary objections.

28. It is plain at the very outset that the case of One Petitioner herein is rested on foundations of sand. A reference to paragraphs 2 and 7 of the writ petition would show that the whole case was built on the basis of a Schedule which is a part of the draft Rules which have never so far secured the sanctity of enforcement. During the course of arguments it transpired that certain draft rules including, a schedule thereto had been under consideration but admittedly these have never been notified by the Central Government in the Gazette and, therefore, are of no statutory value whatsoever. It was on the basis of these draft rules and the Schedule attached hereto that the Whole edifice of the Petitioner's case had been sought to be built, namely that these draft rules provided specifically that for the speciality of Community Medicine a Post-Graduate qualification therein was prescribed. Now once it is found as it was undeservedly conceded before us that the said draft rules have no statutory sanction then the wholestand of the Petitioner crumbles like a house of cards. In fact in view of this no other argument was open to the writ Petitioner.

29. Learned Counsel for the Petitioner Mr. J.L. Gupta apparently, under some

misapprehension had then attempted. Wassail the schedule to the Rules on which reliance had been rightly placed on behalf of the Respondent-Institute. Counsel attempted to take up the untenable testable position that in fact this Schedule and the amendment to the Rules had also not been published in the Gazette. This stance was, however, untenable and it goes to the credit of Mr. Gupta that in fairness he wholly withdrew the same. It would appear that the Post-Graduate Institute of Medicals Education and search, Chandigarh Rules, 1970 had made certain consequential changes in the earlier Rules of 1967 and added a Schedule were duly published in the Gazette on the 26th of March, 1970. Reliance of the Respondent-Institute was, therefore, patently based on valid statutory provisions.

30. In view of the above it is plain that there is no merit in this, writ petition which is rested entirely on non existing provisions. The same has, therefore, to be dismissed with costs.

S.C. Mittal, J.

31. I agree.