

DR. R.K. GOYAL
v.
STATE OF U.P. AND ORS.

DECEMBER 5, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law :

Indian Medical Council Act :

Section 19-A—Appointment—Lecturer in Medical Colleges—Qualification for appointment—Regulation thereof—Recommendation of Medical Council approved by Central Government—Subsequent revised recommendation was pending approval by Central Government—Held, State Governments expected to comply with recommendations made by Medical Council from time to time—If such recommendations, although not approved by Central Government, were complied with by State Government it was neither illegal nor arbitrary.

Appointment—Lecturer in Medical Colleges—Absence of recruitment rules—No teaching experience prescribed in recommendation by Medical Council superseding its earlier recommendation—Held, recommendation of Medical Council Binding on State Government—Order of appointment affirmed.

The Director of Medical and Health Services invited applications for appointment as lecturers on ad hoc basis in different disciplines in Medical Colleges of the State. The appellant and Respondent No. 4 applied for the post of lecturer in Orthopaedics and were recommended for appointment. Subsequently, the State Public Service Commission (PSC) invited applications for the post of lecturers in Orthopaedics in different medical colleges of the State. A Master's degree in the speciality with three years teaching experience was the minimum required qualification. This time also the appellant and respondent No. 4 applied for the same post but the appellant's candidature was cancelled as he did not possess any teaching experience. The PSC could not give its recommendations on account of filing of several writ petitions and court orders. Under these circumstances, the State Government appointed the appellant as a lecturer in Or-

A thopaedics in the Medical College for one year on *ad hoc* basis. The State Government terminated the appellant's service on expiry of the period of one year. The Medical Council of India had recommended Master's degree in the concerned specially with three year's teaching /research experience and this recommendations received the sanction of the Central Government and thus became regulations under Section 33 of the Indian Medical Council Act. The said recommendation was revised and the requirement of teaching experience was done away with. Though the Council had forwarded the revised recommendation to the Central Government for its approval they had not become regulations as they were still under the consideration of the Central Government. Before the order of termination could be served upon the appellant, he filed a writ petition in High Court and obtained an interim order restraining the authorities from terminating his services. In view of this interim order the State Government continued the appellant as lecturer till further orders. Subsequently the appellant's service was regularised under Rule 4(3) of the U.P. Regularisation of *Ad hoc* Appointments (On posts within the purview of PSC) Rules, 1979. In view of these developments the appellant allowed his writ petition to be dismissed.

E Respondent No. 4 filed a writ petition before the High Court challenging the aforesaid regularisation of the appellant's service. The High court held that as the appellant did not possess three years' teaching experience, the State Government could not have appointed him as lecturer even on *ad hoc* basis. The High Court further held that as the appellant's initial *ad hoc* appointment was bad his services could not have been regularised by the State Government for that reason also. The High Court, therefore, declared the *ad hoc* appointment of the appellant and regularisation of his services as bad and quashed the same. Hence this appeal.

G On behalf of respondent No. 4 it was contended that the recommendation of the Council regarding three years' teaching experience was binding on the State Government as it had received the sanction of the Central Government and had become regulation under the Indian Medical Council Act; and that the subsequent recommendations of the Council had not been approved and, therefore, had no binding force.

H Allowing the appeal, this Court

HELD: 1.1. Even the regulations framed by the Medical Council with respect to the qualifications recommended for appointment as teachers in medical colleges are only directory in nature. [550-F-G]

Dr. Ganga Prashad Verma and Ors. v. State of Bihar & Ors., [1995] Supp. 1 SCC 192, relied on.

1.2. It is really within the domain of the State Government to prescribe qualifications for appointment to various posts in State Services. Though recruitment to the State medical Services falls within the purview of the State Government, they are expected to comply with the regulations made by the Council in order to maintain high standard of medical education. [550-H; 551-A]

Ajay Kumar Singh & Ors. v. State of Bihar & Ors., [1994] 4 SCC 401 and *Government of Andhra Pradesh & Anr. v. Dr. R. Murali Babu Rao & Anr.*, [1983] 3 SCR 173, relied on.

2.1. Section 19A of the Indian Medical Council Act enables the Council to prescribe by making regulations minimum standards of medical education required for granting recognised medical qualifications by Universities or medical institutions in India and that would include prescribed minimum qualifications for appointment as teachers of medical education. As State Governments are thus expected to comply with the recommendations made by the Medical Council from time to time and if the State Governments comply with such recommendation irrespective of whether they are approved by the Central Government or not, it cannot be said that in doing so they have acted arbitrarily or illegally. [551-B-D]

2.2. No Recruitment rules framed under Article 309 of the Constitution were in existence for recruitment for the post of lecturer in the medical colleges and appointments were made on the basis of executive Orders passed from time to time. When the appellant was appointed as ad hoc lecturer, it was permissible to make such *ad hoc* appointments though for a limited period. At that time teaching experience was not prescribed as the required qualification for appointment as lecturer in the State medical colleges. It was for that reason that when the Director of Medical and Health Services, U.P. issued the advertisement for appointment of *ad hoc* lecturers, it did not contain the condition that the candidates should have three years teaching experience. It appears that the Public Service Com-

A mission (U.P.) committed a mistake when it issued an advertisement and mentioned therein that the minimum qualification for the posts of lecturer in medical colleges was a post-graduate degree and three years' teaching experience. [551-D-F]

B 2.3. The High Court failed to examine all the aspects and wrongly proceeded on the basis that three years' teaching experience was also part of the prescribed minimum qualification for the post of lecturer in Orthopaedics. Therefore, the view taken by the High Court that the initial appointment of the appellant as *ad hoc* lecturer was quite proper and legal, the subsequent order passed by the Government regularising his services will have to be regarded as valid and legal. [551-G-H; 552-A]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 37 of 1994.

D From the Judgment and Order dated 8.9.93 of the Allahabad High Court in C.M.W.P. No. 8914 of 1983

Bhimrao Naik, G.K. Mathur, Bharat Sangal, Irashad Ahmad, R.B. Misra, S.K. Misra and Navin Prakash for the appearing parties.

E The Judgment of the Court was delivered by

NANAVATI, J. This appeal by special leave is directed against the judgment of the Allahabad High Court in Civil Misc. Writ Petition No 8914 of 1983.

F In February 1981, the Director of Medical and health Services U.P., invited applications for appointment as lecturers on *ad hoc* basis in different disciplines in Medical Colleges of the State. The appellant and respondent No. 4 applied for the post of lecturer in Orthopaedics. Both of them were interviewed by the Selection Board on 3.9.81. the Director of Medical Education prepared a panel of selected candidates and recommended their names to the Government for appointment. In February 1982, the Public Service Commission U.P. (PSC for short) gave an advertisement inviting applications for the posts of lecturers in Orthopaedics and other specialities in different medical colleges of the State. A Master's Degree in the speciality with three years' teaching experience including one year's teaching experience after post-graduation was the minimum required

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qualifications. This time also the appellant and respondent No. 4 applied A
 for the same post. They were interviewed on 17.5.83. appellant's candida-
 ture was cancelled as it was noticed that he did not possess any teaching
 experience. The PSC could not give its recommendations on account of
 fling of several writ petitions and court orders. Under these circumstances,
 the Government by an order dated 2.6.83 appointed the appellant as a B
 lecturer in Orthopaedics in the Medical College at Agra for one year or
 till the appointment of a properly selected candidate. The Government
 terminated his service on 17.4.84 as his appointment was *ad hoc* and for a
 period of one year only. It appears that before the order of termination
 could be served upon him, he filed writ petitions No. 7852 of 1984 in the C
 Allahabad High Court and obtained an order of injunction restraining the
 authorities from terminating his services. In view of this interim order the
 State Government passed an order on 23.6.84 continuing him as lecturer
 till further orders. Later on the appellant applied for regularisation of his
 services. On 30.10.89, the State Government, acting on the recommenda-
 tions made by the Selection Committee constituted under Rule 4(3) of the D
 U.P. Regularisation of *ad hoc* appointment (on posts within the purview of
 the PSC) Rules 1979 regularised all those persons who were appointed on
ad hoc basis uptill 1st October, 1986 in various departments of the State
 Medical Colleges. their seniority was to be fixed later on under Rule 7 of
 the said rules. The *ad hoc* appointment of the appellant thus came to be E
 regularised and he was given seniority from 7.8.89. In view of these
 developments the appellant allowed his writ petition to be dismissed on
 18.9.91. Soon after the Government had appointed the appellant as a
 lecturer on *ad hoc* basis respondent No. 4 filed Writ Petition No. 8914 of
 1983 in the Allahabad High Court challenging the same. As the appellant's
 services were regularised during the pendency of that petition, respondent F
 No. 4 amended the petition and also challenged the said Order of
 regularisation passed in 1989.

The High Court accepted the qualification as stated in the advertise-
 ment given by the PSC as correct. As the appellant did not possess three G
 years' teaching experience, the High Court held that the State Government
 could not have appointed him as lecturer even on *ad hoc* basis. The High
 Court further held that as his initial *ad hoc* appointed was bad his services
 could not have been regularised by the Government even under the 1978
 regularisation rules. The High Court was also of the view that as the interim
 order obtained by him and under which the Government had continued H

A him as lecturer got vacated automatically on dismissal of his petition, the
order passed by the Government on 17.4.1984 terminating services got
revived and for that reason also his appointment could not have been
regularised by the Government under the 1979 rules. The High court also
held that the conduct of the appellant in obtaining the interim relief and
then getting the writ petition dismissed was not *bona fide*. The High Court,
B therefore, declared the *ad hoc* appointment of the appellant made on 2.6.83
and regularisation of his services under the order dated 13.10.89 as bad
and quashed the same. The High Court, however, did not grant the prayer
made by respondent No. 4 that he should be appointed as lecturer w.e.f.
2.6.83 and be given seniority and consequential benefits from that date.

C The decision of the High Court is challenged on the ground that the
High Court has erroneously held that there was a requirement of three
years' teaching experience for appointment as lecturer. It was also con-
tended that the view taken by the High Court as regards the effect of the
dismissal of the writ petition and termination of the interim order is also
D erroneous. On the other hand it was contended on behalf of respondent
No. 4 that three years' teaching experience was necessary for the appoint-
ment in view of the recommendation made to that effect by the Indian
Medical Council and it was for that reason that in the advertisement issued
by the PSC it was so stated.

E Therefore, the real point in issue is whether in 1983 when the
appellant was appointed as an *ad hoc* lecturer, three years' teaching
experience was necessary for such appointment. We were told there were
no statutory rules framed by the Government and appointments were made
F on the basis of executive instructions issued from time to time. Neither in
1981 nor in 1983 there was in force any executive order passed by the
Government laying down the condition of three years' teaching experience
for appointment of lecturers in Medical Colleges. It was contended on
behalf of the State that for that reason the Director of Medical Education
and Training, when he invited applications for appointment as lecturers on
G *ad hoc* basis in medical colleges, had stated in the advertisement that the
required qualification for the posts was either M.D. or M.S. in that subject.
It was, however, contended on behalf of respondent No. 4 that since the
PSC in the advertisement dated 2.2.82 given for regular recruitment of
lecturers in the said medical colleges, had stated that the essential
H qualification for the said posts was a post-graduate degree in the subject

and three years' teaching experience of which one year should be after post-graduate qualification, this Court should also proceed on that basis, in the absence of any other material on record, and uphold the judgment of the High Court.

In view of this difference in the advertisements given by the Director and the PSC and the contrary assertions made by the parties in this appeal, this Court passed an order on 13.8.96 directing the Secretary of the Medical Council of India to provide necessary information with regard to the qualification prescribed by the Medical Council of India for the post of lecturer in Orthopaedics in 1981. Pursuant to that order the appellant produced along with his affidavit a copy of the letter dated 16.8.96 written by the Deputy Secretary of the council to the appellant stating that for the post of lecturer recommended qualification was a post-graduate degree in the subject. As it was noticed that the qualification mentioned in that letter was different from the qualification approved by the Medical Council in 1974 and as the said letter did not make it clear as to when the qualification prescribed in 1974 was modified, this Court issued a notice to the Secretary of the Council on 28.8.96 directing him to let this Court know through an affidavit of responsible officer of the Council what recommendations were made by the Medical Council from time to time regarding qualifications for appointment as a lecturer in medical colleges. By the said order the State Government was also directed to state on affidavit what qualifications were prescribed by it in 1981 for such appointment. Pursuant to that order DR. K.N. Kapoor officer on special duty in the office of Director General of Medical Education and Training had filed an affidavit on 16.9.96 wherein he has stated that "The State Government follows the Medical Council of India's requirement for the post and as per the Medical Council of India, the requisite qualification for the post of lecturer in Orthopaedics on 8.2.81 was as under:

(a) Academic qualifications : MS (Orthopaedics/MCH Ortho)

(b) Teaching/Research Experience : "Requisite recognised post-graduate qualification in the subject." It is also stated by him in that affidavit that the appellant did possess the essential qualifications when he was appointed on the post.

Dr. K.K. Arora, Deputy Secretary of the Council has now filed an

- A affidavit stating what were the recommendations made by the Council since 1970. From that affidavit it appears that its recommendations as regards the qualifications required for appointment to the post of teachers in Medical Colleges made in 1964 were amended in 1970. They received the sanction of the Central Government and thus became regulations under
- B Section 33 of the Indian Medical Council Act. The qualifications recommended by the Council for the post of Assistant Professor/Lecturer was M.S. or M.Ch. and three years' teaching/research experience. The said recommendations were revised by the Council in 1974, but there was practically no change with respect to the qualifications recommended for
- C appointment on the post of Assistant Professor/Lecturer in Orthopaedics. The 1974 recommendations were then revised in 1980 and this time it modified the qualifications required for the post of Assistant Professor/Lecturer by doing away with the requirement of teaching experience. The recommendations were again revised in 1981 and 1995, but no modification was made with respect to teaching experience with the result
- D that since 1980 the qualifications recommended by the Council for appointment on the post of lecturer in Orthopaedics is "requisite recognised post-graduate qualification in the subject". Thus since 1980 no teaching experience is required for appointment as a lecturer in orthopaedics. Though the Council has forwarded the recommendations made in 1974,
- E 1980 and 1981 to the Central Government for its approval they have not become regulations under the Act, as they are still under the consideration of the Central Government.

- F It was contended on behalf of respondent No. 4 that only the 1970 recommendations can be regarded as binding as they have received the sanction of the Government and have become regulations under the Indian Medical Council Act. As the subsequent recommendations of the Council have not been approved by the Central Government they cannot be said to have replaced the regulations of 1971 and, therefore, they have no binding force. We find no substance in this contention because even the
- G regulations framed by the Medical Council with respect to the qualifications recommended for appointment as teachers in medical colleges are only directory in nature as held by this Court in *Dr. Ganga Prasad Verma and Ors. v. State of Bihar and Ors.*, reported in [1995] Supp. 1 SCC 192. It is really within the domain of the State Government to prescribe qualifica-
- H tions for appointment to various posts in State Services. Though recruit-

ment to the State medical services falls within the purview of the State Government, they are expected to comply with the regulations made by the Council in order to maintain high standard of medical education as held by this Court in *Ajay Kumar Singh and Ors. v. State of Bihar & Ors.*, reported in [1994] (4) SCC 401 and *Government of Andhra Pradesh and Anr. Etc. v. Dr. R. Murali Babu Rao & Anr. Etc.*, reported in [1988] 3 SCR 173. Section 19A of the Indian Medical Council Act enable the Council to prescribe by making regulations minimum standards of medical education required for granting recognised medical qualifications by Universities or medical institutions in India and that would include prescribed minimum qualifications for appointment as teachers of medical education. As State Governments are thus expected to comply with the recommendations made by the Medical Council from time to time and if the State Governments Comply with such recommendations irrespective of whether they are approved by the Central Government or not, it cannot be said that in doing so they have acted arbitrarily or illegally.

As pointed out by the State Government, no recruitment rules framed under Article 309 were in existence for recruitment for the post of lecturer in the medical colleges in 1981 and appointments were made on the basis of executive orders passed from time to time. In 1981 and also when Dr. Goyal was appointed as *ad hoc* lecturer in 1983, it was permissible to make such *ad hoc* appointments though for a limited period. At that time teaching experience was not prescribed as the required qualification for appointment as lecturer in the State medical colleges. It was for that reason that when the Director issued the advertisement for appointment of 8 *ad hoc* lecturers, it did not contain the condition that the candidates should have three years' teaching experience. It appears that the PSC committed a mistake when it issued an advertisement in 1982 and mentioned therein that the minimum qualification for the posts of lecturer in medical colleges was a post-graduate degree and three years teaching experience.

The High Court failed to examine all these aspects and wrongly proceeded on the basis that three years' teaching experience was also a part of prescribed minimum qualification for the post of lecturer in Orthopaedics. Therefore, the view taken by the High Court that the initial appointment of appellant as *ad hoc* lecturer in 1983 was illegal and bad has to be regarded as incorrect. As we hold that the initial appointment of the appellant as *ad hoc* lecturer in 1983 was quite proper and legal, the

A subsequent order passed by the Government regularising his services will have to be regarded as valid and legal.

We, therefore, allow this appeal, set aside the order passed by the High Court and dismiss Civil Misc. Writ Petition No. 8914 of 1983 filed by respondent No. 4. However, in the facts and circumstances of the case, there shall be order as to costs.

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V.S.S.

Appeal allowed.