

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 05.05.2009

+ W.P.(C) 8738/2009, C.M. No. 5964/2009

PROF.DR.J.R.SABHARWAL VICE PRINCIPAL

..... Petitioner

Through : Mr. B.P. Singh Dhakray, Mr. Shakti Singh Dhakray and
Mr. D.K. Sharma, Advocates.

versus

UOI & ORS.

..... Respondents

Through : Mr. Gaurav Duggal, Advocate, for UOI.
Mr. Maninder Singh, Sr. Advocate with Ms. Pratibha. M. Singh
and Mr. T. Singhdev, Advocates, for Resp. Nos. 6 & 7.**CORAM:****HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether the Reporters of local papers may be

Allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in

the Digest? | Yes |

HON'BLE MR. JUSTICE S. RAVINDRA BHAT, J (OPEN COURT)

1. The writ petitioner challenges an order dated 18.03.2009 whereby a reference under Section 5 of the Dentists Act, 1948 and Regulation 20 of the Dental Council (Election) Regulations, 1952 questioning the election process which commenced on 25.08.2008, was declined.
2. The brief facts necessary for deciding the case are that the petitioner, an MDS qualified teacher, was employed as a Lecturer in the Mithila Minority Dental College, Bihar on

16.08.1991. He continued to work in that institution till 2002 when he was employed by the Harsaran Dass Dental College, Ghaziabad in 2002. It is submitted that the petitioner was appointed as Professor to which post he was confirmed on 21.09.2006 when he was also appointed as its Vice-Principal. The petitioner was concededly elected as a Member of the Dental Council in terms of provisions of Section 3 of that Act, in the year 2003; he served as a Member. He was elected in the category of Section 3(c), i.e. as a representative member from amongst Professors, Deans, HoDs of Dental Wing. Section 3(c)(a) and (b) reads as follows:

“3. Constitution and composition of Council.- The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely:-

(c) not more than four members elected from amongst themselves, by-

(a) Principals, Deans, Directors and Vice-Principals of dental colleges in the States training students for recognized dental qualifications:

(b) Heads of dental wings of medical colleges in the States training students for recognized dental qualifications;”

3. The petitioner had on an earlier occasion approached this Court by filing W.P. 7438/2008. He had, at that stage complained that upon commencement of the process for election of Member Executives to the Dental Council, he discovered that the respondents' Returning Officer had omitted to include his name. The petitioner had represented on several occasions to the respondents, including the Central Government but with no success. This Court by an order directed the respondents to consider his requests and pass a speaking order.

4. Pursuant to these directions, the respondents have issued the impugned order dated 18.03.2009. It is contended that there is overwhelming evidence on the record establishing that the petitioner was eligible as a voter in the election process since he was always accepted as a Vice-Principal of the respondent college. Learned counsel relied upon the Appointment Letter

dated 28.09.2006; the recognition furnished by the Dental Council of India (DCI) dated 18.04.2007; the copy of an Identity Card issued by DCI as well as certain other documents, including a letter issued by the DCI on 18.08.2006 indicating the petitioner's role in a programme and lastly, the previous election process which took place on 21.05.2003 whereby he was permitted to hold himself out as a candidate on the basis of his status as Vice-Principal which led to his election. It is contended, therefore, that the respondents' impugned rejection of his reference under Section 5 is unfounded on facts and unsustainable in law.

5. Before a discussion on the merits, it would be necessary to extract the impugned order, which is in the following terms:

***“F.No.V.12013/3/2006-de
Government of India
Ministry of Health and Family Welfare
(Dental Education Section)***

*Nirman Bhawan, New Delhi
Dated the 18 March 2009*

***Dr. Janak Raj Sabharwal
C-214, Vikas Puri
New Delhi – 110018***

Subject : Reference under section 5 of the Dentists Act, 1948 read with Regulations 20 of the Dental Council (Election) Regulations, 1952 for challenging the election process dated 25.08.2008 notified by the Returning Officer, Dental Council of India u/s (c) of Section 3 of the Dentists Act, 1948 – regarding.

Sir,

In continuation of this Ministry's letter of even No. dated 19th December, 2008, I directed to say that the matter has been examined in consultation with the Dental Council of India.

2. Section 3(c)(a) of the Dentists Act, 1948 mentions about various posts like Principals, Deans, Directors and Vice-Principals, whereas the DCI' Regulations 1983 inter alia, envisage that the Principal/Dean should have the same

qualifications as prescribed for a Professor with experience of not less than 5 years. The minimum basic qualification and teaching experience required for the post of Professor is BDS degree or an Indian University of an equivalent qualification with Post-graduation qualification in the subject and with 5 years teaching experience after the postgraduate qualification as Reader. The same minimum qualification and teaching experience are equally applicable in the case of Directors and Vice-Principals of Dental Colleges. Further, the BDS Course Regulations, 1983 also envisage that there shall be a 3 tier system of uniform designations of Dental Teachers throughout India in all the Dental Institutions viz. (i) Professors, (ii) Readers, (iii) Lectures. The Principal/Dean should teach one of the subjects and he will be the Professor and Head of the Department in his speciality.

3. *In view of above it is reiterated that you are not eligible for the post of Vice-Principal for the reason that you have been accepted only as a Reader vide decision taken in the Executive Committee meeting of the Dental Council of India held on 13th & 14th June, 2006 to which you were a party, being then a Member of the Executive Committee.*

4. *Hence, there is no illegality or irregularity in the decision taken by the Central Government in the matter.*

*Yours faithfully,
Sd/-*

(Raj Singh)

Under Secretary to the Government of India”

6. Previously, the Central Government had by its letter/order dated 19.12.2008 – which is also impugned in these proceedings, indicated that the petitioner had not been accepted for the post of Professor; it alluded to a decision of the Dental Council dated 13/14.03.2006 and referred to a bio-data furnished on 27.04.2001 that he was a private practitioner in Delhi in two hospitals as a Consultant during the period of his claim as a faculty of the Mithila Minority Dental College. The letter *inter alia* also stated as follows:

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i. *The available records/documents indicate that you are not an eligible candidate to vote as well as to be elected as DC I member u/s 3(c) of the Dentists Act, 1948 as (1) You have never been accepted even for the post of Professor as per the decision then in the Executive Committee meeting of the DCI held on 13th*

& 14th June, 2006 (2) You yourself; in your bio-data enclosed with your letter dated 27.04.2001 has impliedly admitted Bid! You are a private practitioner at Delhi in two hospitals viz. Jaipur Golden Hospital New Delhi and at Mata Chanan Devi Hospital, Janakpuri as a Consultant during the period of your claim as a (acuity in Mithila Minority Dental College, Darbhanga (3) In pursuance of the ejections passed by the Hon'ble High Court of Judicature at Patna, in CWDC No. 1989/1994, Council's Inspector carried out the inspection. As per inspection report dated 17.06.1996 as veil Compliance report dated 18.5.1997 & 29.9.1997 furnished by the Council's Inspectors and MM DC, Darbhanga respectively, your name has not been indicated as a faculty.....that period as claimed by you. (4) You have been accepted as a Reader vide decision taken in the EC meeting held on 13th & 14th June, 2006 to which you were a party being then a member of the EC.

ii. As regards showing of your name in the DCI's website is concerned, it is stated that in order to furnish the faculty data in respect of all dental colleges, Top Authorities concerned have been empowered to enter the details of their faculty on the DCI's website from time to time. But the question of acceptance or non-acceptance of such faculty is subject to fulfillment of the eligibility criteria as per the DCI norms. As such your claim be a Vice Principal, Professor and HOD of Harsaran Dass Dental College is not in the order for reasons given in point (i) above.

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7. It was, therefore, stated by the Central Government that the petitioner's complaint for setting aside of election of four candidates as members of the Council, on the ground of his omission in the Electoral Roll, could not be acceded to.

8. It is evident from the above discussion that the narrow controversy requiring consideration is whether the petitioner was entitled to be included in the Electoral Roll and if his exclusion has resulted in an invalid election so far as it concerned the class of candidates who contested under Section 3(c) of the Act.

9. A joint reading of the impugned order discloses that the Central Government formed an opinion on the basis of minutes of Council's meeting dated 13/14.06.2006 in arriving at the conclusion that the petitioner was not a Professor in as much as he did not have five years' teaching experience after post-graduation qualification as a Reader. The Central Government's

position in that regard was from a reading of the Regulation framed under the Act. Though the petitioner has not made any reference to the decision of the Executive Committee of the Dental Council dated 13/14.06.2006, he does not challenge that determination; he did not even produce it with the writ proceedings and in the pleadings. During the hearing, a copy of the said minutes was produced on behalf of the petitioner, it deals with the inspection reports of various institutions; at Item 5(22), it contains a discussion with regard to the deficiency in respect of Harsaran Dass Dental College, Ghaziabad. The relevant part of the said minutes of meeting are as follows:

“5(22) *Harsaran Dass Dental College, Ghaziabad*

Joint Inspection Report of the Council’s Inspectors Dr. Samir Dutta, Rohtak and Dr. Deepak, Chennai to evaluate the standard of first year BDS Examination to be conducted by Ch. Charan Singh University, Meerut in respect of BDS students of Harsaran Dass Dental College, Ghaziabad on 11th & 12th May 2006 – Consideration of-

The Executive Committee considered the above Joint Inspection Report of the Council’s Inspectors and after discussion & deliberation decided as under:-

The Joint Inspection Report is noted.

The Executive Committee does not recommend to the Central Government to recognize the BDS Degree awarded by Ch. Charan Singh University, Meerut in respect of BDS students of Harsaran Dass Dental College, Ghaziabad due to the following deficiencies:-

1. Dr. Janak Raj Sabharwal shown as Professor in the department of Oral & Maxillofacial Surgery is not accepted since his teaching experience gained at Mithila Minority Dental College, Bihar cannot be considered.

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10. The petitioner is in a sense correct in contending that there is no qualification prescribed for the post of Vice-Principal in the Dental College of India Regulations. However, his claim to

be a Vice-Principal has to be considered on some rational basis. He was appointed as a Professor and HoD with effect from 21.09.2006 – concededly at a point of time, when the institution had not been recognized and there were deficiencies noted in April 2006 itself. He more than anyone else ought to have been aware of this position since such deficiencies included the determination with regard to his qualification (or lack of it). That the concerned institution was finally cleared later is not a relevant factor to be considered at this stage. As far as the argument that he was appointed as a Vice-Principal of the Harsaran Dass Dental College with effect from 2002 is concerned, this Court cannot be unmindful of the circumstance that such institutions are expected to impart specialized medical education. A vacuum in the rules with regard to who can be a Vice-Principal, does not mean that for the purpose of election to a regulating body, i.e the Dental Council, the determination by the authorities that certain minimum teaching requirements have to be fulfilled is arbitrary.

11. The mere designation of someone whether he is a Dentist or a Dental Surgeon or recognized personnel under the Dentists Act, 1948, or not, now, in the opinion of the Court, in such cases would be inconclusive. It is open to an institution to designate a non-dental or non-teaching personnel as Vice-Principal, for the purpose of administering or managing the institution. That cannot, for the purpose of Dentists Act, 1948 be considered as clothing such personnel with the eligibility to contest for elections, to the dentist's regulating body i.e. Dental Council. Furthermore, the writ petitioner has produced copy of reply to a query made on 21.11.2008, pointedly referring to the qualifications and experience prescribed for the post of Vice-Principals. The reply is that though there are no regulations, yet as per decision of General Body, they are similar to those as in the case of the post of Principal.

12. In view of above discussion and the fact that the respondent Central Government has

furnished reasons which cannot be considered as irrelevant or extraneous for the purpose of Section 5 or Regulation 20, this Court is of the opinion that no intervention is called for. The determination by the Central Government is more in the nature of a statutory tribunal dealing with the question of validity of elections and whether it is in accordance with law. The view taken by the respondents, in the opinion of the Court is in conformity and not subversive of provisions of the Dentists Act, 1948.

13. The writ petition and the accompanying application are, therefore, dismissed.

S. RAVINDRA BHAT,J

MAY 05, 2009
‘ajk’