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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 31.01.2012
PRONOUNCED ON: 24.02.2012

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LPA 497/2004 & CM No.21897/2011

S.P. BHADOLA & ORS

..... Appellants

Through: Mr. Arvind Kr. Sharma, Advocate

versus

A.I.I.M.S & ORS.

..... Respondents

Through: Mr. Rajat Katyal, Advocate for AIIMS.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. The judgment will dispose of an appeal directed against the judgment and order of learned Single Judge dated 23.04.2004 allowing writ petition No.7404/2001 and consequently quashing the appointment of the present appellants to the post of Medical Social Worker-Grade II, in the All India Institute of Medical Sciences (hereinafter referred as “the Institute”).

2. Briefly the essential facts are that the appellants are Post Graduates (M.A.) in Sociology. They had applied and were selected on temporary appointment basis for projects under the aegis of Indian Council of Medical Research (ICMR) sometime in 1991-1992. When the ICMR employed the appellants, the notified

qualifications for the post, designated “Social Worker” were “*M.A. in Sociology or B.A. and Diploma in social work or Medical Social Work*”. The appellants continued at ICMR in its project; on 04.01.1995 the appellants (who had been working from 18.12.1988, 01.08.1990 and 11.05.1991) were integrated with the regular setup of the Institute with effect from 01.01.1991 or from the actual date of their appointment. The notification by which the project and their employment was transferred to the Institute reads as follows:

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES

No. F-12-15/91-Estt.I

Ansari Nagar, New Delhi-29

Dated: 4th Jan, 1995

MEMORANDUM

Subject:- Taking over of Population Based Cancer Registry and its staff in the regular set up of the IRCH, AIIMS.

The undersigned is directed to convey the approval of the Finance Committee/Governing Body for taking over of “Population Based Cancer Registry” and its staff (list enclosed), in the regular set up of the IRCH, AIIMS w.e.f. 01.01.1991.

The staff employed on the Population Based Cancer Registry as mentioned in ANNEXURE-I are integrated with regular set up of the institute w.e.f. 01.01.1991 or from the actual date of their appointment which is later. It is however, clarified that the regular appointments to these posts shall be made after regular selection process.”

3. The appellants’ names were listed in the annexure to the notification. They continued to work in this position as Medical Social Workers in the Institute. In the issue of ‘*Employment News*’ of 20-27.03.1996, the Institute invited applications for the post of Medical Social Worker (M.S.W.) Grade II. The relevant extract of the notification reads as follows :

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES

Ansari Nagar, New Delhi-29

Applications will be received by the Director, All India Institute of Medical Sciences, New Delhi - 29 from Indian Citizens up to 20.10.96 on a plain paper for the following temporary post: -

<i>Sl. No.</i>	<i>Name of Post & Pay Scale</i>	<i>No. of posts</i>	<i>UR</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>
5.	M.S.W. Gr.II (Rs.1640-2900)	06	04	02		

Qualification

Essential: 1. *Master's Degree in Social Work from a recognized University/Institution.*

2. *Experience in the line with a Welfare or Health Agency, preferably dealing with Medical/Public Health Services.*

Desirable: *Specialization by experience or qualification or training in Medical Social Work including Psychiatric services.*

AGE LIMIT: 18-35 years."

4. It is not in dispute that the appellants who had by then worked for periods ranging between 6 and 9 years applied for appointment for this post. They underwent the selection procedure and faced an interview, conducted by the concerned recruiting authority of the Institute on 09.10.1997. The appellants had not been issued formal appointment letters despite their selection; and therefore sought a direction by this Court by filing WP (C) No.13/1998. They were subsequently notified about their selection and appointment letters were issued on 09.01.1998 to each one of them. They accepted their appointments. The writ petition filed by them was consequently disposed of on 21.01.1998. The Institute recorded satisfactory completion of the appellants' probation and by individual orders dated 04.10.2000 confirmed them to the post with effect from 20.01.2000. The order in respect of the first appellant reads as follows:

“MEMORANDUM

*SUBJECT: Confirmation of Mr. Shambhoo Pd. Bhadola, to the post of
M.S.S.O. Gr.-II at I.R.C.H., AIIMS.*

The Director has been pleased to confirm Mr. Shambhoo Pd. Bhadola to the post of M.S.S.O. Gr.-II on successful completion of probation period of two years w.e.f.20.1.2000.

The AIIMS and Mr. Shambhoo Pd. Bhadola, M.S.S.O., Gr.-II will now be required to give three months notice or in lieu thereof pay three months salary in the event of their leaving of service/termination.

Other terms & conditions of his services will remain unchanged.

*Sd/-
(M.R. RATTAN)
ASSISTANT ADMINISTRATIVE OFFICER”*

5. One Kiran Singh (hereafter “the writ petitioner”) had responded to the advertisement of 1996 inviting applications to the post of Medical Social Worker of the Institute. She participated in the recruitment process but was unsuccessful. She questioned the appointment of the appellants through a writ petition being WP(C) No.7404/2001. The appellants were arrayed as the second, third and fourth respondents in the writ petition. After notice was issued, the Institute filed its counter affidavit in which the position articulated was that the writ petitioner could not challenge the selection since she was a candidate and had taken her chances. The Institute specifically stated that the writ petitioner had failed in the recruitment process and that in any event she could not question the appointment on account of laches as well as the fact that she was not kept on the waiting list. It was also stated in the counter affidavit that:

“3. That respondent Nos.2 &4 were working on ad hoc basis as Medical Social Worker for the periods varying from over 5 years to 9 years in the Cancer Registry at

IRCH funded by ICMR. All the three were appointed as Medical social Work on ad ho basis in the ICMR project with the qualification of M.A. (Sociology) and they had also applied against the aforesaid advertisement.

4. *Keeping in view their long experience in the line and good performance during the period in the project, they were also called for interview provisionally. The meetings of Selection Committee were held from 6th to 9th Oct., 1997 to interview the candidates.*

Though they were possessing the degree of M.A. (Sociology) instead of M.A. (Social Work), their performance was judged very good by the Selection Committee and they were recommended for appointment to the post of Medical Social Service Officer Gr.II and were offered the appointment to the post accordingly. They have joined duties in the Institute on 20.01.98.

5. *That the aforesaid project was taken over by the Institute w.e.f 01.01.1991 and accordingly they were given age relaxation. That the petitioner had also applied for and participated in the process of selection and was on the list of selected candidates nor on the waiting list.”*

6. The learned Single Judge after considering the materials on record, concluded that the appellants did not hold the requisite qualifications and their selection was unjustified. The impugned judgment premises the findings on the response of the Professor and Head of Department of Social Work, University of Delhi dated 25.11.1997, to a query apparently addressed by the Association of Indian Universities as to whether M.A. (Sociology) was equivalent to a post graduation in Social Work. The writ petitioner had relied upon a letter dated 25.11.1997, written to the Association of Indian Universities (by the Delhi University) on the question of equivalence which *inter alia* stated as follows :

“1. The University Grants Commission constitutes subject panels for preparing status reports, reviews and identification of thrust areas different disciplines. There are two different subject panels – one social work and the other in sociology. Therefore, apart from my reply the position of the University Grants Commission may also be ascertained in this regard.

2. Social work teaching involves 50% of practice at the under graduates on the post of graduates levels which is not the case with the teaching of sociology any where in India.

3. *The University Grants Commission has appointed 2 Review Committees on social work Education and the recommendations of the second Review Committee, published in 1980 when professor Satish Chandra was the Chairperson is being followed in order to ensure minimum standards in social work education, sociology programme in the Indian Universities have not yet been reviewed by the University Grants Commission at this level and the recommendations of these review committees do not apply to sociology.*

4. *The pay commissions appointed by the Government of India from time to time have included social work as professional qualification for the appointment of Medical Social Workers and Psychiatric Social Workers. Therefore, the stand taken by the All India Institute of Medical Science is a retrograde step. The AIIMS itself is a super speciality organization and has to duly accord recognition to other socialities and professionals.*

5. *The Ministry of Welfare, Government of India and the University Grants Commission have worked on the drafting of a bill for the establishment of a National Council on Professional Social Work in India to regulate, among others social work practice. This draft, which indicates the latest position does not include sociology or any other social science. Behavioural science and life science disciplines.*

In view of the above, I am sure that the Association of India Universities will be able to take a firm position and make a distinction between social work and sociology for all times to come.”

7. The learned Single Judge, in the impugned judgment brushed aside the objection of laches and delay and noted that according to the writ petitioner the process of selection attained finality only in the year of 2000. The court relied upon the decision of Supreme Court in *M.A. Haque Vs. Union of India & others*, 1996 (5) SCC 167, and held that the appellants' appointment was not based on the relaxation but it amounted to a waiver of essential qualifications. It was further held that the prescribed qualification was a Master's degree in Social work and that despite the University of Delhi's opinion that such degree could not be equated with Master's degree in Sociology, the present appellants were appointed. On the basis of this reasoning the petition was allowed and the appellants' appointments

were quashed. Consequently they were sought to be relieved from their duties by an order dated 21.05.2004.

8. By an interim order dated 13th July, 2004 the impugned judgment of the learned Single Judge was stayed. The original writ petitioner's application for variation and recall of the interim order was dismissed on 15.10.2004. Subsequently the interim order was continued till disposal of the present appeal.

9. Mr. Arvind Kumar Sharma, learned counsel for the appellants submits that an error has crept in the impugned judgment in not taking into consideration the circumstance that the appellants had been continuously working for about 9 years pursuant to a transparent process of selection by the ICMR in accordance with the recruitment rules formulated which were in existence then. The Establishment or the Project in which they were employed was eventually taken over by the Institute; the order issued in that regard specifically mentions them as incumbent, whose services were transferred to the Institute. Therefore when the selection process was notified and they were called for interview, the Institute had the benefit of their service for 3 years and all of them had worked for about 10 years. On the other hand the writ petitioner chose to participate in the selection process and after being unsuccessful challenged the appellants' appointment more than three years later, after they had been confirmed to the position.

10. It was urged that in the impugned judgment the letter of Delhi University dated 25.11.1997 with regard to equivalence could not be conclusive under the circumstances. The Institute had sought clarification from the Association of Indian Universities; the latter in turn solicited the views of the Delhi University, one of its constituents or members. The view of the Delhi University was a possible one but under no circumstance could be deemed conclusive. Learned counsel highlighted the letter dated 25.11.1997 and urged that para 5 itself spelt out that policy in regard to social work qualifications had not been finalized and that

the Ministry of Welfare, Central Government of University Grants Commission had prepared a draft bill. In concluding that the University of Delhi had in fact stated that two qualifications were not equivalent, urged counsel for the appellants, the impugned judgment fell into an error of law. It was argued that the question of equivalence or otherwise falls within the exclusive domain of the employer, which in the present case was the Institute. The Institute by its decision, having regard to overall circumstances and the performance of the appellants, decided that they were qualified to hold the post and can continue to discharge similar duties that they had over the past 10 years.

11. Learned counsel for the appellants also placed reliance on qualifications for the post of social workers notified by several similar institutes such as JIPMER Pondicherry, Government of Haryana, Barwa Institute etc., where M.A. in Sociology is deemed sufficient qualification. It was urged that having regard to all these circumstances the impugned judgment has to be set aside.

12. Learned counsel for the Institute submitted that a communication was addressed pursuant to the writ petition filed in the present case questioning the appellant's selection to the Association of Indian Universities. The latter did not, however, give their final response and apparently elicited the views of the Delhi University which in turn, by its letter dated 25.11.1997, did mention that the two qualifications could not be considered equivalent. However, the Institute did not feel itself bound by the letter or advised by the Delhi University in view of the fact that no final position was indicated and further that the employer had in any case considered the appellants qualifications as well as their continuous merited performance while deciding to select and appoint them to the post.

10. The above discussion would reveal that when the appellants were initially appointed, undoubtedly by the ICMR pursuant to a project, they held the qualifications prescribed and notified in that regard. The relevant rules notified by

the ICMR at that time *inter alia* read as follows:

“RECRUITMENT RULES FOR TECHNICAL POSTS UNDER ICMR

<i>Name of the Post</i>	<i>Medical Social Worker/Social Worker</i>
<i>No. of Posts</i>	<i>*12 (1996) * Subject to variation dependent on workload</i>
<i>Classification</i>	<i>Group-C</i>
<i>Scale of Pay</i>	<i>5500-9000</i>
<i>Whether Selection-cum-seniority or selection by merit or non-Selection</i>	<i>Not Applicable</i>
<i>Age limit for Direct Recruits</i>	<i>Below 28 years</i>
<i>Whether the benefit of added years of service under Rule 30 of CCS (Pension) Rules, 1972 admissible</i>	<i>Not applicable.</i>
<i>Educational and other qualifications Required for direct recruits</i>	<i>M.A. in Sociology/MSW or Graduate with 2 years diploma in social work.</i>
<i>Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees</i>	<i>Not applicable</i>
<i>Period of probation, if any</i>	<i>Two years</i>
<i>Method of recruitment whether by direct recruitment or by promotion or by deputation or by absorption and percentage of vacancies to be filled by various methods</i>	<i>Direct recruitment from amongst the candidates sponsored by the Employment Exchange or through open advertisement.</i>
<i>In case of recruitment by promotion or deputation or absorption grades from which promotion or absorption to be made</i>	<i>Not applicable.</i>
<i>Circumstances in which UPSC is to be consulted</i>	<i>Not applicable.</i>

11. It is not in dispute and indeed this fact has even been noticed in the impugned judgment – that the appellants were duly qualified and selected to the ICMR, and therefore allowed to join the post of Medical Social Worker in the ICMR. They continued to discharge their functions satisfactorily. In the intervening period i.e. on 04.01.1995, their names figured in the list of employees who were declared to be staff **“integrated with regular setup of the Institute”**. They were thus existing employees of the Institute from 04.01.1995. In these

circumstances, when 10 posts of Medical Social Worker were notified inviting applications from the members of the general public, in terms of the issue of “*Employment News*” of 20-27.03.1996, they applied. Their applications were accepted and they were called for interview. The writ petitioner was also called for an interview on 15.09.1997. However, she was not selected and her candidature was rejected. On the other hand, after considering all the materials including the continuous performance of the appellants, the Institute selected them and offered appointment through letter dated 09.01.1998. They were treated as regular appointees from that day and even confirmed with effect from 04.10.2000.

12. There can be no dispute at all with the legal position that in case of the appointment of one who does not possess the necessary and prescribed educational qualifications to apply for a post under public employment, the entire selection and all subsequent steps would be without authority. The question in this case, however, is whether the Institute’s decision to appoint the appellant was illegal in that regard. They were holding the posts and working as employees of ICMR, in accordance with the prescribed qualifications when they were initially recruited; the entire establishment was then transferred to the Institute, where the appellants continued to function for a further two years. By then, their selection and functioning had continued for nearly 9 years. Their services were deemed satisfactory. Thus, when the appellants applied in response to the Institute’s advertisement, the latter sought the view of the Indian Association of Universities, as to whether their qualifications were equivalent to post-graduation in social work. The Association did not give its own opinion, and instead it sought a response from the Delhi University, which was one of its constituents. The Association did not give its final opinion, on the basis of that view, or the collective view of all other Universities. Furthermore, even the University of Delhi’s opinion could not be considered definitive or conclusive, as can be seen

from the following extract of its letter:

“..The Ministry of Welfare, Government of India and the University Grants Commission have worked on the drafting of a bill for the establishment of a National Council on Professional Social Work in India to regulate, among others social work practice. This draft, which indicates the latest position does not include sociology or anyother social science. Behavioural science and life science disciplines.

In view of the above, I am sure that the Association of India Universities will be able to take a firm position and make a distinction between social work and sociology... ”

13. In view of the above factual position, the finding in the impugned judgment, that the Institute chose to disregard the opinion of the Delhi University and thus, the appointments had to be quashed for the reason of the appellants’ ineligibility, in our opinion, cannot be sustained. The Delhi University was just one of the members of the Association of Indian Universities, which was asked for its advice about the equivalence. The Association did not, apparently, give its independent final opinion. Therefore, the Institute could not be said to have acted improperly in considering the appellants eligible.

14. This court recollects the 5 judge decision of the Supreme Court in *Mohd. Shujat Ali v. Union of India*, (1975) 3 SCC 76, in which it was held that the courts should tread slowly in technical matters, especially when equivalence of qualification is involved in public employment:

“It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the

Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. Here in the present case it cannot be said that the view taken by the Government of Andhra Pradesh that US and OCE certificates of the Osmania Engineering College were not equivalent to US or OCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diplomas of any other recognised institution suffered from any of these infirmities.”

Similarly, in *State of Haryana v. Indira Kumari*, (2003) 10 SCC 149 it was held that:

“...for the purpose of arriving at a decision as to whether one degree is equivalent to another or not, no order in terms of Article 136 of the Constitution is required to be passed. The decision of the State can also be inferred from its conduct.”

15. For the foregoing reasons, we are of the opinion that the finding in the impugned judgment that the Institute was bound by the view of the Delhi University, (on the assumption that the latter had the authority to declare equivalence, when the facts showed that the said university merely gave its opinion to the Association of Indian Universities, which itself did not indicate that the appellants did not hold equivalent qualifications, in respect of the post), cannot be sustained. The facts also showed that the appellants had put in continuous 15 years of satisfactory service, and the explanation preferred by the writ petitioner for the delay, (ie. the process of selection having been completed in 2000) could not have been accepted. By then, the appellants’ services *after* their appointment were declared to be satisfactory, and they were confirmed to the post. For these reasons, the impugned judgment has to be set aside, and the appeal has to succeed. We clarify, however, that this judgment is in the circumstances, and is not to be construed as a final determination on equivalence, which is to be determined by

AIIMS in other cases. The appellants shall be entitled to all consequential benefits, including pay increments, seniority, etc, which they were deprived of during the pendency of this appeal. The appeal is therefore, allowed.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

February 24, 2012