

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 335 OF 2012

Swati Sinku Kujur, W/o Sunil Kumar Kujur, aged about 42 yers, R/o E-3, Mahila Polytechnic Campus, Bairan Bazaar, Raipur, Distt. Raipur (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through its Secretary, Health and Family Welfare Department, D.K.S. Bhawan, Raipur (C.G.)
2. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur (C.G.)
3. Chhaya Markam, D/o S.L. Markam, aged about 32 years, R/o Meenakshi Apartment, Madan Mahal, Jabalpur (M.P.)
4. Vijaya Sahu, D/o M.R. Sahu, aged about 31 years, R/o Laxmi Nagar, Raipur (C.G.)

... Respondents

For Appellant	:	Mr. Rajeev Shrivastava and Mr. Gagan Tiwari, Advocates.
For Respondent No.1-State	:	Mr. B. Gopa Kumar, Deputy Advocate General.
For Respondent No.2	:	Mr. Abhishek Sinha, Advocate.
For Respondents No.3 & 4	:	Mr. Govind Dewangan, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

03/12/2015

1. The present appeal arises from order dated 29.3.2012 in Writ Petition (S) No. 2267 of 2010. The writ petition was dismissed declining to interfere with the challenge to the appointment of Respondents No. 3 and 4.
2. Learned Counsel for the Appellant submitted that the Learned Single Judge erred in holding that having participated unsuccessfully in the selection, the Appellant could not now challenge the selection process itself. The Appellant did not challenge the recruitment process

but the illegality committed in execution of the selection process. Selection process by viva voce alone was not wrong. But the award of 100 marks for viva voce alone was bad. Not more than 50 marks ought to have been allotted for viva voce and the rest 50 marks should have been on some other parameters. Interview is a wider phrase than viva voce and encompasses more than an oral assessment. The second submission was that under Medical Council of India Regulations, 1998 (hereinafter called 'MCI Regulations') the minimum qualification prescribed for the post of Assistant Professor (Ophthalmology, in the present case) was a recognized post graduation in the concerned subject and three years teaching experience in the subject in a recognized medical college as Resident/ Registrar/ Demonstrator/Tutor. Respondents No. 3 and 4 possessed teaching experience after post graduation of 2 years 9 months and 1 year 2 months respectively. Since they did not fulfill the essential eligibility they could not have been appointed. The Appellant possessed the requisite 3 years teaching experience after post graduate qualification. The Appellant had secured 47 marks in the interview as distinct from 51 and 48 of Respondents No. 3 and 4 respectively. The Appellant was not a failed or unsuccessful candidate. The MCI Regulations of 1998 operative on the date of the advertisement i.e. 27.9.2008 could not have been deviated from and if any deviation was to be done, reference had to be made to Medical Council of India (hereinafter called 'the MCI') under MCI Regulation 7. To contend that the minimum eligibility qualification was post graduate qualification in the subject and yet teaching experience prior to post graduation could be considered is an anomalous position. The MCI regulations did not provide for the same. The Learned Single

Judge erred in holding that the amendment notification dated 3.11.2010 published after the advertisement and declaration of results was declaratory in nature and could be applied retrospectively to the selection. The amendment was prospective in operation and not retrospective.

3. Counsel for the State submitted that the teaching experience prior to post graduation could well be taken into consideration. The Commission before making the selections in question had sought a clarification from the Directorate of Medical Education of the State Government.

4. Counsel for the Commission submitted that it being only an agency for the recruitment process has acted on basis of clarification furnished by the Directorate of Medical Education.

5. Counsel for Respondents No. 3 and 4 submitted that if the teaching experience acquired while pursuing the post graduate qualification and after acquiring the post graduate qualification is taken into consideration, they meet the eligibility requirements as provided in the amendment notification dated 3.11.2010.

6. We have considered the submissions on behalf of the parties.

7. At the fulcrum of the entire dispute was the MCI Regulations and its interpretation. Unfortunately, the MCI was not impleaded as a party Respondent. Despite a plethora of Respondents, none of them raised any objection with regard to its non impleadment. Resultantly, the MCI which was in the best position to interpret the regulations being an expert body to ensure standards of medical education was not consulted at all.

8. We further find that pleadings are also deficient with regard to teaching experience of Respondents No.3 and 4, and further clarifications are required on facts. For both the aforesaid reasons we are satisfied that the matter has to be remanded to the MCI for appropriate decision on the aspect of teaching experience.

9. The principle that having participated in the selection process unsuccessfully, it is not open for a candidate to challenge the selection procedure stands well established and needs no further discussion. But the Appellant was not an unsuccessful or failed candidate. She was at serial three of the merit panel. It was her case that unqualified persons had been appointed. If the charge is established it would make way for the Appellant automatically.

10. The hair splitting submission that interview means more than viva voce merits no consideration. The word 'interview' has been defined in Concise Oxford English Dictionary as an oral examination of an applicant for a job, college place etc. The word 'viva-voce' in the same has been described as an oral examination rather than in writing. Essentially, the two are therefore the same involving a process of verbal interaction only with the candidate.

11. The Appellant, Respondent No.3 and Respondent No.4 all hold post graduate qualification in Ophthalmology. The question for consideration is if they possess the three year teaching experience as required in the MCI Regulations and could teaching experience prior to post graduate qualification be taken into consideration for determining three years teaching experience. It appears from the pleadings that part of the teaching experience of Respondent No.4 is prior to pursuing post

graduate studies. The factual position with regard to Respondent No.3 is also not very clear.

12. If the MCI was an expert body entrusted with the responsibility to maintain the minimum standards of medical education and prescribe the same, it alone was competent to decide under MCI Regulation 7 if teaching experience on any of the aforesaid posts prior to a post graduate qualification was to be taken into consideration or not. In our opinion, the Directorate of Medical Education of the State Government was surely not competent to do so. The appropriate course of action for the Directorate of Medical Education was to seek clarifications from the MCI under MCI Regulation 7 and not to step into the shoes of the MCI to interpret what the standards of medical education should be.

13. The amendment notification dated 3.11.2010 came nearly two years after the advertisement and declaration of results. We do not consider it necessary in the nature of the discipline and expertise required to ensure production of quality doctors, at this stage, to go into the question whether the amendment notification could have been applied to a selection process initiated and completed before it came into force in view of our decision to remand the matter to the MCI.

14. Even otherwise, the amendment notification which came into force on 3.11.2010 was prospective in operation and provides that the teaching experience while pursuing post graduate courses or after obtaining post graduate degree was alone to be taken into consideration, meaning thereby, that any teaching experience prior to taking admission in the post graduate course could not have counted towards the requisite three years period. Whether the Appellant or

Respondents No. 3 and 4 meet this amended requirement or not is also a question of fact.

15. We therefore remand the matter to the MCI for taking an appropriate decision with regard to the Appellant, Respondent No.3 and Respondent No.4 so that ultimately the expert body has the last word under Regulation 7 in deciding and ensuring that standards of medical education are maintained and with which it has been entrusted the responsibility.

16. The MCI shall grant hearing to the Appellant, Respondent No.3, Respondent No.4 and the State in the presence of each other. If any one of the parties does not cooperate it shall be open for the MCI to proceed ex-parte against it, but after recording reasons for doing so.

17. Respondents No. 3 and 4 are stated to be working since 9.4.2010. But ultimately it is a question of maintaining standards of medical education rather than the period for which the persons may have worked. The MCI shall take a final decision expeditiously within a maximum period of four months from the date of receipt and/or production of a copy of this order before it.

18. The issue of selection with regard to the two posts of Ophthalmology shall then abide by the final decision of the MCI.

19. The writ appeal is disposed with the aforesaid directions.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge