

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 732/2015 & CM 1300/2015 (interim order)**

% **27th January, 2015**

DR. MANOJ KUMAR Petitioner
Through Mr. Umesh Sharma, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through Mr. Jasmeet Singh, CGSC with Ms.
Manpreet Chadha, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the appointment of respondent no. 4 as the Chairman of the respondent no. 2/Rehabilitation Council of India (RCI) with the consequent relief that petitioner be appointed as the Chairman of the respondent no. 2/RCI.

2. Petitioner questions the appointment of respondent no. 4 as the Chairman of the respondent no. 2 by arguing two aspects. The first aspect which is argued is that as per Section 13 of the Rehabilitation Council of

India Act, 1992 (hereinafter referred to as 'the RCI Act'), the respondent no.4 was to be enrolled as a professional on the Register to be maintained by the RCI/respondent no.2 and since respondent no.4 was not enrolled as a professional, she should not have been appointed as the Chairman of the respondent no. 2/RCI. The second argument is that respondent no.4 was over age, above 65 years, when she was appointed as Chairman, RCI, and therefore, the appointment of respondent no. 4 as the Chairman, RCI is illegal.

3. Both the arguments urged on behalf of the petitioner lack substance and are dealt with hereinafter.

4. Reliance placed upon Section 13 of the RCI Act is misconceived because Section 13 of the RCI Act pertains not to the appointment of Chairman and members of the RCI but with respect to the Register to be maintained by the Rehabilitation Council of India of professionals who would be registered with the respondent no. 2 and accordingly would be able to derive appropriate benefits under the RCI Act as a professional existing on the Register. Section 13 of the RCI Act does not deal with the appointment of a Chairman or member of the RCI but the qualifications with respect to the appointment of Chairman and Members of Rehabilitation

Council of India are dealt with essentially under Section 4 of the RCI Act and which reads as under :

“4. Term of office of Chairperson and members—1) The Chairperson or a member shall hold office for a term of two years from the date of his appointment or until his successor shall have been duly appointed, whichever is longer.

(2) A casual vacancy in the Council shall be filled in accordance with the provisions of section 3 and the person so appointed shall hold office only for the remainder of the term for which the member in whose place he was appointed would have held that office.

(3) The Council shall meet at least once in each year at such time and place as may be appointed by the Council and shall observe such rules of procedure in the transaction of business at a meeting as may be prescribed.

(4) The Chairperson or, if for any person, he is unable to attend the meeting of the Council, any member elected by the members present from amongst themselves at the meeting shall preside at the meeting.

(5) All questions which come up before any meeting of the Council shall be decided by a majority of votes of the members present and voting, and in the event of any equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.”

5. A reading of the aforesaid Section 4 of the RCI Act shows that there is no requirement for being appointed as the Chairman of the respondent no.

2/RCI that such a person must be first a rehabilitation professional under Section 13 of the RCI Act. Therefore, the argument urged on behalf of the petitioner that since respondent no. 4 is not enrolled as a rehabilitation professional, and therefore, respondent no. 4 cannot be appointed as the Chairman is an incorrect argument and accordingly rejected.

6. So far as the second argument with respect to respondent no. 4 being over age is concerned, it is not disputed that there is no age restriction prescribed under the RCI Act with respect to appointment of a Chairman i. e there is no bar for a person above 65 years to be appointed as a Chairman. What is thus only argued on behalf of the petitioner is that in terms of the subject advertisement, Annexure P-1, of appointment of the Chairperson of RCI, the respondent no. 4 had crossed 65 years of age on the date of her appointment, and therefore, respondent no. 4 could not be appointed being over age.

Even this argument is misconceived because the age of 65 years not being crossed is not as on the date of the issue of the advertisement, but as on 1.11.2011. The respondent no. 4's date of birth is 27.3.1946 and hence she has not crossed the age of 65 years on 1.1.2011, and therefore, it cannot

be argued on behalf of the petitioner that respondent no. 4 was over 65 years of age on 1.1.2011 and hence she could not have been appointed.

7. Learned counsel for the petitioner argued that there are opinions given by the legal department of the Union of India against the respondent no. 4, however, the issue with respect to appointment of respondent no. 4 has to be judged as per the legal parameters which are argued before this Court and this Court is not bound by the legal opinion of the legal department of the Union of India so that this Court must allow the writ petition although both the grounds of the petitioner do not have substance.

8. Dismissed.

VALMIKI J. MEHTA, J

JANUARY 27, 2015
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