

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

% *Date of decision : September 16, 2015*

+ **LPA 631/2015**

DR MANOJ KUMAR Appellant

Represented by: Mr.Umesh Sharma, Adv.

versus

UNION OF INDIA & ORS Respondent

Represented by: Mr.Jasmeet Singh, CGSC with
Ms.Astha Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 19811/2015

Exemption allowed subject to just exceptions.

CM 19812/2015

For the reasons stated in the application the 101 days delay in refiling the appeal is condoned.

Application is disposed of.

LPA 631/2015

1. Aggrieved by the order dated January 27, 2015 dismissing the writ petition filed appellant Dr.Manoj Kumar prefers the present appeal.
2. Dr.Manoj Kumar had filed an earlier writ petition being W.P.(C) No.8060/2013 inter-alia praying for a writ of mandamus for being appointed to the post of Chairman, Rehabilitation Council of India (in short RCI) and restraining the respondents from committing any illegality in

appointment from the existing select panel. During the pendency of W.P.(C) No.8060/2013 respondent No.3 herein Dr.Mrs.Sudesh Mukhopadhyay was appointed as the Chairman of the RCI, hence the appellant withdrew W.P.(C) No.8060/2013 on January 19, 2015 to challenge the said appointment.

3. In W.P.(C) No.732/2015 Dr.Manoj Kumar inter-alia prayed for quashing of the appointment or continuation of respondent No.3/ Dr.Mrs.Sudesh Mukhopadhyay being illegal and contrary to the RCI Act and directions to appoint him to the said post in terms of the select list.

4. Vide the impugned order dated January 27, 2015 learned Single Judge noted that the appellant challenges the appointment of Dr.Sudesh Mukhopadhyay as Chairman RCI on two grounds; firstly that as per Section 13 of RCI Act since Dr.Sudesh Mukhopadhyay was not enrolled as a rehabilitation professional on the register maintained by RCI she could not be appointed as Chairman of RCI and secondly that she had attained the age of 65 years when she was appointed as Chairman RCI and thus the appointment was illegal. Learned Single Judge held that Section 13 of the RCI Act was not applicable as the same does not deal with the appointment or selection of Chairman or Members of the RCI and the qualifications of the candidates for appointment to the post of Chairman/ members of RCI were dealt with essentially under Section 4 of the RCI Act.

5. The learned Single Judge held that a reading of Section 4 of the RCI Act would reveal that there was no requirement that the Chairman of RCI must be a rehabilitation professional under Section 13 of the RCI Act. As regards the age requirement learned Single Judge noted that there was no bar to appointment of the Chairman above the age of 65 years and hence no

grounds for quashing of appointment of Dr.Sudesh Mukhopadhyay was made out.

6. Before this Court the only contention raised was that Section 4 of the RCI Act stood amended and when it was put to the learned counsel for the appellant that whether the amended Section 4 of the RCI Act was pointed out to the learned Single Judge, it was replied in the negative.

7. Be that as it may, we have ourselves looked into the various provisions and note that Sections 3, 4 and 13 of the RCI Act, 1992 read as under:

“3. Constitution and incorporation of Rehabilitation Council of India.-

(1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be constituted for the purposes of this Act a Council to be called the Rehabilitation Council of India.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.

(3) The Council shall consist of the following members, namely:-

(a) a Chairperson, from amongst the persons having experience in social work or rehabilitation, to be appointed by the Central Government;

(b) three members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with- (i) Welfare; (ii) Health; and (iii) Finance;

....

....

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 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 reason, 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 an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.*

13. *Rights of persons possessing qualifications included in the Schedule to be enrolled.-*

(1) *Subject to the other provisions contained in this Act, any qualification included in the Schedule shall be sufficient qualification for enrolment on the Register.*

(2) *No person, other than the rehabilitation professional who possesses a recognized rehabilitation qualification and is enrolled on the Register,-*

(a) shall hold office as rehabilitation professional or any such office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice as rehabilitation professional anywhere in India;

(c) shall be entitled to sign or authenticate any certificate required by any law to be signed or authenticated by a rehabilitation professional;

(d) shall be entitled to give any evidence in any court as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to the handicapped:

Provided that if a person possesses the recognized rehabilitation professional qualifications on the date of commencement of this Act, he shall be deemed to be an enrolled rehabilitation professional for a period of six months from such commencement, and if he has made an application for enrolment on the Register within said period of six months, till such application is disposed of.

(3) Any person who acts in contravention of any provision of subsection (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

8. By way of amendment No.38 of 2000 the following changes were made in Section 3 and 13 as under:

"In Section 3 of the principal Act, in sub-section (3), for clauses (a) and (b), the following clauses shall be substituted, namely:-

"(a) a chairperson, from amongst the persons having experience in administration with professional qualification in the field of rehabilitation, disabilities, and special education, to be appointed by the Central Government;

(b) such number of members not exceeding seven, as may be nominated by the Central Government, to represent the Ministries of the Central Government dealing with matters relating to persons with disabilities";

In Section 13 of the principal Act, after sub-section (2), the

following sub-section shall be inserted, namely:-

“(2A) Notwithstanding anything contained in sub-section (2), any person being a doctor or a paramedic in the field of physical medicine and rehabilitation, orthopaedics, ear, nose or throat (ENT), ophthalmology or psychiatry, employed or working in any hospital or establishment owned or controlled by the Central Government or a State Government or any other body funded by the Central or a State Government and notified by the Central Government, may discharge the functions referred to in clauses (a) to (d) of that sub-section”.

9. Thus the prime contention of learned counsel for the appellant before this Court that Section 4 stands amended which has not been considered by the learned Single Judge is without any basis. There is no error in the finding of the learned Single Judge that Section 13 does not prescribe the qualification of the Chairman but only prescribes qualification for being enrolled on the register of the RCI. Vide the amendment in sub-section (3) of Section 3 as noted above the qualification of the Chairperson has been prescribed and there is no averment in the writ petition or the appeal that Dr.Sudesh Mukhopadhyay does not possess the necessary qualification as prescribed in the amended provision.

10. Appeal is consequently dismissed.

CM 19810/2015 (stay)

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 16, 2015 /‘ga’