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

+ **W.P.(C) 8390/2015**

SHASHI SHARMA

..... Petitioner

Through

Mr. Naresh Kaushik, Advocate with
Ms. Joymoti Mize, Advocate.

versus

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY AND ORS.

..... Respondents

Through

Ms. Anita Sahani, Advocate for
respondent No.1.

Mr. Amit Mahajan, Advocate for
respondent No.2.

Mr. T. Singhdev, Advocate with
Mr. Sanjay Kumar, Advocate for
respondent No.3.

Reserved on : 30th March, 2016

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Date of Decision : 19th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed with the following prayers :-

*(i) Direct the respondents to allow the benefit of PGME
(Amendment Regulations, 2005) to the petitioner by issuance*

of an appropriate order on the same lines as of the order dated 31.05.2005.

(ii) pass such other order(s)/direction(s) as are deemed fit and proper in the facts and circumstances of the present case.

2. In the present writ petition, it has been averred that petitioner's fundamental rights under Articles 14, 16 and 21 of the Constitution have been violated by the respondents by not granting recognition of her qualification as Assistant Professor for the period between June 2008 and June 2012. It is also averred that though the said benefit has been allowed to a large number of similarly situated doctors from the teaching cadre, yet the same has been arbitrarily denied to the petitioner without any lawful basis.

3. On 1st September, 2015 when the present writ petition had been taken up for hearing for the first time, the learned Predecessor of this Court passed the following order:-

"1. The petitioner seeks a direction according her the benefit of teaching experience from the year 2008 to 2012 in the respondent No.2 Safdarjung Hospital and Vardhman Mahavir Medical College, affiliated to the respondent No.1 University, in accordance with the Post Graduate Medical Education (Amendment Regulations) 2005.

2. The long delay in filing the petition, even if the cause of action were to be assumed to have accrued in 2012, has been enquired. Counsel for the petitioner states that since the teaching experience for the said period would enure to the benefit of the petitioner throughout her career, the petitioner, for the sake of her career progression, is now desirous of availing the benefit

thereof.

3. *The counsel for respondent No.1 GGSIPU appearing on advance notice states that the petitioner took voluntary retirement from the respondent No.2 Safdarjung Hospital and Vardhman Mahavir Medical College in September, 2012 and cannot now claim any benefits qua her rank, emoluments etc. The counsel for the petitioner clarifies that the petitioner is not desirous of any such thing and merely wants her teaching experience for the said period to be recorded.*

4. *The counsel for the respondent further states that the subject regulations are under challenge before the Division Bench of this Court. She is however unable to state whether there is any stay of the said regulations or not.*

5. *List for further consideration on 2nd November, 2015."*

(emphasis supplied)

4. On 16th March, 2016, learned counsel for respondent no. 2-Hospital had handed over a Certificate dated 8th March, 2016 in which the petitioner's teaching experience was recorded. Consequently, this Court was of the view that the present writ petition stood satisfied. But, learned counsel for petitioner sought an adjournment to obtain instructions. The order dated 16th March, 2016 is reproduced hereinbelow:-

"Learned counsel for Department of Paediatrics, Vardhaman Mahavir Medical College, Safdarjung Hospital, New Delhi has handed over a certificate dated 8th March, 2016, in which the petitioner's teaching experience has been recorded. The relevant portion of the said certificate reads as under:-

"To whomsoever it may concern

This is to certify that Dr. Shashi Sharma was working in the Department of Paediatrics as Senior

Specialist from 02.08.2008 to June 2012.

During this period she was involved in (Undergraduate and Postgraduate) Teaching Clinical and Research activities.

Deptt. is running MBBS, MD (paediatrics), DNB (paediatrics) courses.”

In view of the aforesaid certificate and the order dated 1st September, 2015, this Court is of the view that the present writ petition stands satisfied. However, learned counsel for the petitioner wishes to take instructions.

List on 30th March, 2016.

5. However, on next date of hearing, learned counsel for the petitioner stated that in the absence of an appropriate equivalence order by the respondent-University, recognizing the petitioner's teaching qualification for the period June 2008 to June 2012, the petitioner is facing immense difficulty in claiming benefits under PGME (Amendment) Regulations 2005. The said amended Regulations relied upon by learned counsel for the petitioner are reproduced hereinbelow:-

"(d) Consultants of specialists who have the experience of working for a period of not less than 18 years and 10 years in the teaching and other general departments in the institution or hospitals, not attached to any medical college, where with the affiliation from any university, postgraduate teaching is being imparted as contemplated under sub-regulation (1A) of regulation 8, shall respectively be eligible to be equated as Professor and Associate Professor in the department concerned. The requisite experience for equating a Consultant or Specialist working in the super-specialty department of the said institution or hospitals as Professor and Associate Professor shall respectively be 16 years and 8 years. Consultants or specialist having

postgraduate degree qualification, working in such an institution or hospital, who do not have the said period of experience, shall be eligible to be equated as Assistant Professor in the department concerned."

6. On the other hand, learned counsel for respondent-University stated that the petitioner had joined service on 2nd August, 2008 and had deliberately misrepresented before this Court that she had taught between June 2008 and June 2012.

7. Learned counsel for respondent no. 2 also stated that the petitioner was considered by the Selection Committee for equivalent teaching designation in the meetings held on 24th and 26th August, 2011, but was found to be ineligible in view of the following additional criteria adopted by the Selection Committee. The said additional criteria is reproduced hereinbelow:-

"(1) The Specialist/Consultants working at VMMC & Safdarjang Hospital and who have joined VMMC & Safdarjang Hospital in CHS/CGHS prior to 21.06.2008 i.e. upto 11th June, 2008 (cut off date as per the notification from Ministry of Health and Family Welfare, Govt. of India vide No. a 11016/32007-CHS-V dated 11th June, 2008) shall only be considered for recognition of Equated Teaching Designation as the case may be."

8. Having heard learned counsel for the parties, this Court finds that the petitioner in the present instance has not challenged the decisions of the Selection Committee dated 24th and 26th August, 2011 whereby the petitioner's request for equivalence was specifically denied on the ground

that she was not eligible. Even the additional criteria adopted by the Selection Committee has not been challenged in the present writ petition.

9. It is settled law that a relief neither claimed nor founded in the pleadings can not be granted. The Supreme Court in ***State of Orissa and Another Vs. Mamta Mohanty, (2011) 3 SCC 436*** has held as under:-

"Relief not claimed — cannot be granted

55. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. [Vide Sri Mahant Govind Rao v. Sita Ram Kesho, (1898) 25 Ind. App. 195 (PC); M/s. Trojan & Co. v. RM. N.N. Rao v. Sita Ram Kesho, AIR 1953 SC 235; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. Hindustan Construction Company Ltd., (2010) 4 SCC 518"

10. In ***National Textile Corporation Ltd. Vs. Nareshkumar Badrikumae Jagad and Others, 2011 (10) SCALE 28***, the Apex Court has held as under:-

"7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the

controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235; State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299; and Kalyan Singh Chouhan v. C.P. Joshi, AIR 2011 SC 1127)."

11. This Court is also of the opinion that the present writ petition is barred by laches inasmuch 2011 decision of the Selection Committee cannot be challenged by way of a writ petition filed in August, 2015. It is settled law that one of the several rules of self-imposed restraint evolved by the superior courts is that High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled rights of the third parties. It has also been held by the Apex Court that if the writ petition is filed beyond the period of limitation prescribed for filing a civil suit, the High Court will normally treat the delay as unreasonable and decline to entertain the grievance of the petitioner on merits. In the opinion of this Court, the test to be applied is whether laches on the part of the petitioner is such as to hold that the petitioner by its act and conduct has given a go-by to his rights. In the case of ***State of Madhya Pradesh and another Vs. Bhailal Bhai & Anr., AIR 1964 SC 1006***, the Supreme Court has held as under:-

".....Learned Counsel is right in his submission that the provisions of the Limitation act do not as such apply to the granting of relief under Art.226. It appears to us however that

the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art.226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.....”

12. The Supreme Court in ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** has held as under:-

“ 17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

(emphasis supplied)

13. This Court is further of the opinion that in the present instance the notice issued on 1st September, 2015 was a limited notice wherein the petitioner had stated that she was not desirous of seeking any rank - which according to the Court means equivalence. The Supreme Court in ***Spring Meadows Hospital & Anr. vs. Harjol Ahluwalia Through K.S. Ahluwalia & Anr., (1998) 4 SCC 39*** has held as under:-

"These two appeals arise out of the order dated 16-6-1997 passed by the National Consumer Disputes Redressal

Commission, New Delhi (hereinafter referred to as “the Commission”) in Original Petition No. 292 of 1994. The hospital is the appellant in Civil Appeal No. 7708 of 1997 while the insurance company is the appellant in the other appeal. When the special leave applications out of which the two aforesaid appeals arise were listed for preliminary hearing, the Court had issued notice limited to the award of Rs 5 lakhs as compensation to the parents of the child even though the insurance company has raised the question of its liability to pay the compensation in question.

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6. The learned counsel for the appellant appearing for the hospital contended that the complaint having been filed by the minor child who was the in-patient in the hospital through his parents the said minor child can only be the consumer and the parents cannot claim any compensation under the Consumer Protection Act for the mental agony they have suffered and as such the award of compensation to the tune of Rs 5 lakhs in favour of the parents is beyond the competence of the Commission. The learned counsel then urged that under the Consumer Protection Act the consumer to whom services has been provided can make a complaint and in the case in hand the services having been provided to the minor patient, he becomes the consumer and consequently no compensation can be awarded in favour of the parents of the consumer and according to the learned counsel it is apparent from the provisions of Section 12(1)(a) of the Consumer Protection Act. The learned counsel lastly contended that under Section 14(1)(d) of the Act the Commission would be entitled to pay such amount as compensation to the consumer for any loss or damage suffered by such consumer and in the case in hand the minor child being the consumer the Commission was not competent to award compensation to the parents for the mental agony they have suffered. The learned counsel for the insurer-appellant in the other appeal vehemently contended that the insurer cannot be held liable to indemnify the hospital who is the insured as the said hospital had employed unqualified people to treat the patients and the direction of the Commission that the insurer

would indemnify the insured is unsustainable in law. But we are not in a position to examine this contention advanced on behalf of the learned counsel appearing for the insurer in view of the limited notice issued by this Court. It would not be open for us to entertain this question for consideration as the notice issued by this Court indicates that only the award of compensation to the parents of the minor child and the legality of the same can only be considered. We are, therefore, unable to examine the contention raised by the learned counsel appearing for the insurer."

(emphasis supplied)

14. Consequently, as petitioner on 1st September, 2015 had only wanted her teaching experience to be recorded by respondent no. 2 which has been done by way of Certificate dated 8th March, 2016, this Court is of the opinion that no further relief can be granted to the petitioner.

15. Accordingly, the present writ petition is dismissed on merits as well as on delay and laches.

MANMOHAN, J

APRIL 19, 2016

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