

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.253 of 2008

Date of decision: 18 .07.2017

Dr.S.K.Jain

...Appellant

Versus

Dr.Puran Chand and others

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. R.K.Malik, Sr.Advocate with
Mr.Samrat Malik, Advocate for the appellant

Mr.Anurag Jain, Advocate for respondents no.1 & 2

Mr. Shakti Kaushik, Advocate for
Mr. Vinod S.Bhardwaj, Advocate for respondents no.3 & 4

Mr. Arun Kaundal, Advocate for respondent no.5

RAJIV NARAIN RAINA, J

1. This appeal on merits has no substance. The only issue before this Court was whether the defendant possessed a Ph.D degree entitling him to promotion and other accompanying service benefits. The Lower Court Record (for short “the LCR”) requisitioned by this Court runs into 1859 pages. To cut the long story short in appeal, the facts relevant to the determination of the issue involved before this Court are that the appellant took study leave and went to School of Veterinary Medicine, Hannover. He obtained qualification known as “Doctor Medicinae Veterinarie”. The issue involved is whether this qualification is equivalent to PhD degree in India.

2. At page 1223 of the LCR, there is found a document Ex.P-33, which is a letter dated 6th January, 1998 sent by Mr.M.Ledwoch addressed to Mr.J.K.Bhatia, Evaluation Officer, Association of Indian Universities (for short “the AIU”), AIU House, 16 Kotla Marg, New Delhi from the School of

replying to the letter dated October, 24th 1997 written by the Indian authority holding forth that the German “Doctor Medicinae Veterinarie” (for short “Dr.med.vet.”) qualification is not equivalent to the PhD. There is another document at page 1109 marked as B-72 issued by the German Academic Exchange Service which states that it offers fellowship (research and sandwich model) to the Government of India for Indian Nationals, if called to pursue studies in Germany. These fellowships are meant for advanced studies and research at universities and research institutes in the Federal Republic of Germany and, as a rule, not for obtaining degrees.

3. Ex.D-38 at page 1233 of the LCR is a copy of a booklet issued by the Association of Indian Universities, New Delhi (AIU) on Equivalence of Foreign Degrees. The booklet lists global universities and institutions which are recognized by the AIU at the places where German Democratic Republic falls in its educational institutions. There are two institutions mentioned and none of them are the School of Veterinary Medicine, Hannover.

4. From document at page 1503 in LCR, one can read without reading down that the School of Veterinary Medicine, Hannover is professed to be one of the oldest institutions for higher education in Europe. It was only in January, 2003 that the School of Veterinary Medicine, Hannover was transformed into an endowed university within a public foundation. If the school became an endowed University in 2003 then imaginably I query what effect that that would have to the educational qualifications earned in 1994 by the appellant, who wants the setting aside of the appellate court judgment and decree dismissing his appeal having lost the litigation as a defendant in the suit preferred by the plaintiffs- respondents. At page 1509 of the LCR and

Course of Study leading to the grant of a PhD degree, the same has been offered by the School of Veterinary Medicine, Hannover since 1999 (the first in Germany). This course on the subject papers on the case file presented requires by duration of the course, three years of study and prescribed coursework involving a project-oriented training in the field of research; which course should impart the ability to conduct independent scientific work and ultimately lead to the possibility of employment in research or related fields.

5. Apparently, a PhD degree was not offered by the School in Germany where the appellant read before 1999 whilst the appellant's claim is based on something done previously in 1994. The appellant studied for two-and-a-half years in Germany proceeding on study leave as per his own showing which is less than three years for qualifying the award of PhD degree.

6. It may be noticed that the appellant was already in a PhD programme student at the respondent-Haryana Agricultural University, Hisar (For short "HAU") and he was allowed to avail the German Academic Exchange Service (DAAD) fellowship from 4th June, 1989 to 30th September, 1990 paid by absence salary by temporarily discontinuing his PhD programme at the University in Hisar. The appellant, while continuing on study leave in August, 1990, had requested for extension of leave from 1st October, 1990 to 30th September, 1991 since he was at the fag-end of the course. He was, however, granted leave up to 31st December, 1990. He again requested for extension of leave up to 30th September, 1991 which mercy request was not acceded to by the Chaudhary Charan Singh Haryana Agricultural University, Hisar carved out from HAU from lands and

7. The defendant-appellant over stayed in Germany and when his request for further extension was declined, he was asked by his university to return home immediately. Thereafter, the appellant made a request on 7th January, 1992 to allow him to continue with his PhD programme, since his research work was by then incomplete. Therefore, he argues that it was well-nigh impossible for him to abandon/leave the research work at that partial stage and return to India in the circumstances he was placed. He stated that he had not received the letter of extension up to 31st December, 1991 in response to his earlier request made in August, 1991. He then requested that he may be allowed to continue with his “PhD programme” w.e.f. the 2nd Semester, falling between the year 1991-92.

8. Dissatisfied with his request for extension of study leave with full pay, his request was put to disciplinary proceedings and the Vice Chancellor with the enquiry report in hand tendered to him observed that the appellant committed an act of indiscipline due to his unauthorized over-stay abroad. However, keeping in view his age and career prospects, a lenient view was taken and only a recorded warning was issued to him. Even the application on the basis of which he was allowed to undertake the Research Work for the years 1989-90 which is documented as Ex.P-2 at page 923 of the LCR, the word “fellowship” was used. Vide letter dated 20th April, 1989 issued by the Ministry of Human Resource Development, Department of Education, Delhi, it was indicated therein that he was awarded just a fellowship. The word “PhD/Postgraduate” has been scored out by pen in the Ex.P-2. Therefore, I conclude that the appellant did not proceed to Germany for pursuing a PhD programme.

9. Mr.Anurag Jain, learned counsel for private respondents 1 and

has pointed out and vehemently argued that the authorities in the parent University have indulged in favouritism and tried to help the appellant and oblige him in the proceedings, wherein it is recorded in paragraphs 30 to 32 as follows:-

“30.The report of the committee has already been given in para 20. the committee simultaneously recommended that the degree of Dr.Med. obtained by Dr. Jain be considered equivalent to PhD degree in Indian Universities.

31.The Director General & Secretary, Accreditation Board, ICAR vide its letter dated 31.5.2002 has stated that the opinion given by AIU vide letter dated 2.3.2000 is final as the AIU is authorized by the UGC to consider and declare equivalence of degrees/qualification etc (page B-76).

32.The DAAD vide its letter dated 24.1.2000 forwarded a copy of the certificate issued by the Central Office for Foreign Education, Secretariat of the Standing Conference of Ministers of Education and Cultural Affairs of the Laender in the Federal Republic of Germany. In the Certificate it has been stated in the last that with regard to education system in India, the German degree of “Dr.Med.Vet.” is comparable to Director of Philosophy (PhD) (page B-77)

From the above it will be seen that it is not a clear case where decision can be taken whether Dr.Med. Vet. Degree is equivalent to PhD Degree in India University. AIU has also changed its stand. As per latest communication they have advised to take action as per Committee Report. The Committee Report and the report of Dr.B.D.Garg and Prof. A. Ahmad goes in favour of Dr. S.K.Jain.

It is pertinent to state if the degree obtained by Dr.Jain is not treated equivalent to PhD Degree then the action as per charge-sheet and Show Cause Notice i.e. Disciplinary action for

defrauding and cheating and recovery of salary of study leave will have to be taken.

The matter is placed before the Academic Council for consideration and decision.”

10. Mr. Jain, further still, refers to a document with the subject heading “To Whom It May Concern” which is a letter issued by the School of Veterinary Medicine, Hannover addressed to the appellant where it is advised that the admission requirements for the Doctor’s Examination involves the presentation of a doctoral thesis (Dissertation) that is based on profound research work and the work deals with new aspects of the chosen subject. It is only after the thesis is examined and approved by the faculty concerned, that candidates have to pass a final oral examination. The letter is signed by one Mr. Oclmann who forms opinion that with regard to educational system in India, the German degree “Dr.med.vet.” is comparable to the “Doctor of Philosophy” (PhD). The letter is dated “Bonn. January, 2000” and I find little on the face of the letter reasons of confirmation or comparison between the two qualifications to merit trust. There is also a clarification from the School of Veterinary Medicine, Hannover vide letter dated 26th October, 1998 in response to the letter dated October, 9 issued by the CCS Haryana Agricultural University, Hisar that the ‘Dr.med.vet.’ degree awarded by German Institutions is not equivalent to a PhD degree. This puts a serious question mark on the efficacy of earlier letter and creates doubt as to its authenticity. Currently, the School of Veterinary Medicine is the only school in Germany offering a postgraduate PhD system in addition to the ‘Dr. med. vet.’ degree. The difference between the two degrees is that the PhD system, involves a postgraduate training with several hundreds of seminars and courses in addition to a research project, whereas the ‘Dr. med. Vet’ degree

only requires a research project. This nails the lie on the case of the appellant on equivalence claimed without any legs to stand on.

11. Mr. Jain, then submits that at one point of time the appellant had requested for extension of time for another three months to complete his “PhD at Hannover” i.e. between October, 1994 to December, 1994 and on the same hand, a perusal of literature on award of degrees in the brochure of AIU at page 1263 of the LCR shows that there is reference to four institutions in Germany which are certified to be equivalent to PhD programme in India and in none of these four figures the name of the school at Hannover, as it is simply not mentioned.

12. There is another interesting aspect of the case which requires consideration. Mr. Jain draws my attention to the letter dated 17th May, 1989 issued by the Registrar, Haryana Agricultural University, Hisar addressed to the Dean, College of Veterinary Sciences, Hannover, on the subject of permission to avail DAAD fellowship for the session 1989-90, that in the case of Dr. S.K. Jain, Asstt. Prof. (Vety. Pharmacology) the Vice-Chancellor permitted PhD studies w.e.f. 4th June, 1989 to 30th September, 1990 i.e. one year and three months and the appellant was permitted to continue to be on study leave during that period since the research programme to be undertaken in Germany was stated to be in conformity with his PhD programme. This by itself means that he did not go to Germany for pursuing the PhD degree programme, but only for doing a research programme which might help him in his pursuit of the PhD degree in India. Even the letter dated 6th October, 1990 (Ex.P-4) shows that the appellant was allowed extension of leave till 31st December, 1990 only and it was desired by his University at Hisar that he should return to resume his PhD in the parent University in January, 1991.

Vety. Pharmacology, HAU, Hisar, even when the appellant's letter to his parent department referred to only the Fellowship Research programme, but not the PhD programme. There is yet another letter Ex. P-5 at page 935 of the LCR wherein the appellant had requested for extension of leave as he is doing PhD in Germany and his period of stay abroad may be treated as leave of the kind due. These appear to be self-serving declarations which are wishful thinking. Documents can be multiplied across the hefty LCR and in the present paper-book but all are not necessary for inclusion for the determination of the appeal.

13. The learned Additional District Judge, Hisar in his judgment has considered all the aspects meticulously and returned findings of fact after appreciating the evidence adduced in a just and proper manner. An apparently proper finding of fact has been recorded that the two degrees were not equated, but some vested interests in the University had equated them to give the appellant an undue benefit. He has upheld the judgment and decree of the trial court concluding that the decision regarding 'Dr.med.vet.' degree as equivalent to PhD degree from University has not been fairly taken and the matter needs consideration afresh as the Court being not an expert in the field of equivalence can direct that the official defendant should decide the matter afresh. In view of the judgment and decree of the courts below, the issue of equivalence is still at large. Though the view taken by the lower appellate court is apparently a correct one and a possible view, but looking to the mass of papers in the LCR and after the length of hearing in detail by the respective parties and every indication that what is claimed is not equivalent to PhD in India, there is, to my mind, sufficient material on record to conclude that the defendant/appellant did not hold a PhD degree recognized

in India on which his promotion as Professor could depend, which promotion requires without debate possession of the essential qualification.

14. The judgments and decrees of the courts below, however, deserve to be modified by holding that it would no longer be prudent or practical to keep the issue open forever and in a state of flux for a fresh visit on equivalence without any definitive and reliable material to conclude in favour of the defendant-appellant. I am satisfied in view of the materials placed on record of the LCR that only one conclusion is possible on the preponderance of evidence that the appellant did not and does not hold a PhD degree recognized in India for availing service benefits and for other purposes, at the cost of the plaintiffs and other third parties interested in the result and he would thus be deemed as not a holder of PhD degree having proceeded to Germany for a Fellowship programme. Neither the plaintiff nor the University had any fetters placed on them in the suit filed in the year 2003 to have on their own taken all such steps to prove the qualification was equivalent to one or the other, but they have left the matter to the court. This shows disinterestedness in the matter.

15. Vide order dated 14.5.2009, while admitting the regular second appeal, this Court ordered status quo to be maintained on formulating the following law points arising for the determination of this Court:-

“1. Whether the plaintiff had any locus standi to file and maintain the suit?

2. Whether it was necessary for the courts to return findings on other issues if the issue regarding the locus of the plaintiff is determined against them?

3. Whether the decision of Academic Council with regard to equivalence of foreign degrees with Indian degrees is binding or not?”

16. In view of what has been discussed above, I am inclined to hold that the plaintiffs have sufficient *locus standi* to maintain the suit because the higher posts in HAU may lead to *inter se* competition among different disciplines of study and imparting education, including that of Vice-Chancellor.

17. Even if the plaintiffs had insufficient locus, even then the courts need not have returned findings on other issues as canvassed by the appellant. Findings of fact in civil disputes and service matters stand on different footing. Service law is document based adjudication which is public in nature and purely private interests alone are not involved are civil suit are brought for determination of mainly personal and sundry civil rights.

18. The respondent University is bound to obey by UGC recommendations on maintaining high academic standards, award of degrees and educational qualifications for teaching faculty as prescribed by latter. Equivalence of foreign degrees with Indian degrees is to be based on course content, duration of programme and myriad factors. In this case, School of Veterinary Medicine, Hannover has itself left a gaping void on equivalence of the two, when they have stated more than once that 'Dr. med. vet.' Is not equivalent to PhD, forget about India, even in Germany and at least at the time when the appellant was a research fellow in the School of Veterinary Medicine, Hannover and thereafter.

19. It would not be off the mark to further dilate on some of the exhibited documents relied upon by Mr. Jain, which are, for one, Ex. D1 at page 1539 of the LCR which is a letter from the AIU which records that AIU has received varied opinions from the German authorities on the status of 'Dr.med.vet.' degrees/fellowship. The Committee constituted for the purpose

regarding the 'Dr.med.vet.' degree awarded by the Institutions in German. The Central Office for Foreign Education, Secretariat of the Standing Conference of Ministers of Education and Cultural Affairs of the Laender (States) in the Federal Republic of Germany (KMK) had also issued their letter in January, 2000, *supra*. The AIU had advised that this matter is being repeatedly brought up and the Vice Chancellor of the respondent Chaudhary Charan Singh Agricultural University which has been carved out from the Haryana Agricultural University should consider the opinion of the Committee constituted by the University to finalize the matter. There is also Ex.D3 at page 1551 from the Indian Council of Agricultural Research, New Delhi addressed to the Registrar, CCS Haryana Agricultural University, Hisar on the subject of clarification regarding equivalence of 'Dr. med. vet.' degree of Germany with PhD earned from Indian Universities. It has been advised therein that the opinion given by the AIU to the University vide letter dated 2nd March, 2000 is final as the AIU is authorized by the UGC to consider and declare the equivalence of degrees/qualifications etc.

20. There is no doubt that the work of equivalence of qualifications at University level is entrusted to AIU but it is merely for the purpose of equating academic course content etc. The authorities are free to accept this education or to determine on its equivalence. The powers available to the Academic Council of HAU are enumerated in the regulations found at page 117 of the case file. The Academic Council has power to recognize University degrees equivalent to the corresponding examinations of Chaudhary Charan Singh Haryana Agricultural University. But the premise is that the University as against which comparison is made should be a recognized University in India by UGC or found to be equivalent by the AIU

Meeting of the Academic Council held on 29th May, 2003 on Item No.B-3, relevant to this case on the issue of clarification regarding equivalence of 'Dr. med. vet.' qualification of Germany with PhD of Indian Universities, the Academic Council, after due deliberations, decided that the degree of "Dr. med. vet." obtained by the appellant be treated equivalent to PhD .This document was heavily relied upon by Mr. Malik, learned Sr. Counsel appearing for the appellant. I have considered this aspect as well. I find nothing on the record to show as to how they reached the conclusion and on what material was the decision based except uninformed ipse dixit. Both the courts below have not accepted it and the lower appellate court has, therefore directed reconsideration afresh. I find not even a whisper of reason for taking such a decision as was taken on Item No.B-3 by the Council.

21. In the District Collector & Chairman Vizianagarani (School Welfare Residential School Society) Vizianagaram and another vs. M.Tripura Sundari Devi, (1990) 3 SCC 655; 1990 (2) RSJ 139, the Supreme Court has held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualification mentioned in the advertisement. Departure from prescribed norms fixed in rules of service amount to a fraud on public to appoint persons with inferior qualification in such circumstances unless it is clearly stated that the qualifications are open to relaxation. No Court should be a party to the perpetuation of a fraudulent practice. This *dicta* has been followed by Division Benches of this Court in case Narender Singh Kundu vs. Haryana

Vidyut Prasaran Nigam Ltd. And others, 2004 (4) RSJ 613 and Satyavir Kaushik vs. State of Haryana and another, 2005 (3) RSJ 213.

22. In the case of State of Rajasthan and others vs. Lata Arun, 2002(3) RSJ 714, it has been held by the Supreme Court that while judicially reviewing policy decision, it is not for courts to decide whether particular educational qualification possessed by a candidate should or should not be recognized as prescribed qualification in the case. That is not to say that such matters are not justiciable; in an appropriate case, the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground and whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations intended to benefit an individual or group of candidates.

23. In view of the above discussion, I find no legal infirmity or perversity in the judgments and decrees of the courts below. As a result, the appeal is dismissed. There will be no order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

18 . 7.2017
MFK

Whether Speaking/reasoned

Yes

Whether Reportable

Yes