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

+ **W.P.(C) 5709/2016 and CM No. 23587/2016**

TEACHING FACULTY WELFARE
ASSOCIATION, PGIMER

..... Petitioner

Through: Mr Varun K. Chopra, Advocate.

Versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS

..... Respondents

Through: Mrs Anita Sahani, Advocate for R-1/GGSIPU.

Mr T. Singhdev, Mr Tarun Verma,
Ms Puja Sarkar, Mr Michelle
Biakthansanghi Das and Mr Abhijit
Chakravarty, Advcotes for R-2/MCI.
Mr Monhinder J S Rupal, Mr K Lenin
Vinober and Mr Prang Newmai,
Advocates for Delhi University.
Mr Varunk Chopra and Mr Gurtajpal
Singh, Advocates.
Mrs Bharathi Raju, CGSC for R-3/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.11.2017

1. The petitioner - an association of doctors belonging to the teaching cadre of the Central Health Services (CHS) working in different departments of Post Graduate Institute of Medical Education and Research (PGIMER), Dr Ram Manohar Lohia Hospital - has filed the present petition, *inter alia*, challenging the validity of a clarification dated 26.10.2015 (hereafter 'the impugned letter') issued by Medical Council of India (MCI).

2. By the impugned letter, MCI had clarified that the term “Specialist and Consultant” as referred to in sub-clause 11.1(d) of Post Graduate Medical Education Regulations, 2000, PGMER (hereafter ‘the Regulations’), would include all doctors who possess postgraduate qualification and have worked continuously in the department of their PG qualification in institutions or hospitals where with affiliation from any university, postgraduate teaching is being imparted.

3. The petitioner claims that the expression “Specialist” cannot include doctors working in the cadre post of General Duty Medical Officers (GDMO). The petitioner contends that the impugned letter is repugnant to sub-clause 11.1(d) of the Regulations and this is the principal ground on which the petitioner rests its challenge. It is also submitted that the said decision is contrary to the decision of the Board of Governors of MCI recorded in the Minutes of the Meeting held on 15.10.2012. Mr Chopra, the learned counsel for the petitioner also contends that the impugned letter is also contrary to the clarification issued by Guru Gobind Singh Indraprastha University (GGSIPU) on 14.10.2015.

4. Before proceeding further, it would be relevant to refer to sub-clause 11.1(d) which reads as under:-

“(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-speciality department of the

said institution or hospitals as Professor and Associate Professor shall respectively be 16 years and 8 years. Consultants or specialists 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.”

The following proviso has been included to clause 11.1(d) in terms of Notification published in the Gazette of India on 17th November, 2009.

“Provided that such conferment of the nomenclature of the designation/status of postgraduate medical teachers shall be awarded only to those many number of consultants in the concerned hospital/institution so as to fulfil the minimum requirement for imparting Postgraduate Medical Education to the sanctioned annual intake of the respective Govt. Hospital/Institute.”

5. In *Faculty Association, Maulana Azad Medical College & Associated Hospital v. Union of India & Ors.: W.P. (C) 7049/2005, decided on 09.11.2016*, the Division Bench of this court explained the import of the said sub-clause in the context of the controversy whether there is any conflict between Central Health Services Rules, 1996 and the sub-clause 11.1(d). The relevant extract from the said decision is set out below:

“34. We do not think that there is any conflict or repugnancy between Regulation 11.1(d) and CHS Rules and the sub-cadres created thereunder. Clause (d) to Regulation 11.1 does not permit or hold that there would be transfer or change of the sub-cadre. It grants and permits a designation for the purpose of the PGME Regulations, 2000. It ensures that there is no violation of the PGME Regulations, 2000 in post-graduate institutions covered by clause (1A) to Regulation 8 as they do not have the post-graduate faculty, but have Consultants and Specialists. These Consultants

Specialists are given the said equation or equivalence only for the purpose of the PGME Regulations. The effect thereof would be that the doctors i.e. Consultants and Specialists belonging to the non-teaching sub-cadre cannot and would not occupy any post or position in the teaching sub-cadre. Promotions in the two sub-cadres and the number of posts do not undergo a change and are not affected. The Consultants and Specialists in the non-teaching sub-cadre would continue to remain members of the non-teaching sub-cadre. Thus, the PGME Regulations, 2000 and the CHS Rules operate in different fields and it would be incorrect and wrong to hold that by the said designations or equivalence granted for the purpose of PGME Regulation, 2000, the Consultants and Specialists become members of the teaching sub-cadre or become entitled to promotions in the teaching sub-cadre. The respondents in their arguments have clearly stated that the equivalence or designation does not amount to a transfer or change in the sub-cadre and the teaching and non-teaching sub-cadres remain distinct and cannot intermingle as such.

35. In view of the aforesaid reasoning, we would record our conclusions as under:-

(i) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 treats Consultants or Specialists having the requisite experience not attached to medical colleges but post-graduate institutions covered by Sub-regulation 1A to Regulation 8 as Professors, Associate Professors and Assistant Professors. The petitioners are unable to establish and show that clause (d) to Regulation 11.1 is illegal or bad in law. On the other hand, the respondents have been able to show and establish the reason and cause why the aforesaid clause was enacted by the MCI. The object and purpose were to allow and permit post-graduate courses already in existence should not close down and stop pursuant to the promulgation of PGME

Regulations, 2000.

(ii) Clause (d) of Regulation 11.1 of the PGME Regulations, 2000 is not in conflict with the CHS Rules in any manner. The teaching and non-teaching cadres remain distinct and separate. Consultants and Specialists in the non-teaching sub-cadre continue to remain members of the said cadre and are not entitled to occupy posts meant exclusively for the teaching sub-cadre. The PGME Regulations, 2000 and CHS Rules operate in different fields and the equivalence granted for the purpose of the PGME Regulations, 2000 would not affect members of the teaching sub-cadres as it does not amount to transfer or change in sub-cadres.

(iii) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 does not postulate one-time exception and there can be subsequent designations as long as there is a shortage of Professors, Associate Professors or Assistant Professors belonging to the teaching sub-cadres.

(iv) Designations for the purpose of clause (d) to Regulation 11.1 of the PGME Regulations, 2000 can be only awarded to Consultants and Specialists who fulfil the minimum requirement for imparting post-graduate medical education to the sanctioned annual intake in the respective government institutions/hospitals and cannot exceed the said numbers. Violation of the proviso and the question whether there are excessive designations has not been raised and argued before us. The petitioners have stated that this is not a subject matter of the present writ petition and has been raised in other writ petition pending in the High Court. We have, therefore, not examined the factual matrix and the question whether there has been a violation of the proviso to Regulation 11.1(d) of the PGME Regulations, 2000.”

6. As it is apparent from the above, sub-clause 11.1(d) of the Regulations apply to medical institutions such as Dr Ram Manohar Lohia

Hospital which, although not affiliated to any medical college, run a programme for postgraduate studies. In terms of sub-clause 11.1(d), “Specialist and Consultant” are eligible to be equated as professor and associate professor in the concerned departments.

7. The essential grievance of the petitioner is that GDMOs who also have the requisite postgraduate qualifications and the experience would - by virtue of the impugned letter - be included in the definition of “Specialist”. It was contended that the term “Specialist and Consultant” as used in sub-clause 11.1(d) of the Regulations cannot include GDMOs as they are not from the teaching cadre.

8. The question whether a doctor is a Specialist or not need not be determined on the basis of the cadre to which he/she belongs. The term “Specialist” would also be used for a doctor who has acquired a specialisation in a subject by further qualifications and experience. It is in this context that MCI had issued the impugned letter, which is set out below:-

“Dr. Maruti Sinha,
C-2/176 (FF), Janakpuri,
New Delhi-110058.

Sub: Request for clarification of term “Specialist and Consultant” as referred to in PGMER, 2000.

Sir/Madam,

With reference to your letter No. DMOF/2015/28, dated 25.9.2015, on the subject noted above, I am directed to state that the above mentioned matter was considered by the Post Graduate Committee at its meeting held on 9.10.2015 and it reads as under:-

“The Postgraduate Medical Education Committee considered the letter dated 01/10/2015 received from Dr. Maruti Sinha, Secretary, Delhi Medical Officers Association with regard to clarification of term “Specialist and Consultant” as referred to in PGMER, 2000 along with Notification dated 16th March, 2005 and decision of the Executive Committee of the Council dated 23/11/2014

It is clarified that all those doctors who possess postgraduate qualification and have worked continuously in the department of their PG qualification in Institutions or Hospitals where with the affiliation from any University, postgraduate teaching is being imparted should be considered eligible for grant of equated teaching designation irrespective whether they have worked on the cadre post of General Duty Medical Officer or Specialist. Those who have the experience of working for a period not less than 18 years and 10 years shall be eligible to be equated as Professor and Associate Professor respectively in the department concerned. Those with experience of less than 10 years will be eligible to be equated as Assistant Professor (Notification dated, 16.03.2005). Only those GDMOs who do not have postgraduate qualification and are performing rotational duty at different places will not be considered.

You are informed accordingly.

Yours Faithfully,
Sd/-
(Dr. Reena Nayyar)
Secretary I/C”

9. This Court finds no repugnancy between the said clarification and

sub-clause 11.1(d) of the Regulations. Plainly, a doctor acquiring the specified post graduate qualification and experience would be specialist in his subject/field.

10. The reference to the Minutes of the Meeting of the Board of Governors of MCI held on 15.10.2012 is of little assistance to the petitioner. The Board of Governors had decided that Medical Officers other than consultants/specialists cannot be considered for grant of equated teaching designations. The impugned letter merely clarifies as to who can be considered as consultant/specialist and specifies the qualifications/experience for being considered so.

11. It is relevant to mention that Delhi Medical Officers Forum (DMOF), an Association which included GDMOs, had filed a writ petition, *inter alia*, seeking that all eligible doctors including GDMOs be considered for equated teaching designations and directions to the said effect be issued. The said writ petition (***Delhi Medical Officers Forum (DMOF) v. Union of India & Ors. :W.P. (C) 10767/2015***) was disposed of by an order dated 24.11.2015 directing grant of equated teaching designations in terms of the clarification dated 26.10.2015 (the impugned letter therein).

12. The said decision dated 24.11.2015 was carried in an appeal before a Division Bench of this Court (***LPA No. 934/2015*** captioned ***Dr Ratnakar Sahoo & Ors v. Guru Gobind Singh Indraprastha University & Ors***). The appellants therein contended that the learned Single Judge had overlooked sub-clause 11.1(d) of the Regulations. The said appeal was dismissed on 24.02.2016 and the appellants therein were granted liberty to urge whatever was open to them in two writ petitions that were pending at the material time: ***W.P. (C) 7049/2005 titled Faculty Association, Maulana Azad***

Medical College and Associated Hospital v. Union of India & Others and *W.P. (C) 2020/2015 captioned Faculty Association, Lady Hardinge Medical College v. Post Graduate Institute for Medical Education and Research and Ors.* However, the petitioner did not take any steps to avail of the liberty and raise the issue, as raised in the present petition, in those matters. The said writ petitions were disposed of on 09.11.2016 and 19.01.2017, respectively.

13. This Court finds no merit in this petition. Apart from this, the court is also of the view that the petitioner, having failed to avail of the liberty granted, ought not to be permitted to re agitate the controversy in this petition.

14. The petition and pending application are, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 08, 2017

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