

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

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Judgment delivered on: 03rd July , 2017

+ W.P.(C) 5915/2015

DR ANIL GROVER, MD, DM (CARDIOLOGY) Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Bina Madhavan and Ms Akanksha Mehra

For the Respondents : Mr Vivek Goyal and Ms Vanya Khanna for R-1.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

**W.P.(C) No.5915/2015 & CM Nos.10707/2015(stay),
5155/2017(direction)**

1. The petitioner seeks quashing of orders dated 07.05.2015 and order dated 04.03.2015 communicated by order dated 07.05.2015 of by the Medical Council of India (hereinafter referred to as "MCI"), whereby the petitioner has been debarred from undertaking any post of administrative nature/teaching post of similar nature in any University and/or a Medical College for a period of five years.

2. The respondent No.1 – MCI has passed the impugned order on the ground that the petitioner was employed at two Medical Colleges during the same period.

3. The petitioner is a Cardiologist, MD Medicine, DM Cardiology, FICS. The petitioner, on 01.02.2013, was appointed as Professor & Head of the Department of Cardiology at Mamata Medical College, Khammam, (Andhra Pradesh) (hereinafter referred to as “MMC”).

4. It is the case of respondent/MCI that petitioner was shown to be simultaneously employed with MMC as also the National Institute of Medical Science & Research, NIMS University, Jaipur (hereinafter referred to as “NIMS”).

5. It is the case of respondent/MCI that both MMC and NIMS had shown the petitioner as part of their respective teaching faculties while seeking permission of the MCI for starting of the DM Cardiology Course.

6. The case of the petitioner is that the petitioner had taken employment with MMC on 01.02.2013 and had also signed the requisite documentation submitted by MMC for seeking approval of the MCI for starting of the DM Cardiology Course.

7. It is contended that post submission of the said documents, in view of certain differences with the Administration, the petitioner left the services of MMC on 12.05.2014. The petitioner claims to have

last entered the premises of MMC on 12.05.2014. It is contended that this could be verified from the biometric records, which are maintained by MMC.

8. The petitioner, on 14.05.2014, sent an e-mail to the Chairperson of MMC tendering his resignation. Thereafter on 14.05.2014 itself, the petitioner joined the services of NIMS.

9. On 11.06.2014, a letter was sent by the MCI to both MMC as well as NIMS to the effect that the petitioner had been shown to be working at two places in the same Session. Clarification was sought from the said Colleges.

10. On 19.06.2014, the petitioner submitted his reply to MCI and enclosed therewith the resignation letter sent to MMC. The petitioner further contended that MMC had accepted the resignation and handed over the charge of the Head of the Department of Cardiology to one Dr Vinod Kumar. The petitioner also contended that the petitioner had been paid salary only upto 12.05.2014 by MMC and post 14.05.2014, the petitioner was employed with NIMS.

11. The petitioner relied on the appointment letter dated 14.05.2014 as well as his joining letter dated 14.05.2014 to show that the petitioner had joined the services of NIMS only on 14.05.2014 after resigning from the services of MMC on 12.05.2014.

12. By letter dated 01.11.2014, the petitioner was directed to appear before the Ethics Committee on 17.11.2014. The petitioner appeared before the Ethics Committee of the MCI, which recorded his statement. On 17.11.2014, the Ethics Committee of MCI also recorded the statement of the Principal, MMC.

13. By the impugned letter dated 07.05.2015, the Dean/Principal, NIMS has been communicated the decision of the Medical Council of India that petitioner had been debarred from undertaking any post of administrative nature/teaching post of similar nature in any University and/or a Medical College for a period of five years.

14. The petitioner contends that the petitioner was never employed with two Colleges at the same point of time. It is the case of the petitioner that he resigned from MMC on 12.05.2014 and only thereafter joined the services of NIMS on 14.05.2014.

15. It is contended that the petitioner was constrained to leave the services on account of certain differences with the Administration of MMC. A formal resignation letter was also forwarded to MMC which was duly accepted. This, it is stated, is corroborated by the fact that the petitioner was paid salary, by MMC, only upto 12.05.2014.

16. It is submitted that when MMC had applied to MCI for permission to start the DM Cardiology Course, the petitioner was the Head of the Department of Cardiology of MMC Hospital and as such, had signed the requisite documents in support of the application.

17. It was thereafter that the petitioner resigned and joined the services at NIMS. It is stated that the application of the NIMS for seeking permission of the Medical Council of India to start DM Cardiology Course had been submitted prior to the petitioner joining the services of NIMS and as such, the petitioner did not submit any document in support of the said application. It is submitted that only post the petitioner joining the services of NIMS, petitioner was shown to be employed by NIMS.

18. It is contended that MCI failed to establish that petitioner was employed or shown to be employed by two Colleges at the same point of time. It is submitted that the burden of proving to the contrary has been placed on the petitioner and MCI has presumed the petitioner to be employed with two colleges simultaneously without there being any material on record.

19. *Per contra*, Medical Council of India has filed its affidavit seeking to justify the impugned decision. It is contended that there is no relieving letter from MMC showing that the petitioner was relieved from the services of MMC.

20. It is contended that in the absence of a relieving letter from MMC, the petitioner could not have been taken up the services at NIMS.

21. It is submitted that in the meetings held on 17.11.2014 and 18.11.2014, the petitioner was required to appear. The petitioner

appeared on 17.11.2014 and gave his statement. The petitioner was directed to produce the Cable T.V. bill/Telephone Bill or Bank Statement of the address of MMC on 18.11.2014. The petitioner failed to appear on 18.11.2014. Therefore, the Committee took a serious view and decided to debar the petitioner from undertaking any post of administrative nature/teaching post of similar nature in any University and/or a Medical College, for a period of five years.

22. In the counter-affidavit, it is stated that Principal of MMC had appeared before the Ethics Committee and given his statement. In the statement, the Principal of MMC had stated that the petitioner left on 12.05.2014 and resigned from the services on 14.05.2014. The Principal had stated that petitioner had joined the services of MMC for a period of five years but had left the services of MMC prior to the expiry of the period of five years.

23. It is contended on behalf of MCI that teaching faculty cannot be working in two medical colleges at the same time. Every medical college prior to appointing faculty has to obtain a relieving order with regard to the faculty from his/her previous employer.

24. It is on these grounds the respondent MCI has sought to defend the impugned order of debarment of the petitioner for a period of five years.

25. The letter dated 11.06.2014 seeking for clarification from MMC and NIMS with regard to the employment of the petitioner at two simultaneous places reads as under:-

“Subject: Dr. Anil Grover working at Mamata Medical College, Khammam and National Institute of Medical Sciences, Jaipur simultaneously – regarding

Sir/ Madam,

This is to inform you that during perusal of assessment reports of super-specialty departments by the Postgraduate Committee, it was observed that Dr. Anil Grover was working as Prof. & Head of Department of Cardiology at Mamata Medical College, Khammam. However, while scrutinizing the compliance reports of these courses received from the Central Government, it was found that Dr. Anil Grover has been shown to be working at National Institute of Medical Sciences, Jaipur in the same session. Needless to say that no faculty member can be shown to be working at two places in the same session and every college is supposed to take relieving orders from the previous employer before he/she could be allowed to join.

You are, therefore, directed to submit your clarification on the above issue, within 15 days of receipt of this letter.

In case you fail to submit your clarification within 15 days of receipt of this letter, it would be presumed that you have no explanation to offer and the Council shall, thereafter, take action in accordance with law.

Yours Faithfully

Sd/-

(Dr. Reena Nayyar)

Joint Secretary

CC:-

1. Dr. Anil Grover, Prof. 85 Head, Department of Cardiology, Mamata Medical College, Rotary Nagar, Khammam - 507002 (Vijavawada) with the direction to submit clarification on above within 15 days;

2. Dr. Anil Grover, National Institute of Medical Sciences & Research, Shobha Nagar, Jaipur – Delhi Highway No.8, Jaipur - 303121 (Rajasthan) with the direction to submit clarification on above within 15 days.”

26. The petitioner on 19.06.2014, sent a reply to the letter of MCI dated 11.06.2014, as under:-

“Subject: Dr. Anil Grover working at Mamata Medical College, Khammam and National Institute of Medical Sciences, Jaipur simultaneously – regarding

Ref: MCI-23(l)/2014-Med./114088 dated 11.06.2014

Madam,

Most humbly I have to state the following:-

- *Due to inability of the Mamata Administration to fulfill the needs of the cardiology department over the months, serious differences had arisen between Head of the department and Administration. Therefore:*
- *As Head of the department, I had apprised the Mamata Administration through serious of submissions made from July' 2013 to March' 2014.*
- *As nothing came out and it was impossible for rendering any services, I submitted my resignation with immediate effect on May 14th.*

- *The then Director of Mamata Medical College, Mr. Sreedhar conveyed to my former colleague Dr. Vinod Kumar (Cardiology Department, Mamata Medical College), about my resignation from the Medical College and asked to take care of the department.*
- *Perhaps due to personal reasons best known to them, Mamata administration has not issued my relieving order.*
- *I state that after 12th May, neither I have visited Mamata Medical College, nor I have claimed any salary neither I have rendered any services to the Mamata Medical College.”*

27. The resignation letter dated 14.05.2014 send by the petitioner to MMC reads as under:-

“From: Dr Anil Grover anilgrover05@gmail.com

To: Ms Jayasri, Chairperson, Mamata Educational Society udaypuvada@gmail.com

*THE DIRECTOR MMCSH
sreedharkolli@yahoo.co.in*

Date :Wed May 14, 2014 at 8.20 a.m.

*SUBJECT : **RESIGNATION***

Mailed : gmail.com

by

*Secretary Mamata Educational Society
Mamata Medical College & Hospital
Khammam*

Madam,

This is in continuation of the previous mail on the same subject. My resignation from the post of Professor and Head Cardiology, Mamata Medical College & Hospital, Khammam please be accepted with immediate effect.

A signed letter may take few days to reach by speed post and has been dispatched.

*Thank you,
Dr Anil Grover*

Copy To: Director Estt. Mamata Medical College and Hospital

PERMANENT ADDRESS

House No.:20, Phase 3A Mohali (first left turn before the petrol pump as you enter Mohali from furniture market of Chandigarh

Contact : Dr Pawan Sharma Grover (09915577620) ”

28. In the counter-affidavit submitted by the respondent – MCI, it is, *inter alia*, noted as under:-

“9. It is submitted that during the proceedings before the Ethics Committee of the answering respondent Dr. K. Koteswar Rao, Principal, Mamta Medical College, Khammam in his deposition before the Council, dated 17.11.2014, had stated that even though the petitioner was appointed as Professor & Head of the Department of Cardiology at Mamta Medical College, Khammam on 01.02.2013 and the Petitioner had promised at the time of his appointment that he shall work with Mamta Medical College, Khammam for approximately five years and attend all MCI inspections towards the starting of DM Cardiology Course at the medical college, he had

left the medical college. The Principal, Mamta Medical College, Khammam had further stated the petitioner was shown as Professor & Head of the Department of Cardiology at Mamta Medical College, Khammam during the MCI inspection on 14.03.2014 towards the starting of DM Cardiology Course at the medical college. He had stated that the petitioner had left the institution on 12.05.2014 and had resigned on 14.05.2014 without any relieving order being issued by the said medical college. He further stated that the petitioner had left without any relieving order and that the medical college would now have to appoint a new Professor & Head of the Department of Cardiology towards the next MCI inspection towards the starting of DM Cardiology Course at the medical college.

10. It is submitted that the petitioner had also appeared before the Ethics Committee of the answering respondent at its meeting held on 17.11.2014 and after hearing the petitioner, the Ethics Committee of the answering respondent had directed the petitioner to submit a copy of Cable TV Bill / Telephone Bill or Bank Statement in support of his residential address at the campus of Mamta Medical College, Khammam. The petitioner had assured the Ethics Committee of the answering respondent on 17.11.2014 that he will produce the said on the next day i.e. 18.11.2014 at 1.00 p.m., but failed to do so and did not even appear before the Ethics Committee of the answering respondent on 18.11.2014. Thus the Ethics Committee of the answering respondent while taking a serious view of the conduct on the petitioner after due deliberation and discussion decided to debar him from, undertaking any post of Administrative nature / teaching post of similar nature in any university and / or medical college for a period of five years.”

(underlining supplied)

29. The factual position that emerges from the above is that petitioner had joined the services of MMC on 01.02.2013. MMC applied for permission of MCI to commence the Course of the DM Cardiology and showed the petitioner as a Member of the Faculty.

30. The petitioner left the services of MMC on 12.05.2014 and sent his resignation on 14.05.2014. Thereafter on 14.05.2014, itself the petitioner joined the services of NIMS.

31. The petitioner left the services of MMC without a formal relieving order. MMC paid salary to the petitioner only upto 12.05.2014.

32. It is only after petitioner joined the services of NIMS that NIMS submitted further documents with MCI to show that the petitioner was Member of its Faculty.

33. The Principal of MMC, in his statement before the Ethics Committee, corroborated the stand of the petitioner that petitioner had left the services of MMC on 12.05.2014 though without a formal relieving order.

34. It is clear that there is no evidence to show that at any point of time, petitioner was employed by two separate institutions simultaneously.

35. Action has been taken by MCI on the presumption that the petitioner was simultaneously employed by two Colleges. This fact is not borne out from the records. There is no material or evidence before MCI to show that the petitioner was ever employed or shown to be employed by two Medical Colleges, simultaneously, at the same time.

36. The application submitted by MMC to Respondent MCI for permission to commence DM Cardiology Course showing the petitioner as a Member of the Faculty was submitted prior to the petitioner resigning from MMC. It is only post 14.05.2014 that the petitioner was shown as employed by NIMS.

37. The petitioner, by letter dated 01.11.2014, was called for the meeting on 17.11.2014. The subject of the letter requiring the petitioner to appear on 17.11.2014 mentioned: *“irregularities committed by certain colleges in showing their faculty during inspection”*. The letter dated 01.11.2014 cannot be treated as a show cause notice to the petitioner. The petitioner was never put to notice that the meeting of 17.11.2014 was a meeting enquiring into the alleged employment of the petitioner by two colleges simultaneously.

38. Admittedly, in the meeting held on 17.11.2014. it was established from the statement of the Principal MMC that the petitioner had left the services of MMC on 12.05.2014 and tendered his resignation on 14.05.2014. Post 12.05.2014, petitioner was not employed by MMC.

39. The Ethics Committee, in its meeting on 17.11.2014, directed the petitioner to produce the Cable T.V. Bill/Telephone Bill or Bank Statement showing the address at the MMC. The documents were directed to be produced on 18.11.2014. As the petitioner failed to appear and produce the said documents on 18.11.2014, a strict view of the matter was taken and the petitioner was debarred for a period of five years.

40. It fails to reason as to how the said documents i.e. Cable T.V. Bill/Telephone Bill or Bank Statement showing the address at the MMC were at all relevant.

41. The petitioner, on 12.05.2014, had left MMC, so no document of MMC post 12.05.2014 could show the petitioner as resident of MMC. The Principal of MMC had corroborated the stand of the petitioner that post 12.05.2014, the petitioner was not available at MMC. The Bank statement of the petitioner shows that he was not paid by MMC after 12.05.2014. There is no material or evidence on record of MCI to show that the petitioner was simultaneously employed by two Institutes at the same point of time.

42. On the one hand is a mere assumption on behalf of MCI, based on the application submitted by the MCI prior to 12.05.2014 and the additional documents submitted by the NIMS post 12.05.2014 and on the other hand is the statement of the petitioner to the effect that the petitioner left the services of MMC on 12.05.2014 and resigned on 14.05.2014 and thereafter joined NIMS on 14.05.2014. This

statement is corroborated by the petitioner with the payment of salary by MMC for upto 12.05.2014 and also the statement of the Principal of MMC confirming the same.

43. There is no document or evidence on the records of the Medical Council of India to hold the petitioner as having been employed simultaneously by two Institutes. The mere absence of a relieving letter from MMC does not establish that the petitioner was employed simultaneously at MMC as well as NIMS. The statement of the Principal of MMC before the Ethics Committee, confirming that petitioner left MMC on 12.05.2014 and submitted his resignation on 14.05.2014, discharges the petitioner of even the liability of producing the relieving letter. The statement corroborates the stand of the petitioner that he had resigned from MMC and thereafter joined NIMS.

44. Further, there is nothing to show that MMC communicated to the petitioner that his resignation had not been accepted or that the petitioner had not been relieved.

45. No rules have been produced by MCI to show that it is mandatory for a teaching staff to await a relieving order from the previous employer, prior to joining the services of another institute. Nothing has been produced to show that a teaching staff cannot work at two medical colleges during the same academic year, if there is no overlap in the period of employment. Further, nothing has been produced to show that a teaching staff once having joined a college

cannot leave the services of the college during the midst of the academic session.

46. The reliance placed by learned counsel for the respondent on the judgment of this court dated 17.08.2016 in LPA No. 702/2015 titled **BALBIR S. TOMAR VERSUS UNION OF INDIA & ANOTHER** to contend that the instances of professional misconduct given in chapter 7 is not exhaustive and that MCI is not precluded from considering and dealing with any form of professional misconduct on the part of a registered medical practitioner is not applicable to the facts of the present case. Since the petitioner has not been shown to be simultaneously employed by two colleges at the same time, there is no question of the petitioner having committed any professional misconduct.

47. Further reliance placed on the judgment of this court dated 05.10.2010 in WP(C) 6792/2010 titled **SRI KANCHI KAMAKOTI PEETAM CHARITABLE TRUST VERSUS UNION OF INDIA & ANOTHER** to contend that the faculty members have to be in full time employment of the medical colleges and that they cannot perform duties as a private practitioner in a hospital or a clinic is also not applicable to the facts of the present case. In the present case, action has not been taken against the petitioner on the ground that he has performed duties as a private practitioner in a hospital or a clinic. The judgment is clearly not applicable to the facts of the present case.

48. In view of the above, the finding of the Ethics Committee that petitioner was simultaneously employed by two Institutes cannot be sustained. Accordingly, the impugned order of the Medical Council of India debarring the petitioner for a period of five years on the ground that the petitioner was working simultaneously in Mamata Medical College, Khammam, (Andhra Pradesh) and National Institute of Medical Science & Research, NIMS University, Jaipur, is not sustainable and is accordingly quashed.

49. In view of the above, the Writ Petition is allowed. The impugned order, debarring the petitioner from undertaking any post of administrative nature/teaching post of similar nature in any University and/or a Medical College for a period of five years, is set aside. There shall be no order as to costs.

SANJEEV SACHDEVA, J

July 03, 2017
‘Sn’