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

+ **W.P.(C) 8807/2017**

RAJEEV KUMAR AGRAWAL

..... Petitioner

Through: Mr Darpan Wadhwa, Senior
Advocate with Mr Shlok Chandra, Mr
Albert Sabastian, Mr Ritesh Kumar
Sharma and Mr Toyesh Tiwari,
Advocates.

versus

MEDICAL COUNCIL OF INDIA

..... Respondent

Through: Mr T. Singhdev, Ms Amandeep Kaur,
Ms Biakthansangi Das and Mr Tarun
Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.11.2017

VIBHU BAKHRU, J

CM No. 35988/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 8807/2017 and CM APPL. 35989/2017

3. The petitioner has filed the present petition, *inter alia*, impugning the order dated 21.08.2017 (hereafter 'the impugned order') passed by the Medical Council of India (hereafter 'MCI'), whereby it has imposed the punishment of removing petitioner's name from the Indian Medical Register for a period of three years from the date of the impugned order.
4. With the consent of the learned counsel for the parties, the petition is

taken up for hearing and finally heard.

5. The MCI has imposed the punishment on account of the petitioner affirming a false declaration for assessment of the application of Hind Institute of Medical Sciences, Safedabad, Barabanki (hereafter 'HIMS') for commencing a PG Course. The fact that petitioner had given an incorrect declaration is not disputed. However, the petitioner claims that there are certain mitigating circumstances and further contends that the punishment imposed on him is harsh and disproportionate.

6. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

6.1 The petitioner qualified for the degree of MBBS in November, 1991 and was registered with the Bihar Council of Medical Registration on 12.03.1993. The petitioner received his degree of Masters in Surgery from Shri Shahu Ji Maharaj University, Kanpur in December, 1997.

6.2 The petitioner was appointed to the post of Assistant Professor, Department of Surgery at HIMS on 25.04.2008. Concededly, the petitioner's appointment was based on his past work experience, which did not include any work experience with Meenakshi Academy of Higher Education and Research (hereafter 'Meenakshi Academy'); concededly the petitioner had no such experience.

6.3 On 10.07.2009 HIMS was granted recognition by the MCI and was permitted to offer the MBBS Course. The petitioner was appointed to the post of Associate Professor on 02.12.2013 on the basis of having four years

teaching experience and publishing two case reports.

6.4 In 2015, HIMS made an application for commencing a post graduate course and, the assessors appointed by MCI carried out pre-PG Inspection of HIMS on 23.07.2015 and 24.07.2015. For the said purpose, the petitioner furnished a declaration form as a faculty of HIMS indicating his designation as Associate Professor in the Department of Surgery. The said declaration form included details of his previous appointments/teaching experience. The same indicated that the petitioner had functioned on the post of Assistant Professor from 25.04.2008 to 01.12.2013 and as an Associate Professor from 02.12.2013. The petitioner also declared that prior to joining HIMS, he was working at SGPGI Lucknow as a Senior Resident and was relieved from the said post on 22.09.2000.

7. Apparently, the MCI's assessors found that the petitioner was not entitled from promotion as an Associate Professor at HIMS, as the case reports (on the basis of which he had been promoted) were not published during the period 2009 to 2013. This observation was communicated to HIMS. Admittedly, the effect of the said observation was that the faculty strength of HIMS faculty would fall short of the requirement for commencing the PG Course.

8. In order to overcome the said observation, the experience - relieving certificate dated 30.05.2007 - purportedly issued by Meenakshi Academy, was fabricated. By the said certificate, it was certified that the petitioner had worked as an Assistant Professor in the Department of General Surgery of Meenakshi Academy from 01.04.2006 to 30.05.2007 and the petitioner was

relieved on 30.05.2007. On the strength of the said fabricated certificate, it was claimed that the petitioner had an additional experience of one year and one month as an Assistant Professor. With this additional experience, the petitioner's total experience as an Assistant Professor was claimed as five years seven months. According to HIMS and the petitioner, this was sufficient for the petitioner to be promoted as an Associate Professor.

9. The petitioner submitted another declaration form to MCI, now showing his past work experience as five years and seven months as an Assistant Professor. Admittedly, the said declaration was false. The assessors also prepared the assessment sheets indicating the petitioner's experience as an Assistant Professor as claimed by him and HIMS. The petitioner also signed the assessment sheet as a faculty member against his name showing his work experience that included one year and one month as an Assistant Professor with Meenakshi Academy.

10. Post Graduate Medical Education Committee of MCI noted that the experience certificate dated 30.05.2007 purportedly issued by Meenakshi Academy was not valid and Meenakshi Academy had confirmed that the petitioner had never worked with them. In view of the above, the PG Committee concluded that the said certificate was forged.

11. The above matter was referred to the Ethics Committee of MCI and was deliberated by the said Committee. The Ethics Committee also recorded the statement of the petitioner and other doctors against whom such similar allegations had been made. After considering the above matter, the Ethics Committee of MCI, *inter alia*, decided that the name of the petitioner be

removed from the Indian Medical Register for a period of three years. These recommendations were approved by the Executive Committee of the MCI at its meeting held on 11.07.2017 and the said decision was communicated to the petitioner by the impugned order.

12. The impugned order sets out the operative part of the decision of the Ethics Committee and the same is reproduced below:-

“.... the Ethics committee discussed the matter in detail and after detailed deliberation noted that prima-facie there is complete professional misconduct for submitting fake and forged documents on the part of all the faculty namely MDr. Rajeev Kumar Aggarwal, Dr. Chandra Prakash Singh and Dr. P.K. Vashist as well as the then Dean of Hind Institute of Medical sciences namely Dr. M.D. Tripathi.

In view of above, the Ethics Committee decided to remove the name of Dr. Rajeev Kumar Aggarwal, Dr. Chandra Prakash Singh, Dr. P.K. Vashist and the Dr. M.D. Tripathi, the then Dean of Hind Institute of Medical Sciences, from the Indian Medical Register for a period of 3(Three) Years.....”

13. There is no dispute that a fabricated certificate was submitted and the declaration made by the petitioner was false. The only defence put up by the petitioner was that he had not procured the false certificate and had submitted the false declaration under coercion. The petitioner also claims that he had, at the time of assessment, informed the assessors that the experience claimed by him in his declaration was incorrect.

14. Mr Darpan Wadhwa, learned Senior Counsel appearing for petitioner contended that the findings of the Ethics Committee are only *prima facie* findings and, therefore, no punishment could be imposed on a *prima facie*

view. He relied on the decision of this Court in *Praveen Garg v. Medical Council of India: W.P.(C) 6604/2003, decided on 14.05.2009*, in support of his contention.

15. Mr Wadhwa, earnestly contended that although the assessment sheets indicated that the petitioner had claimed an experience of one year one month at Meenakshi Academy, the petitioner was nonetheless considered as an Assistant Professor and this supported the petitioner's stand that he had informed the assessors that the experience claimed by him was incorrect. He argued that if the assessors had accepted the experience as claimed in the declaration form, they would have accepted the petitioner as an Associate Professor. This contention is stoutly disputed by Mr T. Singhdev, the learned counsel who appears for the MCI. He contends that the assessment sheets signed by the petitioner clearly indicates that even at the time of assessment, the petitioner had affirmed that he had work experience with Meenakshi Academy as declared by him and the same is established by his signatures on the assessment sheet, which were made at the time of the assessment. He contended that the assessors had not accepted the petitioner as an Associate Professor because the petitioner was promoted on the basis of two publications, which were not published during the period of his employment with HIMS as an Assistant Professor.

16. I have heard the learned counsel for the parties at length.

17. There is no controversy that the petitioner is guilty of submitting a false declaration; this has been readily accepted by the petitioner.

18. Mr Wadhwa had submitted that the petitioner is not involved in

procuring the forged experience certificate from Meenakshi Academy and the same was submitted to the assessors by HIMS and not by him. This contention is not merited as in the affidavit furnished by the petitioner to the MCI he has clearly affirmed that he had presented the certificate in question; the only defence put up was that he had done so under duress. Thus, concededly, the petitioner had submitted the fake certificate to MCI. The question whether the certificate was procured by HIMS or the petitioner may not be much of relevance. Since there is no dispute that the certificate was furnished by the petitioner, he cannot escape the consequences of doing so.

19. Mr Wadhwa claimed that the petitioner had informed the assessors at the time of assessment that the declaration submitted by him was incorrect. Concededly, the petitioner had signed the assessment sheets indicating his work experience, which included his past experience with Meenakshi Academy.

20. The controversy as to why the assessors had accepted the petitioner as an Assistant Professor and not as an Associate Professor is a matter that is not required to be considered by this Court at this stage, as no such contention was advanced before the Ethics Committee. Mr Wadhwa claims that the same was because the petitioner was never confronted with the assessment sheets. In view of the order that is proposed to be passed, this Court is refraining from commenting on this contention except to note that as per the standard procedure, the assessment sheets are provided to the institutions and there is no allegation that the same were not provided to HIMS.

21. The principal question to be addressed is whether any punitive measure can be imposed on the petitioner on the basis of a *prima facie* view. Although it is expressly recorded in the impugned order that the recommendations of the Ethics Committee was based on its *prima facie* view that there was complete misconduct on the part of certain faculty members; including the petitioner, in submitting fake and forged documents; it is clear that there is no dispute as to the fact that the petitioner had, in fact, furnished the fake certificate and the false declaration. In the given facts, it is difficult to accept that any view other than to hold that the petitioner was guilty of misconduct, could be taken by the Ethics Committee. Thus, the expression *prima facie* must be read as qualifying the degree of misconduct - which the Ethics Committee describes as “complete professional misconduct”. Thus, even though there is no doubt that the petitioner is guilty of misconduct, in the *prima facie* view of the Ethics Committee, the same was also of such gravity so as to warrant a severe punitive measure.

22. At this stage, it is also necessary to observe that there are two separate aspects to imposition of penalty: the first is to establish with certainty that the person accused of misconduct has in fact committed the offending Act for which he is accused; and, the second is the punishment that is to be imposed. In this case, the fact that the petitioner is guilty of the offending act is established; he did submit a fabricated certificate and a false declaration. There is, thus, no doubt that he must be punished for the same. The next aspect as to what punishment ought to be imposed for the misconduct is dependent on several factors that the authority recommending and imposing punishment must take into account.

23. The first and foremost factor to be considered is the gravity of the offence; the quantum of punishment must be commensurate with the gravity of the offence.

24. The second factor is the conduct of the person accused during the proceedings; if the accused readily admits his guilt, the same must be considered as a factor in his favour in awarding a lesser punishment as compared to a person who prolongs the proceedings and attempts to escape the consequences of his wrongful acts.

25. Another factor to be considered is whether there is a pattern or prior history of wrongdoing; obviously, a repeat offender ought to be visited with a higher penalty. Yet another factor is the efficacy of the punishment so as to ensure that it is a sufficient deterrent for other persons who may be tempted to follow course.

26. The above factors are by no means exhaustive and punishment must be imposed taking into account all aggravating and mitigating factors.

27. It is also important that the punitive measure must not be arbitrary or on *ad hoc* basis; insofar as possible, the punishment must be based on some standards. Every person who is found to have committed a kind of misconduct must (subject to some variation on account of aggravating and mitigating factor) be visited with a similar punishment.

28. Undisputedly, removing the petitioner's name from the Medical Register for a period of three years has serious adverse consequences on the

petitioner - it effectively deprives the petitioner from earning his livelihood by practicing his profession. Imposing such measure for a period of three years is *ex facie* a very harsh punishment. This is not to say that MCI cannot impose the same, but before imposing such harsh measures, MCI must satisfy itself that it is warranted and is commensurate with its standards of imposing punitive measures.

29. MCI has not specified any standards or set down any guidelines for imposing such punishments and thus there is a real risk that imposition of such serious punitive measures would suffer from the vice of arbitrariness. In such circumstances, in order to maintain a certain level of objectivity, it would be necessary for MCI to draw on past precedents of imposing punishments for the misconduct of submitting false declarations/documents. To illustrate the point, if a medical practitioner, who is found to have manipulated records of a patient to meet an allegation of medical negligence, is visited with the punishment of a censure; imposing the punishment of removal of petitioner's name from the Medical Register for three years would be arbitrary, unreasonable and would fall foul of Article 14 of the Constitution of India.

30. Imposing such harsh punishment - as has been imposed on the petitioner - without reference to any objective standard would be arbitrary and destructive of the Rule of law.

31. It is apparent from the impugned order that the Ethics Committee was of the *prima facie* view that there was "complete professional misconduct" on the part of the petitioner and other doctors. Plainly such harsh

punishment cannot be sustained on a *prima facie* view. Although there is no dispute that the petitioner had misconducted himself by submitting false certificate and declaration; the question whether this constituted misconduct of the highest level (described as complete professional misconduct), warranting the punishment as imposed, is a matter which the Ethics Committee is required to consider in the context of the explanation provided and various factors as indicated above. This Court is also of the view that it would have been apposite for the Ethics Committee/MCI to have heard the petitioner on the question of the quantum of punishment proposed to be imposed.

32. In view of the above, the impugned order, to the extent that it imposes punishment of removal of the petitioner's name from the Medical Register, is set aside and the matter is remanded to Ethics Committee of MCI to consider the question of proportionality of the punishment imposed on the petitioner and to take a final view after affording the petitioner an opportunity to be heard and having regard to the observations made hereinabove.

33. The petition and the pending application are disposed of.

VIBHU BAKHRU, J

NOVEMBER 10, 2017

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