

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9214 OF 2004

Dr. Rajesh Chandrakant Dere .. Petitioner
Versus
Medical Council of India & Ors. .. Respondents

Mr. R.V.Govilkar with Ms. Shaba N. Khan and Kunal Nawale for
petitioner
Mr. Madhav Jamdar for respondent No.2
Mr. Ganesh Gole for respondent No.1 MCI

CORAM : B.R. GAVAI &
SMT. BHARATI H. DANGRE JJ

DATE : 16th April 2018

P.C.:

Rule. Rule made returnable forthwith. Heard by consent.

2] The petitioner has approached this Court being aggrieved by the order dated 1st November 2004 passed by the respondent No.1, thereby, imposing penalty of temporarily erasing the name of petitioner from the Register of Indian Medical Council from 1st November 2004 to 31st July 2007. The order also imposed a penalty, thereby, making the petitioner ineligible to be considered as a teacher at any Medical Colleges for the academic years 2005-06 and 2006-07.

3] The petitioner, who is a medical teacher was issued with a show cause notice by respondent No.1 dated 28th March 2004. In the show cause notice, it was stated that the respondent No.1 while carrying out inspection in K.J.Somaiyya Medical College as well as Ahmednagar Medical College, found that during the inspection carried out in the month of December 2002, petitioner's name appeared at both the colleges. By the said notice, therefore, the petitioner was called upon to show cause as to why penal action should not be taken against the petitioner.

4] In response to the show cause notice, the petitioner submitted his reply on 2nd April 2004. In reply, the petitioner has categorically stated that the date was erroneously mentioned in the record of K.J.Somaiyya College. He submitted that as a matter of fact, after resigning from Ahmednagar Medical College in the month of December 2002, he came to be appointed in Somaiyya Medical College on and from 24th February 2003. The petitioner in support of his submission had also placed on record the appointment order issued by K.J.Somaiyya College and Research Centre so also joining report submitted by him on 27th February 2003.

5] However, vide the impugned order, the explanation of petitioner

was rejected and penalty as stated hereinabove has been imposed. Being aggrieved by the said order, the present petition is filed.

6] Mr. Govilkar, learned Counsel appearing for the petitioner submits that the respondent No.1 has not at all taken into consideration the defence of the petitioner.

7] Mr. Gole and Mr. Jamdar, learned Counsel for the Indian Medical Council and Maharashtra Medical Council respectively submit that the petitioner had himself admitted that in the year 2002, though he was not working at Ahmednagar Medical College, the Authorities at the Rural Medical College, Loni asked him to remain present during the inspection of the said College in December 2002. Learned Counsel, therefore, submit that on the petitioner's own admission, the impugned order needs to be upheld.

8] A perusal of the material on record would reveal that what the petitioner was asked to show cause, was, as to how he was physically present in the year December 2002 in Ahmednagar Medical College as well as Somaiyya Medical College. The petitioner was not called upon to show cause as to how he was shown at Ahmednagar Medical College as well as Loni Medical

College. It could be thus be clearly seen that the material which was taken into consideration by the respondents is not the one for which the petitioner was put to notice.

9] Insofar as allegations with regard to the petitioner being shown at both Ahmednagar and Somaiyya College is concerned, the documents placed on record would clearly reveal that the petitioner was working in Ahmednagar college till December 2002 and thereafter was appointed in Somaiyya college since February 2003. The documentary evidence placed on record by the petitioner in support of these submissions has not at all been taken into consideration by the respondent Council. In that view of the matter, we find that the impugned order is not sustainable in law. The same is therefore, quashed and set aside. Rule is made absolute in terms of prayer clause (b).

(SMT.BHARATI H. DANGRE, J)

(B.R.GAVAI, J.)