Item No. 2
(Video Conferencing)

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P. (C) No. 381 of 2020

Dr. Hijam Apabi, aged about 58 years, S/o. (L) H. Ibotombi Sigh, a resident of Thangmeiband Khuyathong Polem Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur, now working as Associate Professor, Department of Paediatrics, JNIMS, Porompat

……. ***Petitioner***

- Versus –

1. The State of Manipur represented by the Chief Secretary, Government of Manipur, office at Old Secretariat South Block, Babupra, P.O. & P.S. Imphal, Imphal-West, Manipur – 795001.
2. The Principal Secretary / Commissioner / Secretary (Health & FW), Government of Manipur, office at Secretariat Imphal, Babupara, P.O. & P.S. Imphal, Imphal-West, Manipur-795001.
3. The Commissioner / Secretary (DP), Government of Manipur, office at Secretariat Imphal, Babupara, P.O. & P.S. Imphal, Imphal West, Manipur-795001.
4. The Jawaharlal Nehru Institute of Medical Sciences through its Director, JNIMS, office at JNIMS Complex, A-Block, P.O. & P.S. Porompat, Imphal-East, Manipur – 795005.
5. The Medical Council of India through its President /Secretary, MCI, Sector 8, Pocket 14, Dwarka Phase I, New Delhi – 110077.
6. Dr. Ng. Javan, aged about 44 years, s/o Late V. Ngaopuni, a resident of Poumai Colony, P.O. Lamlong, P.S. Heingang, Imphal West District, Manipur – 795001.

…. ***Respondents***

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For petitioner	:	Mr. M. Hemchandra, Sr. Advocate
For respondent No. 1-4	:	Mr. S. Napolean, G.A.
For respondent No. 5	:	Mr. BR Sharma, Advocate
For respondent No. 6	:	N. Ibotombi, Sr. Advocate
Date of Order	**:**	**06.08.2020**

ORDER

[1] Heard Mr. M. Hemchandra, learned senior counsel appearing for the petitioner, Mr. S. Napolean, learned Government Advocate appearing for respondent 1-4 (State respondents 1-3 as well as respondent No. 4/JNIMS), Mr. BR Sharma, learned counsel appearing for respondent No. 5/MCI and Mr. N. Ibotombi, learned senior counsel appearing for respondent No. 6.

The case was heard at length on 15.07.2020, 16.07.2020, 30.07.2020, 31.07.2020, 03.08.2020 & 05.08.2020. Mr. M. Hemchandra, learned senior counsel for the petitioner submitted his plea on merits and the respondents on maintainability and on merits. The main writ petition itself is taken up for hearing on all aspects by consent of Mr. M. Hemchandra, learned senior counsel for the petitioner, Mr. S. Napolean, learned G.A. for respondent No. 1-4, Mr. BR. Sharma, learned counsel for respondent No. 5 and Mr. N. Ibotombi, learned senior counsel for respondent No. 6. Hence, the writ petition is admitted.

[2] The prayer No. (iv) in the writ petition has been withdrawn pursuant to order dated 31.07.2020 passed in MC[W.P.(C) No. 138 of 2020]. Prayer No. (iv) reads as follows :-

> ***"(iv)*** *To issue a writ in the nature of Mandamus/Certiorari or any other appropriate writ / directions / orders, directing the respondents not to revoke the Orders dated 06-08-2015 pertaining to appointment by promotion as Associate Professor(s) in JNIMS in pursuance of the impugned letter dated 13.06.2020, in view of the facts and circumstances of the present petition."*

Therefore, the only prayer remains is prayer No. (iii) which reads as follows :-

> ***"(iii)*** *To issue a writ in the nature of Certiorari / Mandmus or any other appropriate writ /directions / orders, directing the respondents to quash and set-aside the impugned letter No. MCI-12(1)/2020-TEQ/104446: dated 13-06-2020 (AT ANNEXURE-A/12) and any further consequential Orders/ Letters in pursuant to the said*

impugned letter dated 13-06-2020, in view of the facts and circumstances of the present petition."

[3] The writ petition has been filed challenging the proceeding of the Board of Governors in Supersession of Medical Council of India dated 12.06.2020 / 13.06.2020 (Annexure-A/12). This impugned order has several dates. As per the prayer in the writ petition and Annexure-A/12, the impugned order is dated 13.06.2020, whereas Mr. BR Sharma, learned counsel appearing for the MCI confirms from the MCI that the correct date is 12.06.2020. The said impugned order (Annexure-A/12) reads as follows :-

"BOARD OF GOVERNORS
IN SUPPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2020-TEQ/104446

Dated : 12.06.2020
13.06.2020

The Director,
Jawaharlal Nehru Institute of Medical ScienceS,
Porompat,
Imphal – 795005

Subject : - Clarification related in the Research Publication
Sir,

With reference to your e-mail letter dated 13/05/2020, on the subject noted above, I am directed to state that the letter No. MCI-12(1)/2019-TEQ/189339 dated 12/02/2020 issued to DGAFMS, New Delhi with regard to clarification related to research publications is general in nature and is applicable to all the medical colleges in India.

The issues with approval of the Secretary General, BoG, MCI.

Yours faithfully,
Sd/-
(B.D. Jain)
Assistant Secretary"

[4] On 16.07.2020 before admission, this Court passed the following interim order :-

"Heard Mr. M. Hemchandra, learned senior counsel for the petitioner.

Mr. B.R. Sharma, learned counsel for respondent No. 5 shall take instructions with regard to the discrepancies pointed out by the petitioner in the letter dated 12.2.2020, (Annexure-A-8 Colly) as well as with regard to the transition period for Associate Professor and type of publication acceptable during the transition period.

List matter again on 27.7.2020.

In the meantime, respondents are directed not to declare the result of the DPC the result of the DPC that is scheduled to be held on 18.07.2020.

Furnish a copy of this order to learned counsel for the parties through their respective e-mails."

[5] The case was listed before this Bench as the Presiding Judge was assigned special sitting in election petitions. It was heard on the following dates (i.e.) on 15.07.2020 and 16.07.2020, and thereafter, before this Bench on 30.07.2020, 31.07.2020, 03.08.2020 & 05.08.2020. Pursuant to the order of the Court dated 16.06.2020, Mr. BR Sharma, learned counsel appearing for MCI has submitted a set of documents by e-mail on 29.07.2020 with clarification dated 24.07.2020 issued by the MCI which is taken up on record. Mr. S. Napolean, learned G.A. has filed an order dated 27.07.2020 issued by JNIMS, showing disposal of petitioner's representation dated 04.06.2020. This is in response to the direction of the Court in W.P. (C) No. 262 of 2020 dated 16.06.2020. Mr. S. Napolean, learned G.A. has also filed letter dated 05.08.2020 written by Director, JNIMS enclosing some documents which were already filed by the writ petitioner. Mr. N. Ibotombi, learned senior counsel appearing for respondent No. 6 filed order dated 06.08.2015 and order dated 25.10.2016 issued by JNIMS which are the subject matter of earlier litigation and relates to claim of respondent No. 6. The petitioner has filed additional

affidavit dated 02.08.2020 enclosing Annexure-A/14 to Annexure-A/18. These are taken on record after service on the other side's counsel.

FACTS IN BRIEF

[6] The petitioner in this case was appointed as an Assistant Professor in the Department of Paediatrics, vide order No. JNIMS/TS-1/4/08 (Pt. I): dated 17.12.2011 issued by the Director & Member Secretary, JNIMS Society, Porompat and he was subsequently regularized. Thereafter, vide order No. 01/171/DPC/JNIMS/2014(Pt.I): dated 03.03.2016 issued by the Director, JNIMS, the petitioner was appointed on promotion as Associate Professor in Paediatrics Department, JNIMS as per the recommendation of DPC held on 02.03.2016. These facts are recorded subject to clarification based on records.

[7] The petitioner's initial grievance is that in terms of the letter No. 12/61/2020-M(JNIMS): dated 12.03.2020 (Annexure-A/3) issued by the Deputy Secretary (Health & FW), Govt. of Manipur, his plea for "Time Scale Promotion Scheme for Teacher of JNIMS" should be taken up. The petitioner claims that he being an Associate Professor in the Department of Paediatrics, JNIMS, is eligible and within the zone of consideration for up-gradation to the next higher level or scales on the basis of critical assessment as per "Time Scale Promotion Scheme for Teachers (Assistant Professor and Associate Professor) of JNIMS.

[8] Since his case was not considered as recorded in Para [7] above, he filed W.P. (C) No. 262 of 2020 praying for implementing the Time

Scale Promotion Scheme. In addition, he also prayed for a relief to publish inter-se department seniority and in prayer No. (v) to get some clarification from MCI while reviewing promotion order dated 06.08.2015. It will be relevant to point out that the prayer No. (v) is relating to third parties, none of them were arrayed as respondents in W.P. (C) No. 262 of 2020. As to why prayer (v) was inserted in a claim for Time Scale Promotion, is a moot question, however, an omnibus writ petition was filed on the basis of a representation dated 04.06.2020 seeking several reliefs. This representation dated 04.06.2020 is the basis of the subsequent events and further litigation and the present one as well. Without going into the merits and the nature of relief sought for in W.P.(C) No. 262 of 2020, following order was passed on 16.06.2020 :-

> *"Heard Mr. M. Hemchandra, learned senior counsel assisted by Mr. Juno Rahman, learned counsel for the petitioner. Also heard Mr. Napolean, learned G.A. appearing on behalf of JNIMS as well as State respondents and Mr. B.R. Sharma, learned standing counsel for the Medical Council of India.*
>
> *The present writ petition has been filed with the following prayers:*
>
> *" In the premises stated herein above, it is therefore, most respectfully prayed that Your Lordship's be gracious enough:-*
>
> *(i) To admit the present writ petition;*
> *(ii) To issue rule nisi calling upon the respondent to show cause as to why prayer made by the petitioner shall not be granted in the facts and circumstances of the present petition;*
> *(iii) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/directions/orders, directing the respondents to implement/execute "Time Scale Promotion Scheme for Teachers (Assistant Professor and Associate Professor) of JNIMS", conveyed vide Govt. approval Letter No. 12/61/2020-M(JNIMS): dated 12.03.2020 issued by the Deputy Secretary (Health & FW), Govt. of Manipur, with effect from 12.03.2020 immediately, in view of the facts and circumstances of the present petition;*
> *(iv) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/directions/orders, directing the respondents to publish/make known the inter-*

se/interdepartmental seniority list of Associate Professors in JNIMS as on 12.03.2020 as per Seniority Rules incorporated under JNIMS Service Rules, 2015.

(v) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/directions/orders, directing the respondents to incorporate MCI Clarification on Letters dated 30.06.2015, 03.09.2015, 10.12.2015, 31.01.2016 & 12.02.2020 while making final decision on reviewing the Promotion Order dated 06.08.2015 and review the same after obtaining written clarification about the irregularities/ anomalies found out mainly in the letter No. MCI-12(1)/2019-TEQ/189338-39: dated 12.02.2020 from the Medical Council of India (MCI).

(vi) To issue a writ in the nature of Mandamus/ Certiorari or any other appropriate writ/ directions/orders, directing the respondents to consider and dispose of reason and speaking order within stipulated period of time.

(vii) If no cause is shown or insufficient cause is shown, make the rule absolute;

(viii) To call for the entire relevant records;

(ix) To pass any order/writ/directions which the Hon'ble Court deem fit and proper in the facts and circumstances of the present case."

Learned senior counsel appearing for the petitioner submits that the petitioner for redressal of his grievances had made a detailed Representation dated 04.06.2020 before the concerned authorities which is still pending for disposal and therefore, at this stage, the petitioner will be satisfied if a direction is given to the respondents to consider and dispose of the representation at an early date.

Learned senior counsel for the petitioner further submits that this Court by an Order dated 01.06.2020 had disposed of WP(C) No. 177 of 2017 along with 4 (four) other analogous matters wherein a direction was issued to the respondents to consider for reviewing the Order dated 25.10.2016 by taking into consideration the Clarifications dated 03.09.2015, 10.12.2015 & 12.12.2020 within 45 (forty five) days from the date of receipt of the said Order. He submits that the same would prejudice the case of the present petitioner if a proper consideration is not made by the concerned authorities.

Mr. Napolean, learned G.A. appearing on behalf of the JNIMS as well as the State respondents has furnished a Letter dated 15.06.2020 addressed to him which contains the parawise instructions with regard to the present case wherein it is indicated that considering the Order dated 01.06.2020 passed in WP(C) No. 177 of 2017 and 4 (four) other analogous writ petitions, the respondents had sought for clarification regarding the Letter dated 12.02.2020 and consequently, they have received a reply by way of Communication dated 10.06.2020 which mentions that the clarifications made in the Letter dated 12.02.2020 is general in nature and is applicable to all the colleges in India.

(emphasis supplied)

> *Be that as it may, as the prayer of the petitioner is limited at this stage for consideration of this Representation dated 04.06.2020, this writ petition is disposed with a direction to the respondents particularly, respondent Nos. 1 & 4 that while considering the case of the petitioners in WP(C) No. 177 of 2017 and 4 (four) other analogous matters the Representation dated 04.06.2020 made by the present petitioner be also considered by also taking into consideration the Communication dated 12.03.2020 written by the Deputy Secretary (Health & FW), Government of Manipur to the respondent No. 4.*
>
> *With the above observations and directions, writ petition is disposed of.*
>
> *Furnish a copy of this Order to the learned counsel appearing for all the parties through their respective e-mails."*

[9] The operative portion of the above order makes it clear that the petitioner has made a representation on 04.06.2020 which has been enclosed to this writ petition (Annexure-A/10) which is marked to 5 persons, namely, (i) The Chief Secretary, Government of Manipur, (ii) The principal Secretary/Commissioner/Secretary (Health & FW), Govt. of Manipur (iii) The Commissioner/Secretary (DP), Govt. of Manipur (iv) The Director, JNIMS (v) The President/Secretary, Medical Council of India (MCI). This representation is very relevant to the present case but it will be dealt with in detail later on. As highlighted, on a simple statement of senior counsel to consider the representation, the writ petition was disposed of with the direction to dispose of the representation. W.P. (C) No. 262 of 2020 was closed without going into the merits. Prayer No. (v) relates to third parties who were not added or heard.

[10] Earlier, respondent No. 6 herein and others have filed W.P. (C) No. 177 of 2017, W.P. (C) No. 176 of 2017, W.P. (C) No. 178 of 2017, W.P.

(C) No. 179 of 2017 and W.P. (C) No. 1001 of 2018. By a common order dated 01.06.2020, the above writ petitions were disposed of as follows :-

> *"Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. Boboy Potsangbam, learned counsel appearing for the petitioner in WP(C) No. 177 of 2017, WP(C) No. 176 of 2017 and WP(C) No. 1001 of 2018. Also heard Mr. P. Tomcha, learned counsel for the petitioner in WP(C) No. 178 of 2017 and WP(C) No. 179 of 2017, Mr. Napolean, learned G.A. appearing on behalf of the respondent Nos. 1 & 2 and Mr. B. R. Sharma, learned counsel for the Medical Council of India (MCI) respondent No. 3.*
>
> *As all the writ petitions have common cause of action and the reliefs sought for being identical, they are being disposed of by this common Order.*
>
> ***The petitioners in all the writ petitions are challenging the Order dated 25.10.2016 issued by the Director of Jawaharlal Nehru Institute of Medical Sciences (JNIMS), Porompat, Imphal West, Manipur by which the JNIMS earlier Order dated 06.08.2015 were cancelled and their appointment on promotion has been made with effect from 07.10.2016 as Associate Professor in the JNIMS in the pay scale of PB Rs. 37400 – 67000 + GP Rs. 7000.*** *The petitioners are also praying for a direction to review the Orders dated 06.08.2015 in order to be appointed to the post of Associate Professor with effect from the date of eligibility. The further grievance of the petitioners in the writ petitions is that the Letters dated 30.06.2015, 22.07.2015 and 31.01.2016 written by one Dr. Seema Madan, Consultant (P.G.)/ respondent No. 4 in WP(C) No. 177 of 2017, is not the authorized person of the Medical Council of India (MCI).*
>
> *It is the case of the petitioners that the Medical Council of India (MCI) by Letter dated 03.09.2015 had clarified that with regard to research publications in the matter of promotion for teaching faculty in a medical college/ institution. Further, clarification was issued by the Medical Council of India in its Letter dated 10.12.2015 that the MCI Circular dated 03.09.2015 will be applicable prospectively and only to those research papers/ promotions that have been published/ taken place after 03.09.2015.*
>
> ***(Emphasis supplied)***

The petitioners have also filed an additional affidavit dated 24.02.2020 before this Court annexing a Letter dated 12.02.2020 (Annexure A/ 20) and the said Letter is reproduced hereinbelow:

"BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2019-TEQ/189338-39 *Date 12-02-2020*

The DGAFMS,
Ministry of Defence,
O/o DGAFMS/DG-1D,
'M' Block, New Delhi- 01

Subject :- Clarification related to the Research Publications.

Sir,

With reference to your letter No. 38217/NITI Aayog/DGAFMS/DG-1D dated 05.09.2019, on the subject noted above, I am directed to inform you that the regulation regarding publication are given as below :-

Type of Publications	***Before 24/7/2009***	***24/7/2009 – 02/11/2010***	***03/11/2010– 02/09/2015***	***03/09/2015– 07/06/2017***	***08/06/2017 – Onwards***
Research Papers	*Any authorship*	*First author only*	*First or second author*	*First or second author*	*First or corresponding author*
Case series or case report	*-do-*	*-do-*	*-do-*	*Not accepted*	*Not accepted*
Review Articles	*-do-*	*-do-*	*-do-*	*Not accepted*	*Not accepted*

- *With effect from 03/09/2015 only indexed journals (Circular No. MCI-12(1)2015-TEQ/131880 dated 03.09.2015) are accepted. E-journals are not accepted.*

"BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

- *The transition period for Professor is four years from 24.07.2009 to 24.07.2013 and for Assoc. Professor is also four years from 24.07.2009 to 24.07.2014.*
- *Thus the type of publications acceptable during transition period are given in the table above.*
- *It is further stated that the current regulations do not provide for relaxing regulations retrospectively, as a four years transition period has already been provided for.*

This issue with the approval of Competent Authority.

Yours faithfully,
(Sd/-)
(B.D. Jain)
Assistant Secretary."

Learned senior counsel for the petitioner submits that the Letter dated 12.02.2020 clearly indicates that the transition period for Professor is 4 (four) years from 24.07.2009 to 24.07.2013 and for Associate Professor is also 4 (four) years from 24.07.2009 to 24.07.2014 and the table in the Letter dated 12.02.2020 clearly indicates the regulations regarding publications. In that view of the matter, he submits that the petitioners would be satisfied if a direction is issued to the respondent No. 1 to consider for reviewing of the Order dated 25.10.2016 by taking into consideration the clarifications dated 03.09.2015, 10.12.2015 and the Letter dated 12.02.2020.

Mr. Napolean, learned G.A. appearing on behalf of respondent Nos. 1 & 2 has no objections if such a direction is issued for consideration.

Considering the consensus arrived at by the learned counsel for the parties, all these writ petitions are accordingly disposed of by directing the respondent No. 1/ JNIMS to consider for reviewing the impugned Orders dated 25.10.2016 by taking into consideration the Clarifications dated 03.09.2015, 10.12.2015 & 12.02.2020 within a period of 45 (forty five) days from the date of receipt of a copy of the Order of this Court.

Furnish a copy of this Order to all the learned counsel appearing for the parties through their respective e-mails.

In these cases, there was no necessity to add the present petitioner, as he is in no way, concerned with the review DPC proceedings. His name is not in the review DPC list. It is the claim of the third party. They also seek no relief against the present petitioner, Dr. Hijam Apabi.

[11] A reading of the above order makes it clear that the petitioners in those cases were aggrieved by order dated 25.10.2016 issued by the Director, JNIMS, whereby the earlier order dated 06.08.2015 was cancelled and their appointment on promotion has been made with effect from 07.10.2016 as Associate Professor in JNIMS. The order in those writ petitions was to review that impugned order dated 25.10.2016. In the order dated

25.10.2016, the petitioner's name does not figure and therefore, he cannot be a person aggrieved.

[12] In the present writ petition, the order dated 25.10.2016 issued by the Director, JNIMS is referred to and argued by Mr. M. Hemchandra, learned counsel for the petitioner. It was not filed as a document by the petitioner. However, Mr. N. Ibotombi, learned senior counsel appearing for respondent No. 6 forwarded the said order dated 25.10.2016 to the Registry and it is now placed before this Court. The said order dated 25.10.2016 reads as follows :-

"J.N. INSTITUTE OF MEDICAL SCIENCES
POROMPAT, IMPHAL

O R D E R S
Imphal, the 25th October, 2016

No. : 1/367/Review of Faculty Promotion / JNIMS/2016; Whereas a DPC Meeting was held on 05-08-2015 in the office chamber of the Chief Secretary, Government of Manipur, for consideration of eligible candidates for promotion to 4 (four) vacant posts of Associate Professors in the Department of Surgery in JNIMS.

And whereas, the said DPC recommended the name of Dr. Ng. Javan for promotion to the vacant post of Associate Professor, Department of Surgery in JNIMS. Pursuant to the recommendation of the said DPC, Dr. Ng. Javan was promoted to the post of Associate Professor (Surgery), vide order bearing No. 01/171/DPC/JNIMS/2014 dated 06.08.2015;

And whereas, the Medical Council of India pointed out certain irregularities in giving promotion to the post of Professor and Associate Professor pursuant to the recommendation of the DPC held on 05-08-2015, vide MCI's letter bearing No. MCI-100(22)/2015-MED/163419 and No. MCI-100(22)/2016-MED/163424 both dated 31-01-2016;

And whereas, a screening committee was constituted to examine the eligibility or otherwise of the doctors who have been promoted on the basis of the recommendation of the DPC held on 05-08-2015 and on subsequent dates, vide notification bearing No. 1/367/Review of Faculty Promotion/JNIMS/16 dated 19-07-2016 issued by the office of Director, JNIMS;

And whereas, the screening committee in its meeting held on 17-09-2016 examined the proceeding of the DPCs held on 05-08-2015, 27-11-2015 and 02-03-2016 and the relevant documents and submitted a detail report/finding to the effect that one Professor and ten Associate Professors did not possess the required number of publications as per the

applicable MCI Regulations at the time of holding the DPC Meetings and that they possessed the required number publications only after the DPC Meetings were held. Further, it was also reported that five Associate Professors did not possess the prescribed number of indexed original articles as per the applicable MCI Regulations till date. Accordingly, the screening committee recommended for holding a Review DPC in terms of the applicable/relevant MCI Regulations;

And whereas, on receiving the report of the screening committee, the matter was put up and examined by the appropriate authorities of JNIMS at the highest level and it was decided to hold a DPC meeting to review the proceedings of the earlier DPC Meetings held on 05-08-2015, 27-11-2015 and 02-03-2016, since the said DPCs did not consider the eligibility of the candidates in terms of the relevant MCI regulations as contained in MCI's letters bearing No. MCI-100(22)/2015-MED/118926 dated 30-06-2015, No. MCI-23(1)/2015-MED/123069 dated 22-07-2015 and No./MCI-12(1)/2015-TEQ/131880 dated 03-09-2015;

And whereas, a Review DPC Meeting was held on 06-10-2016 to review the recommendations made by the earlier DPCs held on 05-08-2015, 27-11-2015 and 02-03-2016 and the said DPC recommended Dr. Ng. Javan for promotion to the post of Associate Professor (Surgery) w.e.f. 07-10-2016 only, as he did not have the required number of publications as per the applicable MCI Regulations at the time of holding the earlier DPC Meeting.

And whereas, a show cause notice dated 17th October, 2016 was issued to Dr. Ng. Javan, directing him to submit a show cause in writing as to why his earlier promotion orders bearing No. 01/171/DPC/JNIMS/2014 dated 06.08.2015 promoting him to the post of Associate Professor (Surgery) should not be cancelled and why he should not be given promotion to the post of Associate Professor w.e.f. 07-10-2016 as recommended by the Review DPC.

And whereas, Dr. Ng. Javan submitted his show cause in writing on 24.10.2016. After examination of his show cause notice and after detailed consideration of the entire matter, the President, JNIMS, Porompat, Imphal, hereby cancelled this Institute's earlier orders bearing No. 01/171/DPC/JNIMS/2014 dated 06.08.2015 and appoints on promotion Dr. Ng. Javan as Associate Professor in the department of Surgery, JNIMS in the pay scale of PB Rs. 37400-67000+GP Rs. 7000 with effect from 07/10/2016.

By orders and in the name of the
President, JNIMS

Sd/-
(Prof. L. Deben Singh)
Director, JNIMS"

[13] As observed earlier, the order dated 25.10.2016 relates to Dr. Ng. Javan, respondent No. 6 herein (caveator) and hence the review DPC will relate to him only. It has no connection with the present writ petitioner. In compliance with the direction of this Hon'ble Court in the batch of writ petitions disposed of on 01.06.2020 as extracted above, review DPC was to be held and while the review DPC was under process, the present writ petition has been filed challenging Annexure-A/12 stating that this clarification is bad because the MCI has not clarified the correct position in terms of the petitioner's representation dated 04.06.2020. It is to be pointed out that this impugned clarification letter dated 12.06.2020 / 13.06.2020 (Annexure-A/12) was at the instance of JNIMS in response to an email dated 13.05.2020.

[14] Mr. M.Hemchandra, learned senior counsel appearing for the petitioner pleaded that the impugned clarification (Annexure-A/12) runs contrary to Annexure-A/7 and Annexure-A/8. For clarity, Annexure-A/7 and Annexure-A/8 are extracted below :-

ANNEXURE – A/7 (Colly)

MEDICAL COUNCIL OF INDIA

Pocket – 14, Sector – 8, Dwarka, New Delhi – 110077

No. MCI-12(1)/2015-TEQ/131880 *Date 03/09/2015*

To,
The Health Secretary, all the State Govts.
The DMEs, all the States
The Vice-Chancellor, all the Universities
The Director, all the Post Graduate Institutes
The Dean/Principal, all the Medical Colleges

Sub :- Clarification with regard to research publications in the matter of promotion for Teaching faculty in a medical college/institutions.

Sir/Madam,

The matter with regard to "Clarification on research Publications" for promotion to teaching faculty in Medical Colleges/Institutions was considered by the Academic Committee at its meeting dated 14/07/2015, The recommendations of the Academic Committee were approved by the Executive committee at its meeting held on 05/08/2015 and are as under :-

a) ***Indexing agencies :-***
   Scopus, PubMed, Medline, Embase/Excerpta Medica, index medicaus and index Copernicus
b) ***Types of articles to be considered*** *:*
   Original research articles and original research papers.
c) ***Criteria for National/International journal :*** *–*
   Published by a National/International - Specialty Journal/Journal of a National/International Society provided it included in one of the indexes mentioned above.
d) ***Authorship :***
   First author, second author.
e) ***E-journals :*** *e-journals not included.*

The above would also be applicable for "accepted for publication" papers/articles.

In view of above, I am directed to request you to consider the above with regard to research publications in the matter of promotion for teaching faculty in medical college/institutions.

Yours faithfully,
Sd/-
(Dr. Reena Nayyar)
Secretary i/c.

MEDICAL COUNCIL OF INDIA
Pocket – 14, Sector – 8, Dwarka
New Delhi – 110077

No. MCI-12(1)2015-TEQ/155225 *Dated 10/12/2015*

The Dean
AMCMET Medical College
L.G. Hospital Campus, Maninagar,
Ahmedabad.

Subject :- *Clarification for circular dated 3.9.2015 pertaining to research publication in the matter of recruitment for teaching faculty in a medical college/institutions.*

Sir,

With reference to your letter dated 4.12.2015 on the subject noted above, it is to inform you that may kindly refer to the provisions of amendment Gazette Notification dated 24.7.2009 & 15.12.2009 of Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 in regard to transitory period and tenure in research publications. The MCI Circular No. 12(1)2015-TEQ/131880, dated 3.9.2015 will be applicable

prospectively & only to those research papers/promotions that have been published/taken place after 3.9.2015.

It is further to inform you that the research publications are not mandatory for retired/resigned/voluntarily retired from government or other medical colleges in case of their reappointment on the same designation.

This issues with the approval of competent authority.

Yours faithfully,
Sd/-
(Babu Ram Manuwal)"

"ANNEXURE – A/8(Colly)

"BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2019-TEQ/189338-39 *Date 12-02-2020*

The DGAFMS,
Ministry of Defence,
O/o DGAFMS/DG-1D,
'M' Block, New Delhi- 01

Subject :- Clarification related to the Research Publications.

Sir,

With reference to your letter No. 38217/NITI Aayog/DGAFMS/DG-1D dated 05.09.2019, on the subject noted above, I am directed to inform you that the regulation regarding publication are given as below :-

Type of Publications	***Before 24/7/2009***	***24/7/2009 – 02/11/2010***	***03/11/2010– 02/09/2015***	***03/09/2015– 07/06/2017***	***08/06/2017 – Onwards***
Research Papers	*Any authorship*	*First author only*	*First or second author*	*First or second author*	*First or corresponding author*
Case series or case report	*-do-*	*-do-*	*-do-*	*Not accepted*	*Not accepted*
Review Articles	*-do-*	*-do-*	*-do-*	*Not accepted*	*Not accepted*

- *With effect from 03/09/2015 only indexed journals (Circular No. MCI-12(1)2015-TEQ/131880 dated 03.09.2015) are accepted. E-journals are not accepted.*

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- *The transition period for Professor is four years from 24.07.2009 to 24.07.2013 and for Assoc. Professor is also four years from 24.07.2009 to 24.07.2014.*

- *Thus the type of publications acceptable during transition period are given in the table above.*
- *It is further stated that the current regulations do not provide for relaxing regulations retrospectively, as a four years transition period has already been provided for.*

This issue with the approval of Competent Authority.

Yours faithfully,
(Sd/-)
(B.D. Jain)
Assistant Secretary."

[15] Mr. M. Hemchandra, learned senior counsel appearing for the petitioner points out errors in the timeline (i.e) as per chart, the period between 24.07.2009 to 02.09.2015 is six years one month and ten days. However, as per date specified as regards transition period, it is 5 (five) years for Associate Professor. This view is denied as wholly incorrect and misconceived by Mr. BR Sharma, learned counsel for MCI. He states that the petitioner has misunderstood transition period with the type of Research Publication to be submitted during different periods as per chart. Both should not be clubbed together. They operate separately and applied uniformly to all. This inherent fallacy in petitioner's argument has to be rejected. Be that as it may, as per direction of this Court dated 16.06.2020 passed in the earlier case (i.e.) W.P.(C) No. 262 of 2020, M/S JNIMS and M/S MCI will have to clarify on the representation dated 04.06.2020 made by the petitioner. In the meanwhile, after the present writ petition was taken up and an interim order dated 16.07.2020 as above was passed, a clarification as required by Court is given by the MCI on 24.07.2020. According to Mr. BR Sharma, learned counsel representing the MCI, 24.07.2020 letter is a reiteration of the earlier position and there is nothing new in it. It is a detailed clarification to repel the petitioner's misconception. The same plea is taken up by Mr. S. Napolean,

learned G.A. appearing for the State and M/S JNIMS, stating that the clarification dated 24.07.2020 is in no way, different from the earlier MCI notifications or clarifications. On that plea, they pleaded that the writ petition is misconceived as the petitioner is not a person aggrieved and no cause of action arises for him to challenge the clarification (Annexure-A/12). Further the writ petition is premature at the stage of review DPC.

[16] From the above, it is clear that by merely challenging Annexure-A/12 without challenging the earlier notifications or clarifications, no relief can be granted, because

(i) the impugned letter (Annexure-A/12) is only a general clarification for the entire country. The petitioner did not impugn Annexure-A/7 and Annexure-A/8. Hence, the error of Annexure-A/7 & A/8 cannot be tested. Hence, misconception is writ large.

(ii) It does not, in any way, change, modify what has been already issued (i.e.), earlier guidelines, notifications/clarifications etc.

(iii) According to the petitioner, Annexure-A/12 runs contrary to Annexure (A/7 & A/8) Colly. Then, those proceedings should have been challenged, if according to him, they are inconsistent as stated by him and recorded at para [15] above.

(iv) When the representation of the petitioner dated 04.06.2020 has been disposed of by a speaking order dated 27.07.2020, his remedy is to challenge the resultant speaking order, and not seeking a relief of setting aside Annexure-A/12 in a very vague and confusing plea. It

is, therefore, apparent that the writ petition is misconceived, without any legal basis, besides being vague and confusing.

WHETHER THE WRIT PETITOINER IS A PERSON AGGRIEVED

[17] The petitioner is not a person aggrieved because, he is already an Associate Professor, as has been recorded in the earlier portion of the order and he seeks promotion to the higher post. Whereas, in the guise of challenging (Annexure-A/12), the petitioner wants to scuttle the claim of respondent No. 6 and similarly placed Assistant Professors who are seeking position as Associate Professors. He has stalled the Court directed review DPC without a prayer for interim relief. In this case, merely challenging the 'All India clarification' impugned (Annexure-A/12), the petitioner does not establish a case as to how he is a person aggrieved because he is not a party to the review DPC. The petitioner's prayer is for Time Scale Promotion and as to how the impugned proceeding delays his Time Scale Promotion is not explained. It will be pertinent to point out that the petitioner, by his own conduct, by filing MC [W.P. (C)] No. 138 of 2020 got prayer No. (iv) deleted and this relief is against respondent No. 6. In so far as prayer No. (iii) is concerned, it does not in any way deal with Time Scale Promotion. Then, what will be the purpose of challenging the impugned clarification (Annexure-A/12) is not clear. No relief can be claimed in vacuum. Hence, prima facie the petitioner does not qualify to be termed as a person aggrieved.

Assuming without admitting that he will be aggrieved by promotion of private respondent or other, he should have added all of them as party respondents. Respondent No. 6 entered appearance as a caveator. The

next valid objection raised is that as directed by this Court by order dated 16.06.2020 in W.P.(C) No. 262 of 2020, the representation has been disposed of by JNIMS vide order dated 27.07.2020 wherein all the issues raised by the petitioner in his representation dated 04.06.2020 was considered. Therefore, if the petitioner has any grievance, he has to challenge the said order. The representation was disposed of on 27.07.2020 and now, a new cause of action has arisen. The petitioner has to challenge that proceeding if he wants. The present writ petition, as rightly pointed out, has become infructutous because of the subsequent event. Hence, the petitioner is in no way a person aggrieved in respect of the present impugned proceeding (Annexure-A/12).

SCOPE FOR ENTERTAINING THE WRIT PETITION ?

[18] In the above backdrop, this Court has to consider what is the scope of the present petition. After this writ petition was taken up, the representation dated 04.06.2020 has been disposed of on merits on 27.07.2020, a copy which has been served to the petitioner. It is open to the petitioner to challenge the same or deal with it appropriately as he may choose. For the present, we are concerned with the direction issued by this Court on 16.06.2020 in W.P. (C) No. 262 of 2020 specifically making it clear that representation dated 04.06.2020 should be disposed of by respondent No. 1-4. The details of list of respondents in W.P. (C) No. 262 of 2020 are not reflected in the order. Petitioner has not enclosed the writ petition, W.P. (C) No. 262 of 2020. However, Mr. BR Sharma, learned counsel states that MCI appeared in that case.

[19] In the above backdrop, the representation dated 04.06.2020 (Annexure-A/10) of the petitioner becomes relevant. Para 1, 2, 3, 4 & 5 deal with facts of his service and the claim of the petitioner. Para No. 6, 7, 8, 9, 10 & 11 speak about Dr. Javan and how his promotion order is bad. It is also pleaded that the petitioner should be granted Time Scale Promotion under the Time Scale Promotion Scheme without disturbing inter-se seniority. The petitioner's claim / representation dated 04.06.2020 has been considered and disposed of in the proceeding dated 27.07.2020 subsequently. However, the actual core issue that is raised in paragraph 12 and the prayer in the representation dated 04.06.2020 (Annexure-A/10), read as follows :- .

> ***12.*** *That, it may also not be out of place to mention herein that in all the DPCs held in JNIMS for appointment (by promotion) to the post of Associate Professor/Professor, the Selection Committee are headed by the Chief Secretary, Manipur and also Principal Secretary (Health & FW), Govt. of Manipur. Therefore, if the authority is inclined to review the Order dated 25.10.2016 by taking into consideration of the MCI Clarifications dated 03.09.2015, 10.12.2015 & 12.02.2020* ***in view of the Hon'ble High Court's Common Order dated 01.06.2020, the Review Committee shall be constituted along with the Chief Secretary, Manipur/the Principal Secretary (Health & FW), Govt. of Manipur and made final decision thereof only after receiving clarification from MCI with regards to the ambiguity on MCI Clarifications on letters dated 03.09.2015, 10.12.2015 & 12.02.2020 read with MCI letters dated 30.06.2015 and 31.01.2016 stated above. Unless and until, clarification on the aforesaid ambiguity letters dated 03.09.2015, 10.12.2015, 12.02.2020, 30.06.2015 & 31.01.2016 has been made, there will be a patent error on the face of records, which cannot be stand before the eyes of law.***
>
> (***Emphasis supplied)***

> *In view of the factum narrated above, I, the undersigned / applicant, am imploring your good office with the following prayers :-*
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> *(i) To implement/execute "Time Scale Promotion Scheme for Teachers (Assistant Professor and Associate Professor) of JNIMS", conveyed vide Govt. approval letter No. 12/61/2020-M(JNIMS): dated 12.03.2020 issued by the Deputy Secretary (Health & FW), Govt. of Manipur, with effect from 12.03.2020 immediately;*

(ii) To publish/ make known the inter-se/inter-departmental seniority list of Associate Professors in JNIMS as on 12.03.2020 as per Seniority Rules incorporated under JNIMS Service Rules, 2015;

(iii) To incorporate MCI Clarification on letters dated 30.06.2015, 03.09.2015, 10.12.2015, 31.01.2016 & 12.02.2020 while taking final decision on reviewing the Promotion Order dated 06.08.2015, that too after receiving the concrete order/letter from the Medical Council of India (MCI) to Jawaharlal Nehru Institute of Medical Science (JNIMS), Porompat in the interest of Justice.

[20] Let us now consider the above on its own merits. From a reading of the Para 12 of the representation extracted above, it is clear that prayer No. (i) and (ii) are for Time Scale Promotion and publishing of seniority list respectively, in respect of the petitioner. That has been considered and replied in the 27.07.2020 proceedings. In prayer No. (iii), the petitioner states that the final decision as regards respondent No. 6 should be taken by the review committee after receiving clarification from the MCI with regard to ambiguity in letters dated 03.09.2015, 10.12.2015, 12.02.2020 read with MCI letters dated 30.06.2015 and 31.01.2016. As stated earlier, it relates to the claim of review DPC in respect of impleaded respondent No. 6, whose review DPC is kept in abeyance by the interim order of this Court dated 16.07.2020 at the instance of the writ petitioner. What is the say of the petitioner in the case of review DPC of respondent No. 6 is not explained. As to how the petitioner can interfere in the claim of respondent No. 6 is not answered. Therefore, the petitioner is at best an interloper meddling in third party affairs. The representation of the petitioner dated 04.06.2020 has been disposed of by proceeding dated 27.07.2020 and a copy has also been served to the petitioner. It is open to him to work out his remedy, if aggrieved. The petitioner

can have no further say in the third party affairs and therefore, his specious plea has to be rejected.

[21] A specific question was asked to Mr. M. Hemchandra, learned senior counsel for the petitioner that in the representation of the petitioner, there is a statement mentioning ambiguities in MCI's letters, clarifications etc. as to what are those ambiguities. He stated that para 12 speaks about the ambiguities and each of it is ambiguous and inexplicit. Unfortunately, except referring to various MCI letters, there is no specific details as to how each one of these letters or clarifications are ambiguous and in any way, conflicting with each other and thereby affect the petitioner. Unless the petitioner is clear on the nature of ambiguity in the MCI letters or clarifications, no authority will be able to take a decision on a mere statement or plea of ambiguity as stated in the representation. The synonyms for the word 'ambiguous' are cryptic, inconclusive, obscure, uncertain, unclear, vague, inexplicit, unintelligible. If such a statement is made, the petitioner has to make out as to how the MCI clarifications/letters fall under the above stated category of ambiguity. Therefore, what is not properly stated and explained in the representation cannot be answered or replied. A vague plea made in this writ petition alleging ambiguity in the various MCI letters/clarifications cannot be countenanced. While the representation dated 04.06.2020 states about ambiguity in respect of so many documents referred to in para 12 of the representation, the writ petition speaks only about only one clarification dated 12.06.2020 / 13/06/2020 (Annexure-A/12) which is a subsequent event. Therefore, the petitioner has to be clear as to whether the impugned letter (Annexure-A/12)

is ambiguous or the earlier letters/clarifications are ambiguous and confusing according to him. If there is confusion in the mind of the writ petitioner, he alone has to state in a clear and proper manner what is the ambiguity, obscurity, vagueness in the MCI proceedings in the representation before the authority and thereafter seek relief. This Court cannot come to the aid of a person who is himself vague, ambiguous, uncertain, unintelligible and obscure. It is equally difficult for the authority as well to respond on such a vague statement of ambiguity and obscurity. In the above scenario, the question of this Court coming to the aid of the petitioner to set aside the impugned order does not arise. There is no scope of entertaining a writ petition when the petitioner himself is not aware of the ambiguity as such.

WRIT PETITION IS PREMATURE

[22] There appears to be prima facie justification to hold that the writ petition is premature because the review DPC as directed by the High Court by its order dated 01.06.2020 in the batch order has to be completed. It may go in favour of the private respondent or the review DPC may even reject the claim of the private respondent. To pre-empt and stop the review DPC proceeding by calling upon the Court to interdict (Annexure-A/12) appears to be a devious plan on the part of the petitioner to keep private respondent or others at bay. As to how the review DPC will turn out, nobody can say. If it goes in favour of the private respondent or any other persons, it is always open to a truly aggrieved person to challenge the same. Hence, the respondents' preliminary objection that the writ petition is premature is sustained and the writ petition is liable to be dismissed as such.

MALAFIDES

[23] There is another aspect that stares on the face of this case. The petitioner was promoted as Associate Professor on 03.03.2016. He also would have gone through the DPC process based on MCI clarifications/letters. If the petitioner was considered based on the so called ambiguous, cryptic, vague, uncertain letters/clarification dated 03.09.2015, 10.12.2015, 30.06.2015 and 31.01.2016, then the petitioner's DPC is also questionable. The petitioner, having climbed the ladder wants to muddle the soil and sink the ladder so that no other can climb. That appears to be the probable cause behind this litigation. The veiled objection is against the private persons as is evident in the representation dated 04.06.2020 and in earlier writ petition, W.P. (C) No. 262 of 2020 where prayer No. (v) is relating to a third party who was not before the Court. This Court is able to read between the lines and infer malafides

[24] In view of the above findings, there appears to be no basis to entertain this writ petition for the sole relief No. (iii) of setting aside impunged letter (Annexure-A/12). No case is made out for interfering the impugned proceeding as no ambiguity, real or apparent, has been made out.

For all the above stated reasons, the writ petition stands dismissed. No cost.

CHIEF JUSTICE

Sandeep

FR/NFR

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.08.10 10:17:56 +05'30'