

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT
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1. CWP No. 18211 of 2017
Date of decision : 21.1.2021

Dr. Priya Sareen**Petitioner**
Vs.
Panjab University and others**Respondents**

2. CWP No. 12216 of 2017

Dr. Priya Sareen**Petitioner**
Vs.
Panjab University and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Amar Vivek, Advocate, for the petitioner(s)
Mr. Subhash Ahuja, Advocate, for respondent No.2
Mr. Puneet Gupta, Advocate, for respondents No.3, 6 & 8
None for respondent No.4
Mr. R. Kartikeya, Advocate, for respondent No.5
Mr. Sukant Gupta, APP, UT, Chandigarh, for respondent No.7

Rajbir Sehrawat, J. (Oral)

This order shall dispose of CWP No.18211 of 2017 and CWP No.12216 of 2017, wherein the petitioner has challenged the order dated 27.10.2016, whereby; while reviewing the earlier order, the respondent University has granted approval to the appointment of respondent No. 5 as Reader in the Department of Repertory and the order dated 2.8.2017, whereby it has been ordered that date of joining of respondent No.5 as Reader in Department of

Repertory be considered as 18.2.2013; and also the order dated 25.11.2012 for appointing respondent No.5 as Reader in 'Case Taking and Repertory (CTR).

The facts which are common to both the petitions are that the respondent No. 3 is running a homeopathic college and hospital in Chandigarh for conducting the under graduate courses in Homeopathy. The said college is regulated by the Central Council of Homoeopathy, the respondent No.4. For providing the staff requirements and the minimum standards of education, the Central Council of Homoeopathy have promulgated the regulations called Homoeopathy (Minimum Standards of Education) Regulations, 1983 (in short 'the regulations'), which have been amended from time to time, and has culminated into the Regulations of 2013.

The claim of the petitioner is that she had obtained MD Degree (in Repertory) in homoeopathy from Baba Farid University of Health Sciences in the year 2007. Thereafter, having undergone proper procedure of selection, the petitioner was appointed as Lecturer in the Department of Case Taking and Repertory (CTR) vide letter dated 27.3.2009. Since then the petitioner was working as such. Later on the petitioner was confirmed as Lecturer in Repertory w.e.f. 1.4.2010. This appointment and confirmation of the petitioner was duly approved by the respondent University vide letter dated 15.3.2011.

On the other hand, respondent No. 5 was working as demonstrator with respondent No. 3 college since 6.8.2002. Later on, she was appointed as Lecturer in Obstetrics and Gynaecology on ad hoc basis in the year 2007. When the post of Lecturer in Repertory was advertised in the year 2009, respondent No. 5 had also competed for that post alongwith the petitioner. However, she was found to be lower in merit as compared to the petitioner. Hence, she was not selected. But she had also applied for post of Lecturer in the Department of Obstetrics and Gynaecology in the year 2009. Accordingly, she was selected as Lecturer in the

Department of Obstetrics and Gynaecology and she submitted her joining as Lecturer on regular basis in the Department of Obstetrics and Gynaecology on 1.4.2009. Since then she had been working as Lecturer in Obstetrics and Gynaecology in continuation.

To fulfill the norms of teaching staff in the college, the respondent No.3, Governing Body of the respondent college advertised one post of Reader in the Department of Case Taking and Repertory. The petitioner, as well as, respondent No. 5 both applied for the said post. Their applications were scrutinized by the duly constituted Scrutiny Committee. The Scrutiny Committee; in its meeting held on 21.2.2012 found both, the petitioner, as well as, the respondent No. 5, to be ineligible for the post and the same was duly recorded in its proceedings. However, later on superseding the decision of the Scrutiny Committee, the governing body-respondent No.3, took a decision that all those candidates who had applied for the post of Reader in Repertory, be called for interview; irrespective of their eligibility as determined by the Scrutiny Committee. Accordingly, the petitioner, as well as, respondent No. 5 were called for interview. For conducting the selection, a statutory Selection Committee was required to be formulated, which was to include subject experts. Accordingly, the respondent college had requested the respondent University to nominate the subject experts as members of the Selection Committee. The respondent University had nominated the subject experts. However, the respondent college objected to the names of the persons nominated by the respondent university and further requested to the respondent University to change the subject experts and nominate some subject experts from near about Chandigarh. Accordingly, the respondent University changed and nominated other members as the subject experts. Thereafter, the Selection Committee conducted the selection proceedings and its proceedings were recorded on 25.11.2012. As per the recorded proceedings although the Selection

Committee is shown to have recommended the selection panel in order of merit, which contained the name of persons selected in other subjects, as well as, the name of respondent No. 5 for the post of Reader in the subject of Repertory, however, the University nominee/subject experts had given their dissent note in the recorded proceedings itself; and it was written by them that the respondent No.5 was not approved by the University as a Lecturer in the subject of Repertory and hence, she cannot be selected as Reader in the subject of Repertory. Accordingly, the subject experts/University nominee had found the experience of respondent No. 5 to be not in conformity with the experience prescribed by the advertisement.

The proceedings of the Selection Committee were sent by the respondent college to the University for approval. However, the Vice Chancellor, while approving the appointment of other persons selected for other subjects in the same proceedings, had ordered that the approval of respondent No. 5 be kept in abeyance. Later on, the Vice Chancellor even declined approval to the selection of respondent No. 5. Accordingly, the university communicated to the respondent college, vide letter dated 19.2.2013 that the Vice Chancellor has not approved the appointment of respondent No. 5 as Reader in the subject of Repertory. But in the meantime, the Secretary of the respondent Governing Body had issued appointment letter to respondent No. 5 on 18.2.2013, as Reader in the subject of Repertory; pursuant to her alleged selection. However, since on the very next day, the Vice Chancellor had declined approval to the selection of respondent No. 5 and the disapproval was communicated by the university, therefore, the governing body of respondent college withdrew the appointment of respondent No. 5 as Reader in Repertory, vide letter dated 6.7.2013. However, the very next day, this letter of withdrawal of appointment was withdrawn by the Secretary vide communication dated 7.7.2013. Respondent No. 5 filed a civil suit challenging the decision of the university. But since the civil Court had not granted any interim

order in favour of respondent No. 5, therefore, the suit was withdrawn by her and she filed CWP No. 5043 of 2013 before this Court. Even this Court did not grant any interim relief to respondent No. 5 against the decision of the respondent University. However, the said writ petition stands admitted and is pending adjudication.

Subsequently on the basis of her seniority; and through the process of selection, the petitioner was promoted as Reader in the subject of Repertory and she joined as such and submitted her joining report on 1.2.2014. Since then, she has been continuing as such. Being senior most in the department of Case Taking of Repertory, the petitioner was designated as Head of the Department. She continued as such. Likewise, respondent No. 5 was also promoted as Reader in her own department of Obstetrics and Gynaecology and she was also designated as Head of the Department Obstetrics and Gynaecology; vide letter dated 23.6.2015. She also continued as such in her own department. Their respective promotions and designations, as such, were duly approved by the University.

Later on; respondent No. 5 made a representation dated 7.12.2015 to the President of the governing body of the respondent college, raising therein the issues related to the internal 'promotion policy', which was , allegedly, being violated by the Principal of the respondent college. It was claimed in that representation that although the case of the petitioner for promotion, on the basis of appointment as Reader in Repertory by way of direct recruitment stands rejected by the Vice Chancellor, however, since the Principal of the respondent college was illegally permitting several other persons to continue on the post of Reader by framing an illegal promotion policy, therefore, she should also be permitted to continue as Reader in the subject of Repertory. Certain other allegations were also leveled against the Principal of that college. Respondent No. 5 had also sent the copy of this representation to the Vice President of India; being the Chancellor of

respondent University. The copy of this representation, as received in the office of Vice President of India, was sent to the Vice Chancellor of Panjab University for examination and for sending a response to respondent No. 5 directly. Beyond that the office of the Vice President of India-cum-Chancellor had not said anything on the issue. On this representation, the respondent University again called for comments of the respondent college. The University also constituted some committee on its own level and thereafter, the university issued the impugned letter dated 27.10.2016, whereby, while reviewing the earlier order dated 19.2.2013, the university had communicated to the respondent college that the Vice Chancellor had approved the selection and proceedings of the Selection Committee dated 25.11.2012; to appoint respondent No. 5 as Reader in the Repertory w.e.f. her date of joining. Against this decision, the petitioner had made a representation to the respondent University; stating therein that the petitioner was already promoted as Reader in the Department of Repertory and that respondent No. 5 was already working as Reader in another department of Obstetrics and Gynaecology since 3.2.2014, therefore, there was no basis or rationale for approving the appointment of respondent No. 5 as reader in Department of Repertory. Accordingly, it was requested that the order dated 27.10.2016 be withdrawn by the university. The respondent No. 5 also wrote a letter dated 23.12.2016 to the principal of the college, with copy to the university; stating therein that since she had earlier joined on the post of Reader in the Repertory on 18.2.2013, therefore, she was submitting her joining report as Reader in the subject of Repertory w.e.f. the same date. This joining report and request of respondent No. 5 was again sent by the respondent college to the university as well. Accordingly, the respondent University communicated to the respondent college, vide its letter dated 2.8.2017 that the date of joining of respondent No. 5 as Reader in Repertory be considered as 18.2.2013.

Therefore, this order of the respondent University made the respondent No. 5 as

senior Reader in the Department of Repertory. Hence; challenging both the orders; the order of reviewing the earlier disapproval, as well, as the order granting the status of Reader to respondent No. 5 in Repertory w.e.f. 18.2.2017; this petition has been filed by the petitioner.

While arguing the case, the counsel for the petitioner has submitted that the advertisement in question was issued by the respondent University on 15.12.2011; which prescribed Post Graduate qualification in Homoeopathy with 4 years teaching as experience as Lecturer in the concerned subject. Respondent No. 5 has obtained her post graduate degree in Homoeopathy only in the year 2010, therefore, it is obvious that respondent No. 5 was not having 4 years teaching experience after acquisition of the post graduate qualification in Homoeopathy. Therefore, she was clearly ineligible. Accordingly, the Scrutiny Committee had found respondent No. 5 to be ineligible for the post of Reader in Repertory. It is only under the influence of respondent No. 8 Dr. P.K. Mittal, who was member of Executive Committee and Secretary of the governing body at the relevant time; that the respondent No. 5 was called for interview despite she having been declared as ineligible by the Scrutiny Committee. Respondent No. 5 neither possessed 4 year teaching experience after post graduate qualification in Homoeopathy nor did she possess 10 year experience as Lecturer in Repertory after graduation degree in Homoeopathy, as was required alternatively in the qualification as prescribed in the advertisement. Hence, respondent No. 5 was totally ineligible for the post of Reader. It is further submitted that although the name of respondent No. 5 was written as recommended candidate in the proceedings of the Selection Committee, however, both the subject experts, duly nominated by the university; had not agreed with the eligibility of respondent No. 5. Hence, they had refused to agree to the selection of respondent No. 5 as Reader in the subject of Repertory.

Accordingly, earlier; the university had rightly declined the approval to the

appointment of respondent No. 5. However, since respondent No. 8 was manipulating the entire things and was bent upon introducing respondent No. 5 in the Department of Repertory somehow or the other, therefore, without any authorization of the Governing Body of the college, in his capacity as 'Secretary' only, he had issued appointment letter to respondent No. 5 on 18.2.2013; knowing fully well that the approval to the selection of respondent No. 5 had not been given by the university. The very next day, on 19.2.2013, the university had even conveyed the disapproval to the selection of respondent No. 5. Despite communication of that approval, she was permitted to continue on the post of Reader in Repertory without any legal basis. Although the governing body had decided to withdraw the appointment of respondent No. 5 as Reader in Repertory on 6.7.2013, however, on very next day even that communication was withdrawn by respondent No. 8; again without any authority. This shows the concerted efforts of interested elements in the management, to unduly favour respondent No. 5 and to get her introduced as Reader in the Department of Repertory; at any costs. It is further submitted by the counsel for the petitioner that subsequently, respondent University has been manipulated by the same pressure elements and it has been forced to review its earlier decision itself; and thereby; to approve the selection of respondent No. 5 as Reader in Repertory. The marking of the representation of respondent No. 5 by the Vice President of India/Chancellor of the university to the Vice Chancellor has only been used as an excuse to carry out the illegal design of the college and the respondent University. This is clear by the fact that the office of Chancellor had never asked the university to approve the appointment as such. Only a re-examination was requested by the office of Chancellor. Such re-examination could have only been done in accordance with law. As is obvious, respondent No. 5 was not eligible, therefore, to overcome that hurdle another clever device was manipulated by the respondent University; by seeking some kind

of recommendation in favour of the respondent No. 5 from some committee. Accordingly, a committee was constituted only to manipulate the decision in favour of respondent No. 5. This is clear from the recommendation of the said committee, which has considered even the fact that respondent No. 5 was having a Ph. D. Degree in Repertory, whereas, on the date of advertisement or the date of her alleged selection, she was having only the degree of MD in Repertory.

Counsel has further submitted that the qualification prescribed for the post of Reader is the teaching experience in the 'concerned subject'. The 'concerned subject' would obviously be the subject in which the person has been appointed as whole-time 'approved teacher' in the college. Any part time or additional teaching work in the subject of Repertory cannot be taken as a valid experience in the subject of Repertory. Accordingly, on the basis of any additional teaching work in the subject of Repertory, the respondent No.5 cannot be made eligible and be transposed in the Department of Repertory.

Counsel has further submitted that even the Vice Chancellor did not have the necessary authority to review his own earlier decision. Having taken a conscious decision qua disapproval of selection of respondent No. 5, the Vice Chancellor was not authorized to make volt face and review his earlier decision; since there is no such authority vested in Vice Chancellor under any law, rule or regulation of the university. Hence, the review of the earlier decision by the Vice Chancellor is totally illegal and non-sustainable. The counsel has relied upon the judgment of this Court in the case of **Sarv Mittar Sharma, Special Secretary v. The Punjab and Haryana High Court (DB)**, (1992) 102 PLR 53 and also judgement of the Supreme Court in case of **Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya**, AIR 1987 SC 2186' in this regard. It is further argued by the counsel for the petitioner that since after the disapproval of her selection in the subject of Repertory, respondent No. 5 herself had participated in

the process of selection for promotion to the post of Reader in Obstetrics and Gynaecology and she was actually promoted and appointed as Reader in Obstetrics and Gynaecology, therefore, she could not have been permitted to be transposed in the Department of Repertory by granting her seniority from the back date; even for that period during which she actually working as Reader in another department on her promotion.

The counsel has further submitted that the college, as well as, the respondent Homoeopathy Council had taken a stand in the earlier petition bearing CWP No.5043 of 2013, in their written statement filed in that petition, that the respondent No. 5 was not eligible for the post of Reader in subject of Repertory. However, by taking a u-turn, these respondents have filed a written statement in the present petition saying that she was eligible in the subject of Repertory on the basis of her additional teaching work in the subject of Repertory; despite being a regular teacher in another subject of Obstetrics and Gynaecology. This shows the level of influence and pressure of the vested interest; who are supporting respondent No. 5 to such an extent that even the statutory authorities have been manipulated to take a stand contrary to their own regulations. The counsel has submitted that earlier the Central Council of Homoeopathy itself had clarified that such additional experience of a teacher; by way of additional teaching work in another subject, would not make her eligible in that subject.

It is further submitted by the counsel for the petitioner that the respondent University have gone to the extent of such illegality in misuse of their authority that they have conferred a benefit upon respondent No. 5; through their executive action; with a retrospective date; and this is done despite the fact that earlier the same university had approved the promotion of respondent No. 5 as Reader in another subject of Obstetrics and Gynaecology. Any executive decision of the executive authority cannot be given any retrospective effect. Hence, even if

the decision of the respondent University is to be taken as having been taken lawfully; then also the respondent No. 5 could have been permitted status as Reader in the subject of Repertory from the date the university granted approval to her selection and not from any date prior to such decision of the university. By granting retrospective benefit to respondent No.5, the respondent University and the respondent college has directly and adversely harmed the seniority of the petitioner in the Department of Repertory. Vide the impugned order, the petitioner was made junior to respondent No. 5. This action has been taken by the respondent University even without granting any opportunity of hearing to the petitioner and even without taking any conscious decision on the representation made by the petitioner against respondent No. 5. The respondent University and the college had no legal authority of taking action behind her back.

The counsel for the petitioner has also submitted that the entire stage was being managed by respondent No. 8, who claimed to be the secretary of the managing committee of the college. He had been acting in a totally illegal manner and without any authority. The secretary of the managing committee is not entitled to appoint or to continue the service of any person in his own capacity. He can act only as per the authorisation of the governing body. However, the governing body of the college has never approved the appointment of respondent No. 5 for the post of Reader in the subject of Repertory ever.

On the other hand, learned counsel for the respondent college has submitted that the Selection Committee had recommended name of the respondent No.5 for the post of Read in Repertory in the process of selection. Although the subject experts had given their dissenting note, however, this note was given only after they had put their signatures qua the selection of respondent No. 5. Hence, the dissenting note of the subject experts is not sufficient to conclude that respondent No. 5 was not selected by the Selection Committee. Accordingly, she

was issued the appointment letter by the Secretary of the Committee in anticipation of the approval of the university. No separate resolution of the governing body was required for appointment of respondent No. 5 as Reader in Repertory because the Selection Committee itself was constituted as per the authorization of the governing body. Counsel has further submitted that as per the record of the college, respondent No. 5 had been teaching in the subject of Repertory as well, while working as a Lecturer in the Department of Obstetrics and Gynaecology, first on ad hoc basis; and then on regular basis. Therefore, she was having the experience of teaching in the concerned subject, as required in the advertised qualification. The counsel has further submitted that since the university has now approved the appointment of respondent No. 5 as Reader in the subject of Repertory and has also granted the deemed date of joining of 18.2.2013 to respondent No. 5, accordingly, she has been rightly treated as regularly appointed Reader in the subject of Repertory by the respondent college.

Still further, the counsel for the respondent University has submitted that earlier the matter was considered by the Vice Chancellor. The Vice Chancellor had taken a decision on the basis of dissenting note given by the subject experts who had participated in the selection proceedings. However, after receipt of representation; marked by the Vice President of India/Chancellor of the university, the matter was re-examined. For re-examination of the entire matter, a committee was constituted. That committee recommended that respondent No. 5 was eligible for the post of Reader on the date of selection. Accordingly, the Vice Chancellor had reviewed his earlier decision and had granted approval vide the impugned order. Counsel has submitted that there is nothing illegal in review of his earlier decision by the Vice Chancellor. The grant or refusal of approval to the selection of a teacher is a purely administrative action and not a quasi judicial function. Therefore, the Vice Chancellor is fully authorized to review his

administrative decision at any point of time. No separate or specific power is required for that purposes. Counsel has relied upon the judgment of Supreme Court rendered in the case of **R.R. Verma v. Union of India**, AIR 1980SC 1481 and **Bachan Singh v. Panjab University**, 2016 (2) PLR 456 to support his arguments.

It is also submitted by the counsel that since the order passed by the Vice Chancellor was purely administrative order, therefore, the petitioner or any other person was not required to be heard on this aspect. The counsel has relied upon the judgment of Hon'ble Supreme Court rendered on this point in the case of **Sultan Singh v. State of Haryana**, 1996 (2) SCT 491 (SC).

In the end, the counsel for respondent University has submitted that even if respondent No. 5 was not having the requisite experience; and therefore, was ineligible on the date of selection, yet, since respondent No. 5 has been working now on the post of Reader in Repertory, after the approval granted by the Vice Chancellor, therefore, she has acquired the requisite experience. The subsequent work experience can fill up the gap of ineligibility of a candidate as on the date of selection. The counsel has relied upon the judgment of this Court rendered in the case of **'Mahesh Kumar and another v. State of Punjab and another'**, 2008 (3) SCT 784'.

To oust the claim of the petitioner altogether, the counsel for the respondent University has also submitted that the petitioner has no locus standi to file the writ petition. Moreover, the selection in question was made in 2012, whereas, the writ petition has been filed in the year 2016 and 2017. Therefore, the writ petitions filed by the petitioner suffer from the delay and laches as well.

The counsel for respondent No. 5 has adopted the arguments raised above and has asserted that the petitioner was having due experience and the academic qualification for the post in question as on the date of selection. She was

rightly selected and appointed on the post. Since the respondent University had committed the mistake by not approving the selection of the petitioner earlier, therefore, the said mistake has rightly been corrected by the respondent University and the approval has been granted. It is further submitted that since respondent No. 5 had originally joined on 18.2.2013, therefore, she has rightly been granted the benefit of counting of seniority in the Department of Repertory from that date.

This Court has heard the counsel for the parties and have perused the record.

As mentioned above, the Regulating body i.e. Central Council of Homoeopathy has laid down the regulations for governing education in homoeopathy. Some of the relevant provisions as contained in Homoeopathy (Minimum Standards of Education) Regulations, are as under :-

2. Definitions -In these regulations, unless the context otherwise requires:-

- (i) xxxxxx xxxxxx xxxxxx
- (ii) “Course” means the courses of study in Homoeopathy, namely;
 - (a) D.H.M.S. (Diploma in Homoeopathic Medicine and Surgery)
 - (b) B.H.M.S. (Bachelor of Homoeopathic Medicine and Suregery)
 - (c) M.D. (Hom.) (Doctor of Medicine (Homoeopathy) in various specialities.
- (iii) “Diploma” means of Diploma in Homoeopathy as defined in clause (iii) of regulation 3 of the Homoeopathy (Diploma Course) Regulations, 1983;
- (iv) “Degree” means a Degree in Homoeopathy as defined in clause (iv) of regulation 2 of the Homoeopathy (Graded Degree Course) Regulations, 1983 or in clause (iv) of regulation 2 of the Homoeopathy (Degree Course) Regulations, 1983;
- (iv) (a) Post Graduation in Homoeopathy means a Post Graduate qualification in Homoeopathy recognized as per the provisions of the Act;
- (v) to (ix) xxxxxx xxxxxx xxxxxx
- (x) “Teaching Experience” means teaching experience in the subject concerned in a Homoeopathic College and includes teaching experience in the subjects of Medicine, Surgery, Obstetrics and Gynaecology, gained in the Medical College, recognized by Medical Council of India.

7. Minimum teaching staff :-

- (1) The minimum number and category of teaching staff :-

- (i) for a homoeopathic College imparting instruction in DHMS (Diploma in Homoeopathic Medicine and Surgery) shall be in accordance with Annexure A.
 - (ii) (omitted).
 - (iii) for a Homoeopathic College imparting instruction in BHMS (Degree Course) shall be in accordance with Annexure C.
- (2) Teaching staff for a Homoeopathic College imparting instructions in BHMS (Degree) and BHMS (Graded Degree) Courses shall be in accordance with Annexure 'C'.

Provided admission of students to such College however, shall be in accordance with the student bed ratio of 1:1 in both the courses put together.

8 Teaching Staff :-

- (1) **In Departments of Homoeopathic Pharmacy, Materia Medica (both Pure and Comparative), Organon of Medicine and Homoeopathic Philosophy, Repertory and Practice of Medicine, the teaching staff at all levels shall be on regular full time basis."**

Annexure C

Clause 4 : Reader in Homoeopathic subjects :

A.- Essential Qualifications :

Post Graduate qualification in Homoeopathy with four years of teaching experience as Lecturer in the concerned subject in a Homoeopathic College or a Degree in Homoeopathy with ten years of experience as Lecturer in the concerned subject or Diploma in Homoeopathy of not less than 4 years duration with fifteen years teaching experience in the subject concerned in a Homoeopathic College. The qualification shall be the one included in Second Schedule of Homoeopathy Central Council Act, 1973."

The advertisement pursuant to which the selection in question was made; prescribed the qualification as contained in the above said regulations and which is reproduced as under :-

"Post Graduate qualification in homoeopathy with four years of teaching experience as Lecturer in the concerned subject in a Homoeopathic College OR a degree in Homoeopathy with ten years' experience as Lecturer in concerned subject OR Diploma in Homoeopathy of not less than four years duration with fifteen years teaching experience in the subject concerned in a Homoeopathic

college. The qualification shall be the one included in the Second Schedule of Homoeopathic Central Council Act, 1973.”

Another aspect which has come up for consideration is the authority of the Secretary of the governing body of the college qua his action in issuing the appointment letter to respondent No. 5. As per the constitution of the governing body, the powers of the Secretary in this regard is as under :-

“Clause V - Functions of the Office Bearers :

XXX XXX XXX

c) Secretary :

XXX XXX XXX

- iii) To issue orders of appointment, suspension, termination, dismissal or any other disciplinary action against any member of Teaching & Non teaching staff of the college and hospital as authorized by the Governing Body.”

At the stage of final arguments, certain questions of fact had also arisen as to whether the managing committee of the governing body of the college has ever passed any resolution approving the selection of respondent No. 5 or not and also qua the actual teaching work done by respondent No. 5 in the Department of Repertory. Accordingly, the respondent college was directed to place on record any such resolution; if such one exists, as well as, to place on record the time table showing the teaching work done by respondent No. 5 in the subject of Repertory. The respondent college has not been able to place on record any resolution of the Governing Body showing the approval of the selection and appointment of respondent No. 5 on the post of Reader in Repertory; pursuant to the above said selection proceedings. However, the time table has been placed on record which shows that respondent No. 5 has done some teaching work in the subject of Repertory as well, while being regularly appointed Lecturer in the subject of Obstetrics and Gynaecology.

In view of the above factual gamut, this Court is called upon; firstly; to consider the meaning of the teaching experience in 'concerned subject'. A perusal of Annexure-C attached to the Regulations of Central Council of Homoeopathy shows that the regulations have prescribed the core and the allied subjects for the degree course. A list of core subjects, as well as, of the allied subjects have been given in this annexure. Some subjects, including the subject of 'Repertory' has been mentioned as a core subject and it has been prescribed that in these core subjects, including the Repertory, only full time faculty at all level would be required. To the same effect is the provision as contained in Regulation 8 reproduced above. In the allied subjects the teacher can be engaged on ad hoc or guest faculty basis also. Moreover, the definition of teaching experience; as prescribed under the regulations; specifies that in the core subjects, the teaching experience in Homoeopathy college alone shall be considered, whereas in other subjects like Obstetrics and Gynaecology; the experience obtained in other institutions can also be considered. Therefore, it is obvious that in the subject of Repertory only the whole time teachers are authorised to conduct the teaching work. Hence, as per regulations, only that teaching work has to be considered for further promotion from the post of lecturer to the post of Reader which has been rendered by a person as full time faculty in the concerned subject, i.e., subject of Repertory. Any part time, guest faculty teaching or an additional teaching work cannot make a person eligible for promotion or for direct appointment as Reader in faculty of Repertory. In fact, for the subject of Repertory teaching work by any such teacher in ad hoc, guest faculty capacity or by way of additional teaching work is not even contemplated under the regulations. Only whole time faculty teaching is permitted in the subject of Repertory, being a core Homoeopathy subject.

Otherwise also, whenever the requirement of an experience for a certain duration is prescribed, such experience has to be whole time experience in that capacity. A person doing part time, additional or as guest faculty teaching work cannot claim the experience for that prescribed number of years in that subject. The rational behind this is pure and simple, an Year consists of the months, weeks and the days. Regulations of the University and the Council prescribed minimum teaching periods for a particular subject. For taking that workload of teaching a person is required to be appointed in full time capacity. Unless a person has done the work as a whole time faculty in the concerned subject for all the days, weeks and the months of the year, such an experience cannot be considered as an experience for that prescribed number of years. Needless to say, that any part time or additional work done during certain hours of a day, by any means, cannot be equated with whole time working experience for the entire duration of a day. Therefore, any part time, additional or guest faculty teaching work may be totally irrelevant for the purpose of eligibility, where a particular number of years of experience of teaching work is prescribed. The fact that the person doing additional teaching work in one subject is a whole time Teacher in other subject would not make the proposition any different for such a teacher. Although the counsel for the respondent has relied upon the judgment rendered in **‘Chandigarh Administration v. Vipin Gupta and another, 2021 (2) SCT 560’** and in case of **‘Dr. Rgvinder Pal Kaur v. State of Punjab and others, 1979 (2) SLR 645’** to contend that to claim benefit of teaching experience a person is not required to be appointed in regular capacity in that department, however, this argument is totally frivolous. Even a reading of the above judgments clarifies that the persons involved in those judgments were claiming experience of working as ‘whole time’ employees, although in their capacity as ad hoc or in officiating capacity, or experience outside the department; but whole time experience; before

applying for the said post. It is no-body's case that a person who has otherwise worked in whole time capacity in a subject cannot claim the benefit of that work experience while applying and competing for a post for appointment on regular basis. The question involved is only; whether even additional or part time work done by a person would constitute full experience for full number of years or not? The counsel for the respondent have failed to point out any such judgment from any Court which equates an additional or part time work as full time experience so as to confer eligibility upon a candidate while applying for selection.

Under the service jurisprudence the rules, invariably; provided two kinds of experience along with educational qualification. Under certain rules 'number of years of service in a particular cadre' are provided for claiming eligibility for the higher post and under some other rules 'number of years of experience' are provided. In case of 'number of years of service' is provided, obviously; unless a person has rendered that regular service in that capacity, he cannot claim eligibility for the next post. However, in case of requirement of 'number of years of experience', unless that experience is specifically tagged by the concerned rules to the lower post; for claiming eligibility for the higher post, a person can take benefit of his 'whole time' experience rendered anywhere even outside the lower cadre provided, if otherwise, the said experience is of the requisite standard. However, as observed above, experience obtained by way of additional duties or part time or guest faculty, does not confers any such eligibility even in those cases where the rule prescribes certain number of years of experience as the eligibility. In the present case, it is clear from the fact that respondent No. 5 was working as a lecturer on regular basis in another department of Obstetrics and Gynaecology. The subject to Obstetrics and Gynaecology is not even a core Homoeopathy subjects under the regulations. She has undoubtedly taken some classes in the subject of Repertory also during her regular appointment in the

subject of Obstetrics and Gynaecology. However, such experience is only an additional duty performed by respondent No. 5 in the subject of Repertory. She may be entitled to some extra remuneration for such additional work under relevant rules, however, this additional work done in the subject of Repertory does not make the requisite number of years of experience in the subject of Repertory, either under the regulations prescribed by the Homoeopathy Medical Council or on the general principles of service jurisprudence. Accordingly, the subject experts had rightly raised objection qua the eligibility of respondent No.5 by recording as under :-

“She has not been appointed as a Lecturer in Repertory and she has also not (been) approved by the University in the subject of Repertory. So according to my opinion, her experience cannot be counted in the subject of Repertory.”

Although the counsels have fiercely contested the point whether the experience is to be counted after the date of acquisition of post graduate qualification, which is prescribed under the regulations as the necessary educational qualification; or any teaching experience in the subject of Repertory is to be counted. While the counsel for the petitioner has submitted that respondent No. 5 acquired the post graduate qualification only in the year 2010 and, therefore, she was having only one year of experience in teaching of Repertory, as additional subject, if at all this experience is to be taken as any teaching experience, however, the counsel for the respondents have emphasized that the regulations and advertisement do not prescribe that the experience has to be after the date of acquisition of the qualification, therefore, the experience of respondent No. 5 right from the day one; when she was appointed as lecturer in the subject of Gynecology; and has been conducting teaching in Repertory as well, has to be counted. And if the experience is counted in such manner then respondent No. 5

was eligible. Counsel has relied upon judgment of Supreme Court in the case of **‘A.K. Raghmani Singh v. Gopal Chandra Nth, 2002 (2) SCT 465’**, in support of his arguments. However, the argument of the counsel for the respondent is totally fallacious. A perusal of the regulations and the qualification as prescribed in the advertisement clearly shows that the rule framing authority has visualized the experience obtained after the qualification and the one obtained before the qualification to be of different types. The experience acquired after the Post Graduation qualification has been put on a very higher pedestal and is treated to be of a better quality as compared to the teaching experience acquired before acquisition of the post graduate qualification. Therefore, while only 4 years of teaching experience after acquisition of post graduate qualification makes a person eligible, it takes 10 years of experience if one is to claim eligibility on the basis of graduation degree; and 15 years of experience if one is to claim eligibility on the basis of diploma in Homoeopathy. Hence, the experience acquired before the post graduation qualification and the one acquired after the post graduation qualification, cannot be equated, and thus, cannot be jumble and joined together. Hence, the judgment in the case of **A.K. Raghmani Singh** (supra) is of no help to the petitioner. As per the record, respondent No. 5 did not have 4 years of experience after acquisition of post graduation qualification, nor did she have 10 years teaching experience after graduation degree as prescribed under the rules. Hence, by any means, respondent No. 5 was ineligible on the date of selection. It is only for this reason that respondent No. 5 was declared as ineligible by the Scrutiny Committee in the following terms, which are reproduced as under :-

“She is not eligible since – (a) She does not compete 4 years as Lecturer after M.D.

(b) She does not complete 10 years after BHMS as she is Lecturer since 16.4.2007 and she was Demonstrator from 5.8.2002 to 15.4.2007. This is period cannot be counted as Lecturer.”

Although for the reasons best known to the governing body, despite having been declared ineligible by the Screening Committee, the respondent No. 5 was called for interview; but the university experts had again raised the objection qua the eligibility of respondent No. 5. This Court finds that the decision of the Scrutiny Committee was perfectly in tune with qualification prescribed by the Homoeopathy Council and the condition of eligibility as required in the advertisement, and the respondent No. 5 was rightly declared as ineligible. Even the university experts had rightly recorded in the minutes of the Selection Committee that respondent No. 5 was ineligible. Accordingly, the Vice Chancellor had rightly rejected the approval to the selection of respondent No. 5, in the first instance. The subsequent decision of the Vice Chancellor has not given any specific reason as to how this ineligibility was taken as having been cured. On the contrary, the recommendations of the committee, allegedly constituted for getting opinion before reviewing the earlier order of denying the approval, show that the said committee has even travelled beyond the record of selection process in making recommendations in favour of respondent No. 5. The committee has stressed on the facts that respondent No. 5 was holding a Ph.D degree. Although the petitioner has disputed the fact that respondent No. 5 was having the Ph. D degree, however, this aspect is totally irrelevant for the purpose of eligibility in the selection in question. Neither the Ph.D degree was prescribed as any essential or additional qualification nor could the respondent No.5 have even obtained that degree in 2011, when she passed her MD degree only in the year 2010. Other than this wrong aspect, any reasons given by the Committee for recommending in favour of respondent No. 5 was only a mis-placed opinion of the committee, which was not warranted by the provisions of the regulations and the qualification as

prescribed in the advertisement. Hence, the subsequent decision of the Vice Chancellor is totally arbitrary, illegal and without any substantial basis.

Although the counsel for the respondent University has submitted that Vice Chancellor had power to review his own decisions because the issued for grant or denial of approval was purely administrative decision, and has relied upon the judgment rendered in the case of **R.R.Verma** (supra), however, this Court finds this argument to be totally irrelevant. Even if the Vice Chancellor is taken to have exercised a purely administrative power, and therefore; not precluded from reviewing his earlier decisions, yet his such administrative decision is liable to pass the test of judicial review. Even if a person has the power to review his own decisions, he cannot act arbitrarily and without any sustainable reasons or the justifying materials. As observed above, this Court does not find any valid reasons or any material to justify the subsequent decision of the Vice Chancellor in granting approval to the selection and appointment of respondent No. 5. Otherwise also, this Court finds substance in the argument of learned counsel for the petitioner that having taken a conscious decision earlier, the Vice Chancellor was not authorized to take a u-turn by reviewing his own earlier decision. The argument of the counsel for the petitioner is fully supported by the judgments rendered by the Supreme Court in the case of **Dr. Smt. Kuntesh Gupta** (supra) and in case of **Sarv Mittar Sharma** (supra) and the other judgments relied upon by the counsel for the petitioner. Right from 1937, as has been held by 'The Privi Council' in case of **R.T. Rangachari v. Secretary of State**, AIR 1937 PC 27', it is an established preposition of law that while a mistake can be corrected but a successor in office cannot review the conscious decision taken by its predecessor in office. This has been so followed even in various judgments of Supreme Court. If a successor in office; who might have some substance to re-appreciate the controversy in different manner; cannot review the conscious decision of his

predecessor; then there is no question of the same person reviewing his own conscious decision taken earlier and arrive at a different conclusion on the same set of record. The reliance of the counsel for the respondent University on the judgment rendered in case of **R.R. Verma** (supra) does not support his case. Even in that judgment, more emphasise of the Court was on executive decision of the authorities qua policy making. Needless to say that discretion in policy making is not the same thing as taking a conscious decision qua the rights, eligibility and the qualification of a particular person. The emphasis of the preposition of law is on 'conscious decision' qua determination of rights, entitlements and liabilities of a person and not qua decision on the policy alternatives available to the executive authority. Whereas, the preposition that an administrative authority cannot review its own earlier decisions is not applicable qua the decisions in the realm of executive policy making, however, this principle is very much applicable to a conscious decision taken by a *persona designata* in his capacity as an administrative authority under the statutory provisions. In a system governed by rule of law no administrative authority has absolute discretion to take or change its decisions as per whims. This principle, in fact, is a major safeguard against the arbitrary decision making of the prescribed administrative authority, which can, otherwise, be disguised as a purely administrative decisions. Hence, in the present case, the Vice Chancellor having taken a 'conscious decision' earlier in declining the approval to the selection and appointment of respondent No. 5, could not have reviewed his own decision and arrived at a different conclusion. Moreover, the Vice-Chancellor has granted benefit of ante dating the date of joining of the respondent No.5. This being a decision of an administrative authority could not have been given a retrospective effect.

Although the counsel for the respondents have also argued that even if

the respondent No.5 was not having the requisite experience at the time of

selection yet the said ineligibility stands cured on account of subsequent experience in the said capacity, however, this argument runs directly into the face of Article 14 of the Constitution. Every person has to compete only if he possesses the prescribed qualification. Permitting appointment of ineligible person would deny equality before law and equal protection of law to those persons who might not have applied because they were not having the prescribed qualification. The respondent No.5 cannot be granted premium upon her in-eligibility. Moreover, medical field is a specialized branch- so no deviation from prescribed standards can be permitted except at the cost of producing quacks; instead of doctors.

One more aspect which deserves notice herein is that the respondent No. 8 in his capacity as 'Secretary', hurriedly issued the appointment letter to respondent No. 5 pursuant to the selection in which the subject experts had opined against even the eligibility of respondent No. 5; and this was done by him without even approval of the governing body of the college. Although the counsel for the respondents have submitted that the 'Secretary' of the governing body did have the authority to issue the appointment letter, however, the perusal of the provisions relating to the powers and functions of the 'Secretary' of the governing body shows that he could have taken any such action only after authorization from the managing committee. As observed above, the respondent college was specifically asked to place on record any such resolution of the governing body which might have approved the selection of respondent No. 5 and which might have asked the Secretary to issue the appointment letter to respondent No. 5, however, the respondent college has not been able to produce on record any such resolution. Hence, even issuance of appointment letter to respondent No. 5 by respondent No. 8 was totally un-authorised.

Another limb of the issue involved is whether the Vice Chancellor could have granted the benefit to respondent No. 5 of being a Reader in the

Department of Repertory from 18.2.2013? This Court finds that the decision of the Vice Chancellor to grant this benefit is totally reckless and is the one taken without any application of mind; and also in disregard of factual and legal aspects. It is not even disputed that, in the meantime, respondent No. 5 had been otherwise promoted as reader in the department of Obstetrics and Gynaecology. She had actually availed that promotion and had worked on that post from 2014, at least, till the impugned order was passed by the Vice Chancellor. Therefore, it is beyond ordinary comprehension as to how the Vice Chancellor could have passed an order for treating respondent No. 5 as Reader in Repertory w.e.f. 18.2.2013. If Vice Chancellor can go to extent of passing this kind of reckless order then the argument of the counsel for the petitioner that he was acting under extreme pressure from element supporting respondent No. 5 gets credence. Hence, such a decision cannot be countenanced by this Court, Moreover, by passing this order, in one stroke; respondent No. 5 has been made to sit on the head of the petitioner, who was already working as Reader in the Department of Repertory after due promotion and approval of the university. This super-session of seniority of the petitioner has been done by the Vice Chancellor and the respondent college even without granting an opportunity of hearing to the petitioner and even without applying their mind to the written representation submitted by the petitioner in this regard. Hence, this action of the Vice Chancellor and the respondent deserves to be set aside.

As a last resort, the counsel for the respondents has submitted that the writ petition itself is not maintainable because the petitioner did not have any locus standi to file the present petition. Filing of the writ petition is also questioned on the point of delay and laches. However, this Court does not find any substance even in this argument of the counsel for the respondents. The question of delay and laches is not for the respondents to take as a defence to their illegal actions. It

is only for the Court to consider whether, at all, it should interfere in the matter or not. This discretion of the Court has also to be exercised at the initial stage when the Court is moved and it considers the matter at the motion stage. Once the Court has entertained the petition and the petition is pending for past about 4 years, this Court cannot throw away the petition on the ground of delay and laches, particularly, when so much of illegality and irregularity on the part of the respondents has been established on record. Moreover, one deserves to keep in mind that the issue of delay and laches is not the issue of limitation. Therefore, the issue of delay and laches is not an absolute bar against the petitioner for filing a writ petition. Delay and laches on the part of the petitioner does not create any statutory right in favour of the respondents to defeat the claim of the petitioner due to passage of time. It is only a caution and restraint to be considered by the Court at the initial stage. The Court had entertained the petition and has been proceeding with the same. Therefore, the writ petition now has to be taken to its logical ends on its merit. Moreover, the action of Vice Chancellor is in the year 2016 only and the present petition is also filed in that year. So the writ petition does not suffer from delay and laches. So far as the locus standi of the petitioner is concerned, it deserves to be highlighted that, in the first instance, the petitioner and respondent No. 5, both were found to be ineligible for the selection in question by the Scrutiny Committee. However, both of them were called for interview. Despite being ineligible and despite the dissenting note qua that ineligibility having been recorded in the selection of the respondent No. 5, the respondent college authorities were bent upon the selection of respondent No. 5. Therefore, the petitioner being a participant in the same selection where an ineligible person like her has been offered appointment subsequently leaving the petitioner out; has every locus standi to question the decision of the respondents in appointing respondent No.5. Although it has been argued by the respondents that after

participation in the selection process, the petitioner could not have questioned the result which had gone against him, however, even this argument is an exercise in diversion. The petitioner is not challenging the unfavourable result as such. Rather she is challenging the over-reach and extra-statutory exercise on the part of the official respondents in issuing appointment letter to respondent No.5 despite the result of the selection itself recording the ineligibility of respondent No.5, like that of the petitioner; and despite the fact that the Vice-Chancellor had not approved the condoning of the ineligibility of respondent No.5 at that time. Moreover, the subsequent decision of the Vice Chancellor in granting ante-dated date of joining to respondent No.5 has made the petitioner junior to respondent No. 5 in the Department of Repertory. This decision has been taken by the Vice Chancellor and the respondent University even without hearing the petitioner and without considering her written representation. Therefore, the petitioner has got every right to question the decision of the authorities in this regard as well. Hence, this contention of the counsel for the respondent is also bound to be rejected and the same is accordingly rejected.

In view of the above, finding merit in the petitions, both the writ petitions are allowed. Order dated 27.10.2016 and 2.8.2017 and 25.11.2012 and the action of the respondents in approving the selection proceedings, appointing respondent No. 5 as Reader in Repertory, pursuant to the selection proceedings dated 25.11.2012 and in granting date of joining as 18.2.2013, are set aside.

(RAJBIR SEHRAWAT)
JUDGE

21.1.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No