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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 22.02.2021

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W.P.(C) 3450/2020 & CM APPL. 12231/2020

DR. UPASANA SINGH

..... Petitioner

Through Mr. Tanmaya Mehta with Mr. Rupal Luthra, Advs.

versus

UNION OF INDIA & ORS.

..... Respondent

Through Mr. Harish Vaidyanathan Shankar, CGSC with Ms. Kinjal Shrivastava, Mr. Varun Kishore, Mr. Vinayak Mohanda, Ms. Namisha Jain, Advs. for R-1.

Ms. Aakansha Kaul with Mr. Manek Singh, Advs for R-2.

Mr. G.D. Chawla, Adv for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The background in which this petition has been preferred was noticed by us in our initial order dated 10.06.2020. We may extract the relevant portion thereof which reads as under:-

“The submission of learned counsel for the petitioner is that respondent no. 3 has been nominated by respondent no. 1 as a Member of the General Body of respondent no. 2/Dental Council of India under Section 3(f) of the Dentists Act, 1948. The said nomination is challenged on the ground that respondent no. 3 was earlier serving respondent no. 2 in the capacity of Joint Secretary. He was charged of very serious misconduct and was found guilty of the said charges by the Council after conduct of a major penalty proceeding under Rule 14 of CCS (CCA) Rules, 1965 and,

consequently, he was removed from service by respondent no. 2. The said removal has been challenged by respondent no. 3 before the Central Administrative Tribunal and its challenge is pending. No interim stay of the order of removal has been granted by the Tribunal. Despite that being the position, respondent no. 1 evidently oblivious of the said past history of respondent no. 3 has nominated him to General Body of the respondent no. 2 Council.”

2. By the same order, we had restrained the respondent no.3 from functioning as a member of the General Body of the respondent no.2/ Council. Simultaneously we had also restrained the respondent no.2 from allowing the respondent no.3 from functioning in that capacity.

3. We may notice that respondent no.2 i.e. the Dental Council of India has supported the present petition and the opposition has come only from the Union of India and the respondent no.3 himself.

4. Considering the fact that the Central Government had nominated the respondent no.3—who had been removed from service upon finding that he had misconducted himself while functioning as the Joint Secretary of the same Council, this Court had required the respondents to produce the relevant file containing the said nomination. The said record has been produced before us and having perused the same, we find that the Hon’ble Health Minister vide his undated note while continuing the nomination of Dr.Rajeev K Chugh for another term w.e.f. 11.06.2020, nominated two persons including respondent no.3 as members of the Council against two anticipated vacancies. The relevant extract from the said file noting reads as follows:-

“O/o Minister of Health & Family Welfare

I have perused the file relating to nomination of 03 Members for a period of 05 years to the Dental Council of India as per Section 3 of the Dentist Act, 1948 against the vacancies arising with effect

from June 10, 2020 due to completion of term of existing Members.

2. I am of the view that Dr.Rajiv K Chugh be allowed to continue another term as nominated Member of the Dental Council of India with effect from June 11, 2020. Further, the following person be nominated as Members of the Council against the remaining 02 anticipated vacancies.

1) Col.Dr.Saroj Kumar Ojha (Retired)

2) Dr.Ashok Khandelwal.

3. The curriculum vitae of Col.Ojha and Dr.Khandelwal are placed on the file.”

*-signed-
(Dr.Harsh Vardhan)
HFM”*

5. The aforesaid noting shows that the curriculum vitae of respondent no.3 as also of Dr.Ashok Khandelwal was placed before the Hon'ble Minister. A bare perusal of respondent no.3's curriculum vitae dated 19.12.2020 found on record shows that he had not disclosed the fact that while functioning as the Joint Secretary of respondent no.2, he had been removed from service by respondent no.2 after a full-fledged major penalty charge-sheet and inquiry, in which he was found guilty of misconduct.

6. The curriculum vitae of respondent no.3, which has been placed on record in the file produced before us reads as follows:-

**“CURRICULUM VITAE FOR DCI MEMBER BY GOI UNDER
SECTION 3(f) of DENTIST ACT 1948**

COLONEL Dr.S.K.Ojha (Retd.)

1. Born on 7 June 1960

*2. Graduate from Dr. R Ahmed Dental College & Hospital
Kolkata-1982*

*3. Postgraduate in Periodontology from Mumbai University-
1990*

*4. Awarded Gold Medal for being Second in Final
Professional BDS Exam-1981*

5. *Awarded Vice Chief of Army Commendation-2008*
6. *Commissioned in Armed Forces in 1983 and served in various Field formation like Poonch, Rajouri & Naushera Sector in Jammu and took part in Operations at the Line of Control*
7. *Taken part in Military Exercises, OP Rakshak in Rajasthan Border in 1992*
8. *Senior Adviser in Periodontics in Indian Armed Forces*
9. *Professor of Periodontics at Armed Forces Medical College Pune 1998*
10. *Served as Director in Army Head Quarters, New Delhi 2006*
11. *Served as Officiating Secretary Dental Council of India 2010-2015*
12. *Past President Indian Dental Association West Delhi Branch 2019*
13. *Can speak Bhojpuri, Bengali, Nepali, Hindi and English*
14. *As a medical practitioner and an ex army personnel I have always stood by the idea of equal opportunities for all and working in favour of the general betterment of the people which coincides with the idea of Vasudhaiv Kutumbam, an ideology which forms the basis of the functioning of the Rashtriya Swayamsevak Sangh.*

Date: 19 May 2020

*Col Dr.Saroj Kumar Ojha
A 73, Krishna Residency
Plot 17, Sector 18A
Dwarka, New Delhi 78 ”*

7. Thus, it is evident that the Hon’ble Health Minister while nominating the respondent no.3 went only by the facts disclosed by the respondent no.3 in his curriculum vitae, and was not aware of the fact that the respondent no.3 had actually been removed from service upon being found guilty of misconduct by the Dental Council of India. The decision of the Hon’ble Health Minister to nominate the respondent no.3 is, therefore, clearly

vitiated on account of non-application of mind to a relevant and pertinent aspect of the matter. Had the Hon'ble Health Minister been aware of the aforesaid relevant facts, he would have applied his mind and only thereupon taken a decision as to whether, or not, to nominate the respondent no.3. In case, he were to still nominate respondent no.3, he would have had to record adequate reasons on the file to justify the nomination of respondent no.3 despite the aforesaid adverse action taken against the respondent no.3 by the respondent/Council. Without good reason and proper justification, the removal from service of respondent no.3 from the respondent/Council could not have been set at naught, and respondent no.3 could not have been granted a back door entry into the respondent/Council again through the route of nomination. The power of the Hon'ble Minister to nominate members to the respondent/Council, like all other powers and authority exercised by a State functionary in his official capacity, must be informed and imbued with reasons. There is no scope for arbitrary exercise of administrative authority.

8. The aforesaid decision can, therefore, not be sustained and is, accordingly, set aside. The nomination of the respondent no.3 to the Dental Council of India is consequently quashed. The petition is allowed in the aforesaid terms, by leaving the parties to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 22, 2021/sr