

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

206(1)

CWP-19890-2016

DR. ARDAMAN SINGH

... Petitioner

VERSUS

MEDICAL COUNCIL OF INDIA & OTHERS

... Respondents

206(2)

CWP-16761-2016

DR. RAVDEEP SINGH

... Petitioner

VERSUS

MEDICAL COUNCIL OF INDIA & OTHERS

... Respondents

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206(3)

CWP-18511-2016

Date of Decision: 01.08.2023

DR. VIJAY KUMAR SHARDA

... Petitioner

VERSUS

MEDICAL COUNCIL OF INDIA & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Gagneshwar Walia, Advocate and
Mr. Bikramjit S. Randhawa, Advocate
for the petitioners in CWP-19890-2016 &
CWP-16761-2016.

None for petitioner in CWP-18511-2016.

Mr. Ravi Sharma, Advocate
for respondents No.1 and 2 in all cases.

Mr. H.S. Dhindsa, Advocate
for respondent No.3- in all cases.

Mr. Saurav Verma, Addl. A.G., Punjab
for respondents No.4 and 5 in all cases.

VINOD S. BHARDWAJ, J. (ORAL)

A batch of three writ petitions is being decided by a common judgment as counsel for the parties submit that identical questions of law arise for adjudication in the present batch of writ petitions. For the facility of reference, the facts are being extracted from CWP-19890-2016 titled 'Dr. Ardaman Vs. Medical Council of India and others'.

Challenge in the said petition is to the order dated 21.07.2016 (Annexure P-11) passed by respondent No.1- Medical Council of India (as it was then) directing the removal of the name of the petitioner from the Indian Medical Register for a period of one year from the date of the notification.

Learned counsel for the petitioner contends that the petitioner is an MBBS doctor and has done his MD in medicine. He was earlier employed with Army and thereafter joined the Punjab Government as a Faculty member in Punjab Medical Education Department. The petitioner worked as Sr. Resident in the Department of Medicine at GMC, Patiala from the year 2001 to 2004 and was thereafter promoted as Assistant Professor and then as an Associate Professor. He superannuated on 31.03.2015 while working as a Professor in the Medicine Department at GMC, Patiala under the Director, Research and Medical Education, Punjab. While working at GMC, Patiala, the Medical Council of India conducted an inspection on 17.11.2014, wherein the petitioner attended as a faculty member of the GMC, Patiala.

Post his superannuation, from the GMC, Patiala, the petitioner was appointed as Professor in the Department of Medicine in Haryana Institute of Medical Sciences and Hospital on 01.04.2015. The abovesaid college was newly established and no medical courses were being undertaken

at that point of time since requisite permission and recognition from Medical Council of India was yet to be obtained. An inspection of the Haryana Institute of Medical Sciences and Hospital was conducted by the team of Medical Council of India on 18.04.2015, which was again attended by the petitioner. The said inspection was conducted for 150 seats for starting the Course of MBBS, however, noticing various deficiencies, the Medical Council of India did not grant recognition/ permission for starting the MBBS Course in the abovesaid Institute for the said academic year. The petitioner was thereafter, offered re-employment by the GMC on 11.05.2015. Accordingly, the petitioner tendered his resignation from the Haryana Institute of Medical Sciences and Hospital on 13.05.2015 which was accepted on 15.05.2015. The petitioner thereafter joined on his re-employment with the GMC, Patiala on 16.05.2015.

However, a notice dated 09.12.2015 was served upon the petitioner pointing out that in the declaration forms for the academic year 2015-16, the name of the petitioner appeared in more than one Medical College i.e. in the GMC, Patiala inspection held on 17.11.2014 as well as in the inspection of Haryana Institute of Medical Sciences and Hospital held on 18.04.2015. It was thus conveyed that the Professional Conduct, Etiquette and Ethics Committee has pointed out that the petitioner has taken up appointment at two different medical colleges at the same time.

The petitioner submitted a detailed reply to the aforesaid show cause notice giving details as mentioned above and pointing out that there was no mis-declaration ever made by the petitioner. However, notwithstanding the

same, the respondents passed the impugned order dated 21.07.2016 (Annexure P-11), which reads thus:

"Whereas, the Medical Council of India constituted a Sub-Committee for scrutinizing the fake declaration form submitted by the various faculty during the assessments of medical colleges for the academic year 2015-2016. The Sub-committee noted that the name of some faculty appeared in more than one medical college during the assessments

Whereas, during the investigation, the Sub-Committee observed the following in the matter of Dr. Ardaman Singh (whose name had been appeared in two different medical colleges i.e. (1) Government Medical College, Sangrur Road, Patiala, Punjab-147001 and (2) Haryana Institute of Medical Sciences, NH-152, Ambala Road, Kaithal - 136 027, Haryana during the assessments for the academic year 2015-16):-

"The faculty was present for inspection in Govt Medical College Patiala on 17.11 2014 and has been accepted as faculty thereafter, he is found in inspection on 18.04.2015 in Haryana Institute of Medical Sciences & Hospita, Rohtak. He has been accepted as faculty there also. In the declaration form of Haryana Institute of Medical Sciences & Hospital, Rohtak he has enclosed the relieving order which is in Punjabi and relieved on 31.3.2015.

However, in the declaration form of Haryana Institute of Medical Sciences & Hospital, Rohtak, he has not mentioned about his presence at MCI assessment at Govt. Medical College, Patiala

An explanation be sought from the faculty"

Whereas, the Ethics Committee of the Council investigated the matter and recorded the statements of Dr. Ardaman Singh.

Whereas, the Dean/Principal of Government Medical College, Sangrur Road, Patiala, Punjab-147001 and Haryana Institute of Medical Sciences, NH- 152, Ambala Road, Kaithal - 136 027, Haryana, was also asked to present before the Ethics Committee but he has neither appeared before the Committee nor sent any reply in pursuance to MCI letter.

Whereas, the Ethics Committee considered the above matter at its meeting held on 3 & 4 May, 2016. The operative part of the decision reproduced as under:

“...

The Ethics Committee further noted that both the Dean of respective medical colleges neither appeared before the Committee nor sent any reply in pursuance to MCI letter

The Ethics Committee further noted that Dr. Ardaman Singh, Professor of Medicine, had appeared for MCI Assessment on 17.11.2014 at Government Medical College, Sangrur Road, Patiala, Punjab, and again appeared before the MCI Assessment team on 18.04.2015 at Haryana Institute of Medical Sciences, Ambala Road, Haryana. The fact of his first appearance at Government Medical College, Sangrur Road, Patiala, Punjab, was not disclosed in the Declaration Form submitted at Haryana Institute of Medical Sciences, Ambala Road, Haryana, for assessment on 18.04.2015

The Ethics Committee further noted that the above act of faculty, is the violation of Point No. 2 of Declaration Form, which is punishable under Point No. 5 of the same, which reads as under:-

Point No. 2

I have not presented myself to any other institution as a faculty in the current academic year for the purpose of MCI inspection.

Point No. 5

It is declared that each statement and/or contents of this declaration and /or documents, certificates submitted along with the declaration form, by the undersigned are absolutely true, correct and authentic. In the event of any statement made in this declaration subsequently turning out to be incorrect or false the undersigned has understood and accepted that such misdeclaration in respect to any content of this declaration shall also be treated as a gross misconduct thereby rendering the undersigned liable for necessary disciplinary action (including removal of his name from Indian Medical Register).

In view of above, the Ethics Committee discussed the matter in detail and after detailed deliberation unanimously decided that the name of Dr. Ardaman Singh be removed from the Indian Medical Register for a period of 1(One) Year from the date of notification"

The above recommendations of the Ethics Committee approved by the Executive Committee the Council at its meeting held on 15.06.2016. "

He further refers to the inspection form that has been appended by the respondent-Medical Council of India in its reply as Annexure R-1/1 wherein the details with respect to the time period during which the petitioner has worked in different medical colleges has been specifically mentioned. Further, in column Nos.3(a) and 4(a) thereof, the description of the employment/relieving has again been mentioned by the petitioner. However,

he draws attention to the declaration attached to the aforesaid Annexure wherein in Paragraph No.2 thereof it has been mentioned as under:

"I have not presented myself to any other Medical Collge/Institution as a faculty/Resident in the current academic year for the purpose of MCI assessment."

It is argued by the counsel for the petitioner that there was no intention of any mis-declaration since all the particulars had been given by the petitioner in Column Nos.3(a) and 4(a) mandating details of previous appointment/teaching experience of the petitioner alongwith his date of superannuation and relevant supporting documents. The aforesaid aspect in the declaration has to be scored off, however, due to inadvertence, the same was submitted. The bonafide of the petitioner is well reflected from a complete and comprehensive reading of the aforesaid declaration as a whole and one single page cannot be listed out to impose the penalty of removal of name of the petitioner from the Rolls of Indian Medical Register. It is also contended by the counsel for the petitioner that even though the respondents hold that it was a misconduct, however, they have not referred to any provision under the Statute and/or the Regulations under which the abovesaid aspect can be labelled as misconduct which could attract a penalty of striking off the name of the petitioner by the Medical Council of India. It is vehemently argued that the sequence of the events clearly shows that the petitioner was never employed at two medical colleges at a same point of time and that any selective reading of the declaration/documents cannot be substituted as a proof. The burden lay upon the respondents to establish the claim made by them and also refer to the Regulations/Provisions of the

Statute, which empowers it to strike off the name of the petitioner-Doctor on occurrence of any such eventuality.

Counsel for the respondents, on the other hand, has placed reliance upon the aforesaid declaration appended as Annexure R-1/1 to contend that the petitioner failed to make a correct declaration and more so, the concerned Dean/Principal of the GMC, Patiala as well as the Haryana Institute of Medical Sciences and Hospital chose not to appear before the Committee despite notices having been sent to them. It is thus contended that since the said persons have chosen not to appear and there was a mis-declaration made by the petitioner during the course of the inspection conducted by the Medical Council of India, hence, it establishes that the petitioner had been employed in two medical colleges during the same period.

On a pointed query, he could not make reference to any provision under the Indian Medical Council Act, 1956 and/or the Regulations thereunder as per which there is/was a prohibition on a Doctor to be employed in two different medical colleges and/or such employment was considered as an act of misconduct, which vests the Medical Council of India with the power to suspend/revoke the registration of a practicing doctor. It was also put to the counsel for the respondents that in the event of the Dean/ Principal of a medical college choosing not to appear before the Committee despite a notice being sent by the Medical Council of India, whether Medical Council of India could have secured the presence of the said Dean/Principal for establishing its own case and as to whether any action has/had been taken by the Medical Council of India for the alleged default committed by the Dean/Principal of GMC, Patiala and/or Haryana Institute of Medical Sciences and Hospital. He

failed to refer any evidence on the basis whereof it could be established that any punitive action had been taken against the erring officers, who chose not to appear despite the notices having been sent by the Medical Council of India. He submits that in any case, the respondents acknowledge that there was a mistake in submission of a declaration and that the said admission would justify the decision taken by the Medical Council of India.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

It has remained uncontroverted that earlier the petitioner was employed with GMC, Patiala, wherefrom he superannuated on 31.03.2015 and prior thereto, he had attended an inspection of the Medical Council of India on 17.11.2014. After his superannuation on 31.03.2015, he joined with the Haryana Institute of Medical Sciences and Hospital on 01.04.2015 where he attended another inspection of Medical Council of India on 18.04.2015. It is further not disputed that recognition to the abovesaid Haryana Institute of Medical Sciences and Hospital for 150 seats of MBBS was not granted by the Medical Council of India. The petitioner was thereafter offered re-employment by the GMC, Patiala on 11.05.2015. Prior to submission of his joining report in GMC, Patiala, he had submitted his resignation with the Haryana Institute of Medical Sciences and Hospital on 13.05.2015, which was accepted on 15.05.2015 (as per the experience certificate appended by him alongwith the present petition) and he rejoined with the GMC, Patiala on 16.05.2015. The aforesaid sequence, thus, fails to establish that the petitioner was employed in two different medical colleges at any given point of time.

The suspicion expressed by the Medical Council of India cannot partake proof. If the imposition of a penalty of suspending the registration of a professional was to be imposed, a mere suspicion was not good enough. Cogent material to establish the charges/ allegations was required to be placed on record before any such conclusion could be drawn and as such a major penalty could be imposed upon the petitioner.

It is well established in law that suspicion is not a substitute for proof. The respondents cannot obviate themselves of their obligation to proof the charge levelled against the petitioner merely on the ground of suspicion nurtured by them. Law necessitates existence of objective material for sustaining a perception/belief; and any such decision which is not substantiated by any cogent material can only be labelled as conjectural.

Even otherwise, misconduct, if any, would be being employed as a guest faculty in two different colleges at the same time. The undisputed facts fail to establish the charge that the petitioner was employed in two different medical colleges at one time and is at best, submission of a declaration, which is inaccurate. The same is, however, not the charge on which any punishment has been imposed.

Further, the respondent-Medical Council of India has failed to refer to any provision of the Indian Medical Council Act, 1956 and/or Regulation thereunder as per which there was a prohibition imposed on any faculty member taking up any assignment at two different places. The counsel for the respondent-Medical Council of India has also failed to refer to any provision of the Act/Rules/Regulations notified by the Medical Council of India, which defines misconduct and establishes that taking up assignment in

two different medical colleges during the same period would constitute a misconduct entailing the consequences and liabilities as have been slapped by the respondent-Medical Council of India.

Referring to the third objection that the petitioner has admitted the mistake in the declaration and as such the order ought to be upheld, I fail to find myself in agreement with the abovesaid contention. Not every mistake entails penal consequences. Bonafide mistake may be required be condoned and overlooked. It is not upto the respondent-Medical Council of India to pick up each and every discrepancy and to, thereafter, slap the penalty which it feels empowered to do so without examining the declaration/forms submitted as a whole. Needless to mention that the abovesaid declaration has to be read as a part and parcel of the complete declaration and in continuation of the details submitted by the petitioner in the accompanying form. A selective reading of the form ignoring the declaration made in the detailed proforma may not be permissible. Any and every discrepancy requires to be harmoniously construed and is not to be seen as an occasion to impose penalty on a person. Unless there was a malicious intent on the part of the offender to conceal the information and to mislead the Authorities concerned by giving information, which was known to the declarant to be wrong, the question of suffering of any liability as a result of such mis-declaration would not ordinarily arise. No benefit has also been availed by Haryana Institute of Medical Science, Rohtak

Further, the issue in question has already been examined by the Delhi High Court in Writ Petition (Civil) No.5915 of 2015 titled as 'Dr. Anil Grover (MD-DM Cardiology) Versus Union of India' decided on

03.07.2017, wherein the similar action of the respondent-Medical Council of India for imposition of penalty of removal of name of a doctor from the Medical Register was set aside for want of appropriate regulatory approval/competence and the abovesaid decision of the Single Bench was upheld by the Division Bench in its judgment dated 27.10.2017 passed in LPA No.577 of 2017. Counsel for the respondent-Medical Council of India does not dispute the said aspect as well.

Accordingly, I find that the action of the respondent-Medical Council of India suffers from grave impropriety and illegality for want of sufficient proof to establish the charge and has also failed to refer to an appropriate regulatory provision under which such a punishment order passed by the respondent-Medical Council of India could be sustained. Consequently, the impugned orders are set aside.

The petitions are allowed accordingly.

01.08.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No