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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6761/2020 & CM APPLs. 29176/2020 & 36365/2021**SHAKTI DATT SHARMA & ORS.**

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. H.S. Tiwari, Mr. Anshuman Mehrotra, Mr. Nikunj Arora and Mr. Arjun Pawar, Advocates for petitioners (Ph. 9810082847, e-mail: ankurchibber@gmail.com)

versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
AND ORS**

..... Respondents

Through: Ms. Anita Sahani and Mr. Rahul Mourya, Advocates for GGSIPU/ R-1 and 2 (Ph.9810113256, e-mail: anitasahani@gmail.com)
Mr. T. Singh Dev, Ms. Anum Hussain, Mr. Tanishq Srivastava, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati, Mr. Aabhaas Sukhramani, Advocates for R-3/ NMC (e-mail: advanumhussain@gmail.com)
Mrs. Avnish Ahlawat, Standing Counsel, GNCTD for R-4 to R-6 with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

CORAM:



HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

04.09.2023

MINI PUSHKARNA, J.

Introduction

1. The present writ petition has been filed seeking quashing of letter dated 19th August, 2019 issued by the respondent no. 1 University containing Minutes of the Selection Committee meeting held on 19th August, 2019 for Equated Designation of Medical Teachers that did not contain the name of petitioners for grant of Equated Teaching Designation. The petitioners have further sought quashing of letters dated 31st August, 2020 issued by respondent no. 3/National Medical Commission (erstwhile Medical Council of India) informing the petitioners 1 and 2 that they were not considered eligible for the grant of Equated Designation of Professor. The petitioners were declared ineligible for grant of Equated Teaching Designation to the post of Professor in the concerned departments, since they were not found to fulfil the minimum requirements under the “Minimum Qualifications For Teachers in Medical Institutions Regulations, 1998” (“1998 Regulations”) read with “Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2018”. The petitioners are further seeking a direction to respondents to grant them Equated Teaching Designation for the post of Professor in the concerned departments with effect from 19th August, 2019, the date on which similar cases were recommended, with all consequential benefits.



Facts of the Case

2. The brief facts of the case are that respondent no. 5 hospital i.e. Dr. Baba Saheb Ambedkar Hospital (Dr. BSA Hospital) was attached to newly formed Dr. BSA Medical College in May-2016. The same has since been managed by doctors of Dr. BSA Hospital, along with doctors and staff of Dr. BSA Medical College, including the petitioners. Apart from these doctors, the hospital also appointed faculty members on contractual basis from amongst the superannuated doctors.

3. The petitioner no. 1 was selected as Post Graduate Medical Officer through Union Public Service Commission (UPSC) in the year 1986, and was posted at the Lok Nayak Hospital, which has more than 1800 beds. The petitioner remained posted at the said hospital from 15th July, 1986 to 15th June, 2017 i.e. 31 years and 11 months. The petitioner no. 1 was posted to Dr. BSA Hospital on 16th June, 2017. During the course of his service, he has been serving Delhi Government hospitals and teaching the Under Graduate and Post Graduate students and supervising Junior and Senior Residents in the Department of Anaesthesia.

4. Petitioner no. 2 was selected as a Specialist (Pathology) in 1995 through UPSC. She was posted at Lok Nayak Hospital, which has more than 1800 beds and remained posted at the said hospital from 01st September, 1998 to 11th January, 2012. She was posted to Dr. BSA Hospital on 12th January, 2012. She was teaching and supervising Junior and Senior Residents in the Department of Pathology at Dr. BSA College since January, 2012. During the course



of the present writ petition, petitioner no. 2 superannuated on 30th November, 2021.

5. Petitioner no. 3 was selected as Specialist (Microbiology) through UPSC. She was posted at Lok Nayak Hospital which has more than 1800 beds and remained posted at the said hospital from 22nd June, 2000 to 10th May, 2012. She was posted at Dr. BSA Hospital on 11th May, 2012. She has been supervising Junior and Senior Residents in the Department of Microbiology at Dr. BSA Medical College since January, 2012 and teaching the Under Graduate students since September, 2017.

6. In order to further enhance the accessibility of quality Medical Education and Health Care, the Government of India, in 2018 announced setting up new Government Medical Colleges and Hospitals by upgrading existing District Hospitals in the country. In furtherance of the said objective, the respondent no. 3 amended the 1998 Regulations to provide Equated Teaching Designation to Consultants and Specialists.

7. As per the 1998 Regulations, as amended by 'Minimum Qualifications For Teachers in Medical Institutions (Amendment) Regulations, 2018', the following criteria is provided for grant of Equated Teacher Designation of Professor:-

"For Professor :

"The requisite experience for equating a Consultant or Specialist (after possessing post graduate medical degree in the subject) working in the concerned specialty in a minimum 300 bedded non-teaching District Hospitals owned and managed by State Govt/Central Govt. as Professor shall be more than 18 years with four Research



publication in indexed journal as Ist Author or corresponding author. Such Consultant or Specialist after joining a medical college shall be called “Designate Professor” and on completion of three years’ experience in the capacity of Designate Professor, such person shall be designated as “Professor”.”

8. Pursuant to the aforesaid, the petitioners herein applied for grant of Equated Teacher Designation of Professor to respondent no. 1 and 2. Additionally, petitioner no. 1 and 2 also applied for the same to respondent no. 3.

9. Dr. BSA Medical College and Hospital vide its letter dated 14th January, 2019 recommended to respondent no. 1 and 2 University for grant of Equated Teaching Designation to Non-Teaching Specialist and Post Graduate Medical Officers, including the three petitioners at Dr. BSA Hospital attached to Dr. BSA Medical College.

10. Since respondents 1 and 2 did not act on the said request, they were repeatedly reminded by Dr. BSA Medical College and Hospital. The last reminder in this regard was sent vide letter dated 11th July, 2019.

11. Ultimately, on 19th August, 2019 a meeting was convened by the members of the respondent no. 1 and 2 University and members of erstwhile Medical Council of India regarding proposal submitted by Dr. BSA Medical College and Hospital. The Minutes of the said Meeting were received by Director Principal, Dr. BSA Medical College and Hospital vide letter dated 19th August, 2019, wherein Equated Designation for the post of Professor was denied to 28 doctors, including the petitioners on the ground that their experience



was less than 18 years in Dr. BSA Hospital.

12. Thereafter, the Director Principal of Dr. BSA Medical College and Hospital sought clarification from respondent no. 3 with regard to considering previous experience of the Consultants/Specialists in other hospitals for grant of Equated Teaching Designation. In reply, a letter dated 26th September, 2019 was issued by respondent no. 3 wherein it categorically stated as follows:-

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फैक्स / Fax : 0091-11-25367024

ई-मेल / E-mail : mcicouncil@ncl.in

वेबसाइट / Website : www.mciindia.org



पॉकेट -14, सेक्टर-8, द्वारका

फेस-1, नई दिल्ली-110077

Pocket- 14, Sector- 8, Dwarka.

Phase - 1, New Delhi-110077

भारतीय आयुर्विज्ञान परिषद के अधिकरण में शासी बोर्ड

BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2019/TEQ/ 150866

Date: 26-09-19

Dr. Achal Gulati,
Director Principal,
Dr. Baba Saheb Ambedkar Medical College &
Hospital,
Govt. of NCT of Delhi,
Sector-6, Rohini,
Delhi-110085.

Subject: Grant of equated teaching designation to non-teaching faculty in newly establishing medical colleges attached to the district hospital having 300 or more beds,



Sir,

Please refer to your letter dated 12.09.2019, on the subject noted above. This is to inform you that Consultant or Specialist after possessing recognised postgraduate degree qualification in the subject working in the concerned speciality in a Minimum 300 bedded non-teaching District Hospitals for a period of more than 18 years with 4 research publications and 10 years with 2 research publications whether gained in a single hospital or more than one hospital, such Consultant or Specialist shall be considered eligible as Designated Professor and Designated Associate Professor respectively in the subject. After completion of 3 years experience in the capacity of Designated Professor and Designated Associate Professor, such person shall be designated as Professor and Associate Professor respectively in the subject.

Yours faithfully,

(Dr. R. K. Vats)

Secretary General

Copy to: Guard File (TEQ Section)

13. The petitioner no. 1 had submitted an application dated 28th July, 2020 to the erstwhile Medical Council of India (MCI) for Teaching Equivalent Qualification (TEQ) seeking confirmation of eligibility of grant of Equated Teaching Designation to the post of Professor in the Department of Anaesthesiology. The petitioner no. 2 had submitted an application dated 13th July, 2020 to the erstwhile MCI for Teaching Equivalent Qualification (TEQ) seeking confirmation of eligibility of grant of Equated Teaching Designation to the post of Professor in the Department of Pathology. Likewise, petitioner no. 3 had submitted an application dated 14th December, 2020 to the erstwhile MCI for Teaching Equivalent Qualification (TEQ) seeking confirmation of eligibility of grant of Equated Teaching Designation to the post of Professor in the Department of Microbiology.

14. Respondent no. 3 i.e. National Medical Commission (erstwhile MCI) rejected the applications for Teaching Equivalent Qualification



(TEQ) for the post of Professor of petitioner no. 1 and 2 on 31st August, 2020 and application of petitioner no. 3 on 14th January, 2021, on the ground that the experience of the petitioners in Non-Teaching 300 bedded district hospital is less than the minimum requirement of 18 years.

15. Hence, the present writ petition has been filed.

Submissions of Petitioners

16. On behalf of the petitioners, the following contentions have been raised:

(i) The petitioners met the experience criteria norms set by respondent nos. 1 to 3 in the year 2019 itself and applied for Equated Designation. Their applications were duly considered by an Internal Screening Committee of Dr. BSA Medical College, ratified by the Director Principal of Dr. BSA Medical College and the proposal was sent to Lieutenant Governor, Government of NCT of Delhi for his consideration and approval.

(ii) The proposal was approved by the Lieutenant Governor on 02nd November, 2018 and sent to Director Principal of Dr. BSA Medical College and Hospital on 08th November, 2018. Subsequently, on 14th January, 2019, the Director Principal of Dr. BSA Medical College recommended the proposal to respondent nos. 1 and 2, however, the same was rejected arbitrarily by respondent nos. 1, 2 and 4 in violation of the statutory provisions and their own guidelines vide letter dated 19th August, 2019.



(iii) On 31st August, 2020, the respondent no. 3 also rejected the request of petitioner no. 1 and 2 for grant of Equated Teaching Designation of Professor on the wrong premise of experience required in Non-teaching district hospital. Without any justification and in an arbitrary manner, the respondents refused to accept past service experience of the petitioners. The experience of the petitioners was way more than the minimum threshold and related to Lok Nayak Hospital which has six times the number of beds i.e. more than 1800 beds as compared to the minimum criteria of 300 beds.

(iv) The number of minimum publications prescribed by the Regulations is 4, whereas the petitioners have published 7, 24 and 18 papers respectively. Thus, they fulfil the said criteria also. In addition to this, the letter dated 26th September, 2019 as issued by respondent no. 3, shows that such Consultants or Specialists who after possessing recognised Post Graduate degree qualification, work in a minimum 300 bedded Non-teaching district hospital for a period of more than 18 years with four research publications, whether gained in a single hospital or more than one hospital, shall be considered eligible for being designated as Professor in the subject institution.

(v) The noting made and signed by the Principal Secretary, Health and Family Welfare, Government of NCT of Delhi, which was sent for approval to the Lieutenant Governor for granting Equated Teaching Designation, has been ignored by the respondent nos. 1 and 2.



(vi) The action of the respondents is in violation of the judgment of this Court in the case of *Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India and Others*¹, wherein this Court has observed that grant of Equated Teaching Designation of Professorship is not qua particular hospital, but qua the doctor concerned. Further, transfer is not break in service and does not wipe out the previous experience of the petitioners.

(vii) Delhi being a Union Territory, has no concept of District Hospitals. Thus, the experience of petitioners at Lok Nayak Hospital ought to have been taken into consideration. The respondents have acted in complete violation of the Regulations while recommending grant of Equated status of Assistant Professors to 12 doctors of the same hospital, when there is no provision for grant of such Equated status of Assistant Professors.

(viii) Respondent nos. 1 and 2 have discriminated against the petitioners in as much as they have not insisted upon the requisite working experience in the same hospital for the other doctors for whom they have recommended Equated status in the same meeting, the minutes of which have been impugned in the present petition.

(ix) Actions of respondents are violative of Fundamental Rights and principles of Equality. All the three petitioners have worked for more than 18 years in Lok Nayak Hospital, which

¹ 2016 SCC Online Del 5911



has a capacity of more than 1800 beds and Dr. BSA Hospital, which has a capacity of 500 beds, both ways more than the minimum requirement of 300 beds.

17. On behalf of the petitioners, the following judgments have been relied upon:-

- (i) ***Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India and Others, 2016 SCC Online Del 5911***
- (ii) ***K.P Sudhakaran & Another Vs. State of Kerala & Others, (2006) 5 SCC 386***
- (iii) ***E. P. Royappa Vs. State of Tamil Nadu & Another, AIR 1974 SC 555***
- (iv) ***Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433.***

Submissions of Respondent No. 1

18. On behalf of the respondent no. 1/Guru Gobind Singh Indraprastha University (University), following contentions have been raised:-

- (i) Petitioners do not have vested right to grant of Equated Teaching Designation. The same can be granted only upon fulfilling the criteria as laid down by National Medical Commission.
- (ii) Petitioners ought to have approached the learned Central Administrative Tribunal (CAT) for relief. In view thereof, the petition is not maintainable. Medical Council of India, now known as The National Medical Commission, which has issued the notifications and clarifications thereto, has been notified to be under the jurisdiction of learned CAT.



(iii) The respondent University has not violated any statutory provisions. None of the similarly placed Consultants/Specialists have been granted the Teaching designation.

(iv) The alleged noting signed by the Principal Secretary, Health and Family Welfare, Government of NCT of Delhi, as relied upon by the petitioners, is contrary to the specific clarification issued by the respondent no. 3 in its letter dated 08th July, 2020.

(v) Petitioners have not challenged the Regulations of the respondent no. 3 National Medical Association or the clarification thereof. The petition is liable to be dismissed on this ground alone.

Submissions of Respondent No. 3

19. On behalf of respondent no. 3/National Medical Commission, the following contentions have been raised:-

(i) Petitioners have based their claim on the provisions contained in the 1998 Regulations, as amended from time to time, which provided for grant of Equated Teaching Designation to Specialists/Consultants as a onetime measure. However, the same has already been repealed on 22nd February, 2022, and is no longer in existence.

(ii) The petitioners have no vested or legal right to be considered for grant of Equated Teaching Designations.

(iii) Respondents have not issued any advertisement for appointment of Faculty Members. The petitioners are seeking Equated Teaching Designations, so as to extend their services



till the age of 70 years as the retirement age of teachers is 70 years, while the Specialists/Consultants retire at 60/65 years.

(iv) There is no judicially enforceable right in favour of the petitioners. The petitioners have not challenged the 1998 Regulations as amended from time to time. Therefore, they cannot raise a claim that they ought to be granted Equated Teaching Designation in violation of aforesaid statutory Regulations.

(v) There can be no estoppel against a statute. The petitioners cannot place reliance on certain notings of the file of the Government of India. The notings in the file are merely opinions by an Officer and cannot be treated as final decision.

(vi) Judgment in the case of *Faculty Association, Maulana Azad Medical College and Associated Hospital (supra)*, is not applicable in the present case.

(vii) Scope of judicial review is extremely limited and Courts ought not to interfere in academic matters. No mandamus can be issued to any academic body not to follow its own Rules and Regulations. The petitioners have not obtained the requisite experience of more than 18 years in a minimum 300 bedded Non-teaching district hospital. Their experience while working as Consultant/Specialist at Lok Nayak Hospital, cannot be counted towards grant of Equated Teaching Designation.

20. In support of his submissions, learned counsel for respondent no. 3 has relied upon the following judgments:-

(i) ***Suresh Chand Gautam Vs. State of Uttar Pradesh***



- & Ors., (2016) 11 SCC 113.*
- (ii) *State of West Bengal Vs. Subhas Kumar Chatterjee and Ors., (2010) 11 SCC 694.*
 - (iii) *Santosh Kumar Verma & Ors. Vs. State of Bihar Through Secretary & Ors., (1997) 2 SCC 713.*
 - (iv) *Maharshi Dayanand University Vs. Surjeet Kaur, (2010) 11 SCC 159*
 - (v) *Rajasthan State Industrial Development & Investment Corporation Vs. Subhash Cooperative Housing Society Jaipur & Ors., (2013) 5 SCC 427*
 - (vi) *Sneh Gupta Vs. Devi Sarup & Ors., (2009) 6 SCC 194*
 - (vi) *Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors., (2009) 1 SCC 180*
 - (vii) *Union of India & Ors. Vs. Vartak Labour Union (2), (2011) 4 SCC 200*
 - (viii) *Greater Mohali Area Development Authority & Ors. Vs. Manju Jain & Ors., (2010) 9 SCC 157*
 - (ix) *Bipromasz Bipron Trading SA Vs. Bharat Electronics Ltd., (2012) 6 SCC 384*
 - (x) *University Grants Commission & Anr. Vs. Neha Anil Bobde (Gadekar), (2013) 10 SCC 519*
 - (xi) *All India Council For Technical Education Vs. Surinder Kumar Dhawan & Ors., (2009) 11 SCC 726*
 - (xii) *A.P. Christian Medical Educational Society Vs. Government of Andhra Pradesh & Anr., (1986) 2 SCC 667*
 - (xiii) *CBSE Vs. P.C. Sunil Kumar & Ors., (1998) 5 SCC 377*

Analysis and Findings

21. I have heard learned counsels for the parties and have perused the record.
22. The present case pertains to grant of Equated Teaching



Designations in respect of MBBS Course regulated through the “Minimum Qualifications For Teachers in Medical Institutions Regulations, 1998” (“1998 Regulations”) as amended from time to time. The petitioners are seeking a direction to the respondents to grant them Equated Teaching Designation to the post of Professor in the concerned departments of Dr. BSA Medical College with effect from 19th August, 2019 along with all consequential benefits.

23. By amendment notification dated 22nd January, 2018, the erstwhile MCI (now National Medical Commission) notified Regulations called “Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2018”, thereby bringing certain amendments in the 1998 Regulations. The said amendment notification dated 22nd January, 2018 issued by the erstwhile MCI reads as under:-



MEDICAL COUNCIL OF INDIA

AMENDMENT NOTIFICATION

New Delhi, the 22nd January, 2018

No. MCI-12(1)/2017-Med.Misc./169950.—In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998", namely:-

- 1 (i) These Regulations may be called the "Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2018."

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998", the following additions/modifications/deletions/ substitutions, shall be, as indicated therein:-

- (i) In the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998" in table I under the heading "REQUIREMENTS OF ACADEMIC QUALIFICATION AND TEACHING /RESEARCH EXPERIENCE" in the column of 'Teaching and Research Experience' against the "Professor", for all the specialties, the following shall be added:

"The requisite experience for equating a Consultant or Specialist (after possessing postgraduate medical degree in the subject) working in the concerned specialty in a minimum 300 bedded non teaching District Hospitals owned and managed by State Govt/Central Govt. as Professor shall be more than 18 years with four Research

publication in indexed journal as Ist Author or corresponding author. Such Consultant or Specialist after joining a medical college shall be called "Designate Professor" and on completion of three years experience in the capacity of Designate Professor, such person shall be designated as "Professor".

- (ii) In the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998" in table I under the heading "REQUIREMENTS OF ACADEMIC QUALIFICATION AND TEACHING /RESEARCH EXPERIENCE" in the column of 'Teaching and Research Experience' against the "Associate Professor", for all the specialties, the following shall be added:

"The requisite experience for equating a Consultant or Specialist (after possessing postgraduate medical degree in the subject) working in the concerned specialty in a minimum 300 bedded non teaching District Hospitals owned and managed by State Govt/Central Govt. as Associate Professor shall be more than 10 years with two Research publication in indexed journal as Ist Author or corresponding author. Such Consultant or Specialist after joining a medical college shall be designated as "Associate Professor".

DR. REENA NAYYAR, Secy. I/c

[ADVT.-III/4/Extly./404/17]



Foot Note: The Principal Regulations namely, "Minimum qualification for Teachers in Medical Institutions Regulations, 1998" were published in Part-III, Section (4) of the Gazette of India on the 5th December, 1998, and amended vide MCI notifications dated 16.3.2005, 21.7.2009, 28.10.2009, 15.12.2009, 3.11.2010, 4.11.2010, 8.7.2011, 11th June, 2012, 6th August, 2012, 20.4.2015, 11.03.2017, 08.06.2017.

- Note:** 1. The above said notification shall be applicable, if in future, if any 300 bedded non teaching District Hospitals owned and managed by State Govt/Central Govt. is converted into a medical college/institute for imparting undergraduate medical education, a candidate with postgraduate medical degree i.e. MD/MS/DNB should be recruited as Sr. Resident and not as Consultant or Specialist and thereafter, the appointment of Assistant Professor/Associate Professor/Professor in such medical college shall be made as per the standard norms.
2. This would be only a one time provision for non teaching District Hospitals owned and managed by State Govt/Central Govt. during the establishment of their medical college, subsequently, the appointment of any faculty would be as per the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 (Amended till date)"

24. The aforesaid amendment provided for grant of Equated Teaching Designations to the post of Professor on fulfilment of the following requirements:

- (i) Requisite experience must have been gained in a minimum 300 bedded Non-teaching district hospital owned/managed by State Government/Central Government.
- (ii) Requisite experience for appointment as Professor is working for more than 18 years in the concerned speciality, after obtaining post graduate medical degree in the concerned subject.
- (iii) Four Research Publications in Indexed Journal as first author or corresponding author.
- (iv) Such Consultants/Specialists who possess requisite academic and teaching/research experience, shall be called Designate Professor after joining a medical college and upon completion of three years experience as Designate Professor, be designated as Professor.
- (v) Note 1 provides that the notification dated 22nd January,



2018 shall be applicable if any 300 bedded Non-teaching district hospital owned/managed by State Government/Central Government is converted into a Medical College for starting MBBS Course.

(vi) Note 2 provides that grant of such Equated Teaching Designations is a onetime provision for Non-teaching district hospitals owned/managed by State Government/Central Government, only for the purpose of establishing a new Medical College.

25. The erstwhile MCI by its letter dated 26th September, 2019 to the Director Principal of Dr. BSA Medical College and Hospital, had clearly stated that for grant of Equated Teaching Designation to the Non-teaching Faculty, Consultant/Specialist must have experience of more than 18 years in the concerned speciality in a minimum 300 bedded Non-teaching district hospital. Letter dated 26th September, 2019 issued by the erstwhile MCI reads as under:-

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ई-मेल / E-mail : mci@bsa.net.in
वेबसाइट / Website : www.mciindia.org



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Pocket- 14, Sector- 8, Dwarka,
Phase - 1, New Delhi-110077



भारतीय आयुर्विज्ञान परिषद् के अधिक्रमण में शासी बोर्ड
BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2019/TEQ/ 150866

Date : 26-09-19

Dr. Achal Gulati,
Director Principal,
Dr. Baba Saheb Ambedkar Medical College &
Hospital,
Govt. of NCT of Delhi,
Sector-6, Rohini,
Delhi-110085.

Subject : Grant of equated teaching designation to non-teaching faculty in newly establishing medical colleges attached to the district hospital having 300 or more beds.

Sir,

Please refer to your letter dated 12.09.2019, on the subject noted above. This is to inform you that Consultant or Specialist after possessing recognised postgraduate degree qualification in the subject working in the concerned speciality in a Minimum 300 bedded non-teaching District Hospitals for a period of more than 18 years with 4 research publications and 10 years with 2 research publications whether gained in a single hospital or more than one hospital, such Consultant or Specialist shall be considered eligible as Designated Professor and Designated Associate Professor respectively in the subject. After completion of 3 years experience in the capacity of Designated Professor and Designated Associate Professor, such person shall be designated as Professor and Associate Professor respectively in the subject.

Yours faithfully,

(Dr. R. K. Vats)
Secretary General

Copy to: Guard File (TEQ Section)

26. It is to be noted that the respondent no. 1 University vide its communication dated 03rd July, 2020 had sought clarification regarding the permissibility to grant Equated Teaching Designation to Consultant/Specialist of 300 bedded District Hospitals, where the said doctor was previously working at a Teaching Medical College/Institution or a Hospital, which was not a District Hospital or a hospital which was having less than 300 beds.



27. The erstwhile MCI vide letter dated 08th July, 2020 clarified that a Consultant/Specialist must have obtained the requisite experience in the concerned speciality in a minimum 300 bedded Non-teaching district hospital owned/Managed by the State/Central Government. Any experience in this regard in any teaching hospital attached to a Medical College where the erstwhile MCI recognised Under Graduate and/or Post Graduate courses were being conducted, cannot be considered towards grant of Equated Teaching Designation. Clarification dated 08th July, 2020 issued by the erstwhile MCI reads as under:

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 ई-मेल E-mail : mci@bciindia.in
 वेबसाइट /Website : www.bciindia.org



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भारतीय आयुर्विज्ञान परिषद के अधिक्रमण में शासी बोर्ड
 BOARD OF GOVERNORS
 IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/2020-TEQ/ 107276

Date: 8/7/2020

Prof. Yatish Aggarwal,
 Dean,
 University School of Medicine and
 Paramedical Health Sciences,
 Guru Gobind Singh Indraprastha University,
 Sector - 16C, Dwarka,
 New Delhi - 110078
 Email: dean.usmptnhs@ipu.ac.in

Subject: Clarification regarding permissibility of grant of "equated teaching designation" to medical doctors of 300-bedded district hospitals, where a doctor previous to completing his/her qualifying period was working without a teaching designation at (a) a teaching medical institution; and (b) a hospital which was not a district hospital; or (c) a hospital which was less than 300 beds



Sir,

With reference to your email letter dated 03/07/2020 on the subject noted above, the point wise reply to your questions are as under:

- Ques.** Where a doctor previous to completing his/her qualifying period in the concerned specialty in a 300-bedded non-teaching District Hospital, was employed with a teaching medical institution and did not hold a teaching designation?
- Ans.** The regulations referred to clearly specifies that the qualifying period that shall be considered is the experience in the concerned specialty in 300 bedded non teaching district hospital. Therefore, any experience in any teaching hospital (where MCI recognized UG and/or PG courses exist) cannot be considered as the qualifying criteria for grant of equated designation.
- Ques.** Where a doctor previous to completing his/her qualifying period in the concerned specialty in a 300-bedded non-teaching District Hospital, was employed with a hospital officially not declared as a District Hospital?
- Ans.** With reference to considering the qualifying period in a 300 bedded non teaching hospital not declared as district hospital and applicability of the above clause to NCT of Delhi, it is noted that hospitals owned

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वेबसाईट /Website : www.mciindia.org



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फैस-1, नई दिल्ली-110077
Pocket- 14, Sector- 8, Dwarka,
Phase - 1, New Delhi-110077

भारतीय आयुर्विज्ञान परिषद के अधिक्रमण में शासी बोर्ड BOARD OF GOVERNORS IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

and managed by the State Govt. in various districts of the state have not by convention been declared as District Hospitals though they discharge similar functions. In view of the unique governance of NCT of Delhi, experience in the concerned specialty in a 300 bedded non teaching hospital owned and managed by the State Govt. may be considered for calculating the qualifying period for grant of equated designations.



Ques. Where a doctor previous to completing his/her qualifying period in the concerned specialty in a 300-bedded non-teaching District Hospital was employed with a hospital which has/had less than 300 beds

Ans. Experience while working in a non teaching hospital of the Govt, with less than 300 beds cannot be considered for counting towards the qualifying period for grant of equated designation.

Ques. It is also requested that it may please be clarified that for how long and how many times can this "one- time provision" be applied to doctors working at a district hospital where a medical college has been established?

Ans. As per Regulations for the establishment of medical colleges, a medical college is established in a graded incremental manner from the time of LOP till its recognition. Thus, the "one time provision" referred to in this regulation covers the entire period from LOP till recognition. Thus, such new medical colleges being established by upgrading 300 bedded hospital can seek equated designations at one or more of time points during the establishment of the medical college based on the stage wise requirement in faculty as prescribed in the Regulations.

Yours faithfully,

(Dr. R.K. Vats)
Secretary General

28. Perusal of the aforesaid clearly shows that the erstwhile MCI vide its letter dated 08th July, 2020 had clarified that in case of Government of NCT of Delhi, various state government hospitals have not been declared as District Hospitals, even though they are discharging similar functions. It was clarified that in view of the unique issue of governance of Government of NCT of Delhi, experience in the concerned specialty in a 300 bedded Non-teaching hospital owned/managed by the Government of NCT of Delhi may be considered towards grant of Equated Teaching Designation. However, any experience in this regard in any teaching hospital attached to a Medical College where MCI recognised Under Graduate and/or Post Graduate courses are being conducted, cannot be considered towards grant of Equated Teaching Designation.



29. Considering the aforesaid notification dated 22nd January, 2018 and the clarification issued vide letter dated 26th September, 2019 and 08th July, 2020 issued by the erstwhile MCI, it is clear that the petitioners cannot claim benefit of any experience that they may be having in a teaching hospital, as the notification was very categorical with respect to experience in a 300 bedded Non-teaching hospital.

30. It is pertinent to note here that the petitioners have not challenged the legality of the notification dated 22nd January, 2018 issued by erstwhile MCI or the subsequent clarifications issued by the erstwhile MCI in the form of letters dated 26th September, 2019 or 08th July, 2020. Therefore, the petitioners are bound by the norms as laid down in the aforesaid notification dated 22nd January, 2018 issued by the erstwhile MCI, and cannot seek any benefit by disregarding the norms as specified therein. Thus, the experience of the petitioners while working in Lok Nayak Hospital cannot be taken into consideration in view of the clear stipulation as given in notification dated 22nd January, 2018, as the said Lok Nayak Hospital is admittedly a Teaching Hospital attached to a Medical College i.e. Maulana Azad Medical College, New Delhi.

31. It is relevant to note here that the 1998 Regulations, as amended by notification dated 22nd January, 2018, which provided for Equated Teaching Designation to Specialist/Consultants in respect of MBBS course, as a one-time measure, has been repealed on 22nd February, 2022 by way of notification of “Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022”.

32. The contention on behalf of the petitioners that they have no



control over their postings and can be transferred from one hospital to another by the State Government and thus, their length of service at Lok Nayak Hospital be counted towards grant of Equated Teaching Designation, is without any justification. The legality of the aforesaid notification dated 22nd January, 2018 and the subsequent clarifications issued by erstwhile MCI have not been challenged. Hence, petitioners cannot raise a claim that they ought to be granted Equated Teaching Designations in violation of the aforesaid Regulations, which was statutory in nature.

33. Reliance on behalf of the petitioners on certain notings of the file of the Government of NCT of Delhi in order to claim that the State Government and Dr. BSA Medical College had agreed for granting Equated Teaching Designations to the petitioners, is totally flawed. File noting in a departmental file or communications between various government agencies, are opinions by an Officer for internal views. The same can neither be considered as a final decision or be relied upon for seeking any benefit.

34. In the case of ***Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others***², it has been held by Supreme Court that noting in a departmental file do not have the sanction of law to be an effective order. Thus, it has been held as follows:-

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for

² 2008 SCC OnLine SC 1564



internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

15. *In Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713] , a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the “order” of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.*

16. *To the like effect are the observations of this Court in Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] , wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to*



confer an enforceable right.”

35. Similarly in the case of ***Greater Mohali Area Development Authority and Others Vs. Manju Jain and Others***³, it has been held that an order does not become effective unless it is communicated to the person concerned. Thus, it has been held as follows:

“22. The Constitution Benches of this Court in Bachhittar Singh v. State of Punjab [AIR 1963 SC 395] and State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313] , have held that an order does not become effective unless it is published and communicated to the person concerned. Before the communication, the order cannot be regarded as anything more than provisional in character. A similar view has been reiterated in Union of India v. Dinanath Shantaram Karekar [(1998) 7 SCC 569 : 1998 SCC (L&S) 1837 : AIR 1998 SC 2722] and State of W.B. v. M.R. Mondal [(2001) 8 SCC 443] .

23. In Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] this Court held that the order of the authority must be communicated for conferring an enforceable right and in case the order has been passed and not communicated, it does not create any legal right in favour of the party.

24. Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated.”

36. Reliance by the petitioners on the judgment in the case of ***Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India & Others***⁴, is totally misconceived. The said judgment does not deal with “The Minimum Qualifications for

³ 2010 SCC OnLine SC 916



Teachers in Medical Institutions Regulations, 1998”, as amended from time to time. The said case dealt with the ‘Post Graduate Medical Education Regulations, 2000’. The said Regulations of 2000 pertaining to Post Graduate Medical Education Stipulated that Consultants or Specialists who have the experience of working for a period of not less than 18 years and 10 years respectively in the teaching and other general departments in the institution or hospital, not attached to any medical college, where with the affiliation from any University, Post Graduate teaching is being imparted, shall be eligible to be equated as Professor and Associate professor in the Department concerned. Whereas, the present case pertains to claim of petitioners for grant of Equated Teaching Designations for MBBS course under “The Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998”. The said 1998 Regulations stipulate experience of more than 18 years in a minimum 300 bedded non-teaching district hospital. Evidently, the governing Regulations as well as the requirement for grant of Equated Teaching Designations in the case of *Faculty Association, Maulana Azad Medical College (supra)* and the present case, are completely different and distinct.

37. As noted above, the aforesaid judgment in the case of *Faculty Association, Maulana Azad Medical College (supra)* does not deal with the 1998 Regulations for grant of Equated Teaching Designation in Government Medical Colleges running MBBS course alone. As submitted by respondents, “The Post Graduate Medical Education Regulation 2000” which has been interpreted in the said judgment of

⁴ 2016 SCC OnLine Del 5911



Faculty Association, Maulana Azad Medical College (supra), is not applicable to Dr. BSA Hospital where the petitioners have been working, since in the Dr. BSA Hospital only MBBS course is currently available.

38. This court also notes that the judgment in **Faculty Association, Maulana Azad Medical College (Supra)**, was dealt extensively in a subsequent judgment of this Court in the case of **Dr. Abhishek Kumar Vs. Govt. of NCT of Delhi and Others**⁵, wherein this Court while holding that Equated Teaching Designation cannot be granted automatically, held as follows:-

“41. It may further be noticed that in Faculty Association, Maulana Azad Medical College and Associated Hospital v. Union of India (supra), the issue related to grant of Equated Teaching Designation pertaining to ‘Specialists’ and ‘Consultants’ under ‘non-teaching cadre’ attached to the hospitals imparting post graduate teaching since considerable period and the same appears to have been taken as one time measure to overcome the embargo in the light of clause (a) to (c) of Regulation 11.1 of PGME Regulations, 2000. Though, it has been held in Faculty Association, Maulana Azad Medical College and Associated Hospital v. Union of India (supra) that Regulation 11.1 of PGME Regulations does not postulate one time exception but it needs to be kept in perspective that award of Equated Teaching Designation shall be only to those many consultants and specialists in the concerned hospital/institution so as to fulfil the minimum requirement for imparting Post Graduate medical education to the sanctioned annual intake of the respective government institution/hospital and cannot exceed the said number. The ‘teaching’ and ‘non-teaching’ designations have specific connotation, and posts are created considering the specific

⁵ 2022 SCC OnLine Del 4582



requirements of the ‘teaching’ and ‘non-teaching faculty’ employed in the hospital/institution. The Equated Teaching Designation cannot be granted oblivious of said requirement as contemplated under proviso to Clause (d) of Regulation 11.1 of PGME Regulations, 2000, failing which the purpose of having ‘teaching’ and ‘non-teaching’ designations would be obscured. In view of aforesaid legal position, the petitioner who belongs to GDMO cadre, cannot be automatically granted Equated Teaching Designation and authorities relied by petitioner are of little assistance to further his case.”

39. Even otherwise, this Court is not inclined to interfere with the decision of the respondents. It is pertinent to note here that in the case of **University Grants Commission & Another Vs. Neha Anil Bobde (Gadekar)**⁶, it has been held by Supreme Court that the Court shall not generally sit in appeal over the opinion expressed by Expert Academic Bodies. Normally it is wise and safe for the Courts to leave the decision of the Academic Experts who are more familiar with the problem they face. Thus, it has been held as follows:-

“31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] , Tariq Islam v. Aligarh Muslim University [(2001) 8 SCC 546 : 2002 SCC (L&S) 1] and Rajbir Singh Dalal v. Chaudhary Devi Lal University [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887] , has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to

⁶ 2013 SCC OnLine SC 874



leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any “qualifying criteria”, which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.”

40. Similarly, advising the Courts to adopt the course of minimum interference in issues involving academic matters, Supreme Court in the case of ***All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others***⁷, has held as follows:-

“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on

⁷ 2009 SCC OnLine SC 378



the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in. In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

“11. ... Judges must not rush in where even educationists fear to tread. ...

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.””

41. (i) Documents on record show that Petitioner no. 1 had submitted an application dated 28th July, 2020 to the erstwhile MCI seeking confirmation of eligibility for grant of Equated Teaching Designation to the post of Professor in the Department of Anaesthesiology. The acceptable experience of petitioner no. 1 in reference to the Statutory Regulations was from 15th June, 2017 to 28th July, 2020 when he was working in a 300 bedded non-teaching district hospital i.e. Dr. BSA Hospital. Thus, his total experience is only 3 years and 1 month against the requirement of more than 18 years. The experience of petitioner no. 1 while working at Lok Nayak Hospital cannot be taken into consideration, since it is admittedly a teaching hospital attached to a Medical College i.e. Maulana Azad Medical



College, New Delhi. Therefore, the application of petitioner no. 1 was rightly rejected by the erstwhile MCI vide its letter dated 31st August, 2020.

(ii) The petitioner no.2 had submitted an application dated 13th July, 2020 to the erstwhile MCI seeking confirmation of eligibility for grant of Equated Teaching Designation to the post of Professor in the Department of Pathology. The acceptable experience of petitioner no. 2 in reference to the Statutory Regulation was from 12th January, 2012 to 12th July, 2020 when she was working in a 300 bedded non-teaching district hospital i.e. Dr. BSA Hospital. Thus, her total experience is only 8 years and 6 months against the requirement of more than 18 years. The experience of petitioner no. 2 while working at Lok Nayak Hospital cannot be taken into consideration, since it is admittedly a teaching hospital attached to a Medical College i.e. Maulana Azad Medical College, New Delhi. Therefore, the application of petitioner no. 2 was rightly rejected by the erstwhile MCI vide its letter dated 31st August, 2020.

(iii) The petitioner no. 3 had submitted an application dated 14th December 2020 to the erstwhile MCI seeking confirmation of eligibility for grant of Equated Teaching Designation to the post of Professor in the Department of Microbiology. The acceptable experience of petitioner no. 3 in reference to the Statutory Regulation was from 11th May, 2012 to 14th December, 2020 when she was working in a 300 bedded non-teaching district hospital i.e. Dr. BSA Hospital. Thus, her total experience is only 8 years and 3 months against the requirement of more than 18 years. The experience of



petitioner no. 3 while working at Lok Nayak Hospital cannot be taken into consideration, since it is admittedly a teaching hospital attached to a Medical College i.e. Maulana Azad Medical College, New Delhi. Therefore, the application of petitioner no. 3 was rightly rejected by the National Medical Commission (NMC) vide its letter dated 14th January, 2021.

42. Considering the discussion hereinabove, it is beyond doubt that the petitioners do not have the requisite experience of more than 18 years in a minimum 300 bedded non-teaching district hospital owned/managed by the State/Central Government.

43. This Court also notes the law as laid down by Supreme Court holding in categorical terms that Courts ought not to interfere with the decision of the Academic Body and cannot relax the Rules or rewrite them. The court cannot devise its own criterion and has no jurisdiction to import its own ideology. (*See: Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, (1984) 1 SCC 307*).

44. In view of the aforesaid detailed discussion, it is manifest that the petitioners do not have the requisite experience and qualifying period for grant of equated designations. The prayers as sought by the petitioners being contrary to the Statutory Regulations, cannot be granted by this Court.

45. Accordingly, the present writ petition is dismissed.

(MINI PUSHKARNA)
JUDGE

SEPTEMBER 04, 2023/c/au/ak