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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29th August, 2023

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W.P.(C) 6378/2017 & CM APPL. 26394/2017

SEEMA AHLAWAT

..... Petitioner

Through: Mr. M.K. Bhardwaj and
Ms. Alisha Saini, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Shourya Dasgupta,
Advocate for Mr. Shadan Farasat,
Additional Standing Counsel.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India, seeking *inter alia* a writ of mandamus directing the Respondents to treat the Petitioner as an eligible candidate for appointment to the post of Associate Professor in Ch. Brahm Prakash Ayurved Charak Sansthan (hereinafter referred to as "Sansthan")/Respondent No.2.

2. Shorn of unnecessary details, facts to the extent relevant and captured in the writ petition are that the Sansthan issued an Advertisement No.01/2017 on 23.02.2017 for filling up 7 vacancies of Associate Professor/Reader in Pay Band III (15600-39100) with Grade Pay of Rs.7600/- with other benefits. The eligibility criteria were as follows:-



SI No.	Qualifications
1.	A Degree in Ayurved from a University established by law or statutory board or faculty / examination body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970.
2.	A Post Graduate Qualification in the subject / speciality concerned included in the schedule to Indian Medicine Central Council Act, 1970.
	Experience
1.	Total teaching of 5 years or more in the concerned subject as Lecturer.
	Desirable
1.	Patent/ Copyright obtained as individual / team.
2.	Research Work and publication in Peer Reviewed Journals.
3.	Ph.D

3. Considering herself eligible as per the requisite qualifications and experience, Petitioner applied for the post of Associate Professor in Panchakarma Department in the OBC Category. Petitioner was declared ineligible on account of lack of experience. As no formal rejection order was communicated to the Petitioner, she submitted a



representation on 02.03.2017 to the Director of the Sansthan to issue her a 'teaching experience certificate' on the basis of teaching experience gained while working on the post of Panchakarma Vaidya in the Sansthan on contract basis in PB-3 with Grade Pay Rs.6600/-, pursuant to offer of appointment dated 01.10.2010.

4. Even after receipt of Petitioner's representation, the teaching experience certificate was not issued to her. Since it was a common problem of all Doctors/Specialists working in the teaching hospitals of the Sansthan that experience certificates were not being issued, the Doctors made a joint representation dated 28.03.2017 pointing out that in view of Gazette Notification dated 07.11.2016 bearing No.28-15/2016-Ay.(MSR) issued in exercise of powers conferred by Clause (j) of Section 36 of the Indian Medicine Central Council Act, 1970 and in supersession of the Indian Medicine Central Council (Minimum Standard Requirements of Ayurveda Colleges and attached Hospitals) Regulations, 2012 (hereinafter referred to as "MSR, 2016"), there was no legal impediment in issuing experience certificates to Specialist Doctors/Clinical Teachers, considering them as Teachers.

5. After receipt of the representation, Sansthan sent a letter dated 12.04.2017 to the Central Council of Indian Medicine ('CCIM')/ Respondent No.3 seeking clarification whether experts having PG Degrees in Ayurveda such as Clinical Registrars ('CRs')/Medical Officers ('MOs')/Vaidyas who were appointed at various stages of the growth of the Sansthan/Hospital were eligible for counting the teaching experience as Lecturer/Assistant Professor under MSR, 2016, from the date of their appointment or from the date of publication of MSR, 2016.



6. In response, CCIM clarified by their letter dated 17.04.2017 that under Regulation 10(1)(a)(iii) of MSR, 2016, experience of Specialist Doctors/Clinical Teachers shall be considered as a Teacher from the date of appointment of the Specialist Doctor or two years prior to submission of application by the Applicant to the Central Government to establish a College, whichever is lesser and *'no provisions have been made regarding the eligibility of Medical Officer, Emergency Medical Officer and Clinical Registrar for the teaching experience as Lecturer/Assistant Professor'*. Petitioner learnt from reliable sources that some issues were being raised about her experience and made another representation dated 25.04.2017 but there was no response and Petitioner was constrained to file the present petition.

7. It is submitted on behalf of the Petitioner that Petitioner is M.D. in Panchakarma speciality and is working in the teaching hospital of the Sansthan since 04.10.2010, when she was appointed pursuant to an Advertisement issued on 04.08.2010, before the admission of first batch of students in the Sansthan. Panchakarma Vaidya is a specialist post in Panchakarma speciality and minimum qualification required for the said post is P.G. Degree in Panchakarma subjects. Petitioner has acquired P.G. Degree in Panchakarma from National Institute of Ayurveda, Jaipur in 2008.

8. It was contended that perusal of the advertisement dated 04.08.2010 and Gazette Notification dated 07.11.2016 bearing No.24-14/2016 (U.G. Regulation) (hereinafter referred to as "2016 Regulation") as well as the nature of duties attached to the post of Panchakarma Vaidya makes it clear that Petitioner fulfills the eligibility criteria mentioned in the Advertisement No.01/2017. As per



the advertisement, teaching experience of 5 years in the concerned subject as Lecturer is required as the eligibility condition. Petitioner was appointed as a Specialist in teaching hospital of the Sansthan in October, 2010 and was assigned the duties of Clinical Teacher from the date of her appointment. The nomenclature “Lecturer” referred in the advertisement does not mean the post of Lecturer and only connotes that the concerned candidate should have experience of teaching the students of the Sansthan in the Medical College and Petitioner has been taking classes and teaching the students of the Sansthan since 2010. While dealing with a similar issue, the Supreme Court in *Asim Kumar Bose (Dr.) v. Union of India and Others, (1983) 1 SCC 345*, held that clinical teaching is more important than theoretical teaching in the classrooms. Experience Certificate as well as Duty Rosters placed on record would show that apart from OPD/IPD, Petitioner has been taking clinical classes on the Panchakarma subject and yet she has been declared ineligible, which is illegal.

9. It was contended that Respondents failed to appreciate that MSR, 2016 completely support the case of the Petitioner, wherein it is stipulated that experience of Specialist Doctors/Clinical Teachers shall be considered as a teaching experience, from the date of appointment or two years prior to the date of application by the College for establishing a new College, whichever is lesser. In fact, the Sansthan admits that experience of the Petitioner requires to be treated as that of a Lecturer, which is evident from the letter dated 12.04.2017, whereby the Sansthan sought a clarification from CCIM limited to the date from which the experience will be counted as teaching experience. It



is thus not open to the Sansthan to take a contrary view before this Court.

10. It was further submitted that during the pendency of the petition, on the suggestion of the Committee constituted to scrutinize the application form of the Petitioner with respect to experience of clinical bed side teaching being considered as experience under the advertisement, clarification was sought from CCIM, reconstituted as National Council for Indian System of Medicine ('NCISM'). Based on the response of the NCISM, Sansthan passed an order on 23.11.2022 declaring the Petitioner as ineligible for the post, which is wholly erroneous for various reasons. Firstly, the same expert body had earlier clarified on 17.04.2017 that experience of Specialist is to be treated as teaching experience from the date of joining and secondly, clarification given on 19.09.2022 is with reference to Regulations notified on 16.02.2022 and do not concern the Advertisement No.01/2017, which was based on 2016 Regulation which provides "five years teaching experience in concerned subject" and not "five years teaching experience as Lecturer".

11. Learned counsel relied upon the judgment of the Division Bench of this Court in ***Faculty Association, Maulana Azad Medical College and Associated Hospital v. Union of India & Others, 2016 SCC OnLine Del 5911***, where the controversy concerned equating non-teaching specialists and consultants at the hospitals with Professors and Associate Professors. Reliance was also placed on the judgment of the Supreme Court in ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, (2006) 9 SCC 1***.



12. Combined counter affidavit has been filed on behalf of Government of NCT of Delhi and the Sansthan. It was argued by learned counsel on behalf of the Respondents that a declaration has been sought by the Petitioner to treat her working experience as an experience in the concerned subject as a Lecturer, which is beyond the scope of power of judicial review of this Court under Article 226 of the Constitution of India. Petitioner does not possess the requisite experience as per the advertisement issued on the basis of the Recruitment Rules (hereinafter referred to as the “RRs”) for the post of Associate Professor (Panchakarma) i.e. teaching experience of five years or more in the concerned subject as Lecturer and this is evident from her application form itself. This Court cannot declare her eligible or pass an order deeming her experience to be an experience as a Lecturer as this is the domain of the expert body NCISM and the Sansthan i.e. the employer.

13. Petitioner has been treating patients in the hospital and does not take classes of students in classrooms and thus a teaching experience certificate cannot be issued to her certifying that she was teaching as a Lecturer. Heavy reliance placed by the Petitioner on Regulation 10(1)(a)(iii) of MSR, 2016 is misplaced as the heading itself shows that it deals with “Phase-wise specific recruitments of new colleges” and applies to new colleges and not to the Sansthan which was established in 2010-11 and is not a new college. The provision is in the nature of a relaxation provided for new colleges to give them an impetus and enable them to begin operations. It is stipulated in MSR, 2016 itself that the Regulations shall come into force on the date of their publication in the Official Gazette i.e. 07.11.2016 and cannot be



given a retrospective effect to benefit the Petitioner. Notification has been issued by CCIM (now NCISM) and the said expert body has itself clarified vide letter dated 17.04.2017 that there is no provision for treating the experience of MOs/EMOs/CRs as teaching experience as Lecturer/Assistant Professor.

14. It was urged that Petitioner has undertaken clinical bed side teaching only as Panchakarma Vaidya for students to give them exposure and insight into hospital functioning, OPD and Panchakarma therapies, which is akin to an internship, as opposed to a job of a classroom Lecturer/Teacher. Same duties have been performed by all Medical Officers and Clinical Registrars of the Sansthan and bed side clinical teaching cannot be equated with classroom teaching. Holding clinical classes by Panchakarma Vaidyas is an incident of the job requirement and is only for supervision and monitoring. Clinical classes are scheduled for 4th year students only, in which students in groups of 15-20 perform Panchakarma therapies, observe OPD and ward functioning under the supervision of Panchakarma Vaidya, Clinical Registrar or Medical Officers. Sansthan has issued experience certificate to the Petitioner for clinical bed side teaching but she did not rely on the said experience in her application form conscious of the fact that this does not qualify as “teaching experience as a Lecturer”.

15. Petitioner’s contention that Panchakarma Vaidya is a specialist post is also incorrect. As per MSR, 2016 Schedule IV Serial No.25, only teachers of Panchakarma teaching department are eligible to be considered as Panchakarma Specialists. Sansthan had sought a clarification regarding nature of teaching experience for eligibility of



Associate Professor from NCISM vide letter dated 03.10.2022 and was informed vide letter dated 19.09.2022 that Regulation 17(b)(ii)(B) of Minimum Standards of Under Graduate Ayurveda Education Regulation dated 16.02.2022 (hereinafter referred to as “Regulation 2022”) is self-explanatory on this issue and further “bed side clinical experience” is not mentioned in the said Regulation.

16. I have heard the learned counsels for the parties and examined their respective contentions.

17. The genesis of the dispute before this Court lies in the Advertisement No. 01/2017 dated 23.02.2017 pursuant to which Petitioner seeks appointment to the post of Associate Professor (Panchakarma) in the Sansthan and this Court is called upon to pronounce that the experience of the Petitioner as Specialist in the Teaching Hospital of the Sansthan including experience as Clinical Teacher be treated as ‘total teaching of 05 years or more in the concerned subject as a Lecturer’ and declare her eligible for appointment as Associate Professor (Panchakarma).

18. An advertisement was issued by the Sansthan on 23.02.2017 notifying 07 vacancies of Associate Professor and the eligibility criterion pertaining to experience, which is the bone of contention between the parties, is as follows:-

	Experience
1.	Total teaching of 5 years or more in the concerned subject as Lecturer.

19. The criteria for appointment as Associate Professor/Reader stipulated in the Advertisement is based on the RRs notified for the said posts and relevant part of the RRs is as under :-



SCHEDULE-III

RECRUITMENT RULES FOR THE POST OF READER / ASSOCIATE PROFESSOR, CBPACS

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Name of post	No. of posts	Class - Division	Pay Band and Grade Pay/ Pay Scale	Whether Selection post or non selection post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and Educational Qualifications prescribed for direct recruits will apply in the case of promotion	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation absorption and percentage of the vacancies to be filled by various methods	Is one of recruitment by promotion/ deputation/ absorption from which promotion/ deputation/ absorption is to be made	If a Departmental Committee exists, what is its composition	Remarks in which Public Service Commission to be consulted making recruitment
Reader / Associate Professor	14 (20 (2) A	Category A	PB-III 17,600-39,100- GP 7600 NPA (revised)	Selection	Not exceeding 50 years**	Qualifications: 1) A degree in Ayurved from a University established by law or a statutory Board/Faculty/Examining Body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970. 2) A Post-graduate qualification in the subject/specialty concerned included in the schedule to Indian Medicine Central Council Act, 1970. Experience: Total teaching experience of five years or more in the concerned subject as Lecturer. Desirable: 1. Patents/copyrights obtained as individual/ team. 2. Research work and publications in peer reviewed journals. 3. Ph.D.	Yes	1 Year (for direct or recruitment)	A.50% in promotion failing which by deputation failing which by direct recruitment. B.50% by direct recruitment.	Promotion from Lecturer with 5 years or more teaching experience, failing which by deputation from candidates holding analogous posts in the Central/State Government/ autonomous organization, having five years or more teaching experience in the concerned subject, out of which there should be five years or more experience as Lecturer failing which by direct recruitment.	Group A for Confirmation and Promotion	N.A.

* Subject to variation dependent on workload.
 ** Age relaxation, (a) As per Govt. Rules & Policy; (b) In respect of employee working in CBPACS will be given as per CBPACS policy in force.

20. From the arguments of the respective parties, it comes out that the entire case turns on the interpretation and construction of the words 'Teaching' and 'Lecturer' occurring in the Advertisement, based on the RRs. Teaching experience does not have a statutory definition and may appear simple to describe or understand but to my mind it is too abstruse and technical and therefore, the question really arises is whether this Court has the expertise or the legal tools to enter into the exercise of determining the sufficiency of teaching experience or making a comparative evaluation of teaching involving bed side clinical experience/teaching with classroom teaching as a Lecturer. Before proceeding to examine the controversy arising in the present writ petition, it is necessary to understand the scope and ambit of interference by this Court in matters relating to appointment, selection etc. while exercising power of judicial review under Article 226 of the

Constitution of India. No doubt, the power of the High Court under



Article 226 of the Constitution is wide but it is equally true that it has to be exercised judicially and judiciously and officious interference in act of the Executive should not be the norm, save and except, where the action is in bad faith or for an oblique motive or is a *malafide* exercise.

21. It is trite that Courts do not substitute opinions of Experts, particularly, in areas pertaining to academics, appointment criteria, laying down curriculum, experience or qualification required for a particular post etc. as these are matters within the domain of the employer and beyond the remit of this Court. The Constitution Bench of the Supreme Court in ***University of Mysore v. C.D. Govinda Rao and Another, 1963 SCC OnLine SC 15*** held that '*normally, the Courts should be slow to interfere with the opinions expressed by the Experts*'. In several decisions the Supreme Court has consistently held that it would normally be wise and safe for the Courts to leave the decision to Experts who are more familiar with the problems they face than the Courts generally can be. In ***Basavaiah (Dr.) v. Dr. H.L. Ramesh and Others, (2010) 8 SCC 372***, the short controversy before the Supreme Court was whether the Appellants were qualified to be appointed as Readers in Sericulture while dealing with a challenge to their appointment by the private Respondents. The University had constituted an Expert Committee comprising of leading Experts in the field which had scrutinized the qualification, experience and published works of both the candidates and made unanimous recommendations in favour of their appointments and there were no allegations of *malafide* against any members of the Expert Committee. The Division Bench of the High Court had held that the Appellants did not have



Doctorate degree in Sericulture and were not qualified for appointment as Readers. Examining the judgment of the High Court, the Supreme Court held as follows:-

“20. [Ed.: Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./108/2010 dated 18-9-2010.] It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

22. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in Central College, Bangalore in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] in which the Constitution Bench unanimously held that normally the courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts who had constituted the Selection Board. The Court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.

23. We have been called upon to adjudicate a similar matter of the same University almost after half a century. In a judicial system governed by precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity. The ratio of the Constitution Bench has not been properly appreciated by the learned Judges in the impugned judgment.



38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.

39. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single Judge of the High Court.”

22. In ***Dr. M.C. Gupta and Others v. Dr. Arun Kumar Gupta and Others, (1979) 2 SCC 339***, a somewhat similar controversy arose where State Public Service Commission had invited applications for two posts of Professors of Medicine in the State Medical Colleges. The question before the Supreme Court was with regard to the teaching experience of Appellant No. 1 as a Lecturer in Cardiology in the Department of Medicine and of Appellant No. 2 as Post-Doctoral Teaching Fellow in the Department of Medicine. The High Court interfered in the matter and set aside the selections made by the Selection Board comprising of Experts. The Supreme Court set aside the judgment of the High Court on the ground that it would normally be prudent and safe to leave such matters to Experts and observed as follows:-

“7.When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be.....”



23. In ***J.P. Kulshreshtha (Dr.) and Others v. Chancellor, Allahabad University and Others, (1980) 3 SCC 418***, the Supreme Court observed that earlier rulings of the Supreme Court were cited to hammer home the point that Court should not substitute its judgment for that of the academicians and while there may not be an absolute ban it is a rule of prudence that Courts should hesitate to dislodge decisions of academic bodies. In ***Dalpat Abasaheb Solunke and Others v. Dr. B.S. Mahajan and Others, (1990) 1 SCC 305***, the Supreme Court held as follows:-

“12.It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

24. In ***The Chancellor and Another v. Dr. Bijayananda Kar and Others, (1994) 1 SCC 169***, the Supreme Court observed as under:-

“9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In the present case Dr Kar in his representation before the Chancellor specifically raised the issue that Dr Mohapatra did not possess the specialisation in the ‘Philosophical Analysis of Values’ as one of the qualifications. The representation was rejected by the Chancellor. We have no doubt that the Chancellor must have looked



into the question of eligibility of Dr Mohapatra and got the same examined from the experts before rejecting the representation of Dr Kar.”

25. To the same effect are the decisions in ***Dental Council of India v. Subharti K.K.B. Charitable Trust and Another***, 2001 SCC OnLine SC 688 and ***Medical Council of India v. Sarang and Others***, 2001 SCC OnLine SC 1012.

26. In ***Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others***, (1984) 4 SCC 27, the Supreme Court held that Courts should be extremely reluctant to substitute their views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by Professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and that it will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature. Relevant paragraph of the judgment is as follows:-

“29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”



27. It would be relevant to refer to another judgment of the Supreme Court in ***All India Council for Technical Education v. Surinder Kumar Dhawan and Others***, 2009 SCC OnLine SC 378, where it was held that Courts' interference in academic and educational matters is not proper and relevant passages are as under:-

"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 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.""

28. The contentions of the parties have to be examined in the light of the aforementioned judgments and within the restricted scope and ambit of judicial interference of this Court. Broadly understood, the case of the Petitioner is that she is M.D. in Panchakarma Speciality and working as a Specialist in the teaching hospital of the Sansthan since 04.10.2010 i.e. before the admission of the first batch of students and her working experience be counted and treated as teaching



experience of 05 years or more in the concerned subject as Lecturer. This contention is predicated on Regulation 10(1)(a)(iii) of MSR, 2016 and her experience of teaching in clinical classes of Panchakarma subject, for which she has placed on record an experience certificate.

29. Sansthan has taken a categorical position in the counter affidavit that Petitioner's work experience does not qualify as a teaching experience for the post of Associate Professor (Panchakarma) as the principal nature of her work is to treat patients in the hospital and not teach the students in classes as a Teacher/Lecturer. Sansthan has also pointed out that the clinical bed side teaching was only as Panchakarma Vaidya for students for the purpose of exposure in hospital functioning, OPD and Panchakarma therapies which is akin to internship as opposed to a Lecturer in the wards and similar duties are performed by other Medical Officers/Clinical Registrars and even there clinical teaching is not counted as teaching experience as a Lecturer. It is also stated in the affidavit that clinical classes are only scheduled for 4th year students with a group of 15-20 students for the purpose of therapies etc. and cannot be equated to a teaching experience as understood in the context of Lecturers in colleges. Sansthan has also placed on record a letter dated 19.09.2022 authored by NCISM, an expert body created under Indian Medicine Central Council Act, 1970 in response to a letter of the Sansthan dated 03.10.2022, clarifying that bed side clinical experience is not mentioned as a part of the experience required for the post of Associate Professor under Regulation 17(b)(ii)(B) of Regulation 2022. Therefore, once the expert body has clarified that bed side



clinical experience cannot be counted as experience for the post of Associate Professor and Sansthan has taken a clear stand on an affidavit that Petitioner was not teaching as a Lecturer and/or the clinical experience cannot be counted as an experience in the concerned subject as a Lecturer, it is not for this Court to rule otherwise in the absence of any material to the contrary placed on record by the Petitioner.

30. The Sansthan is right in its argument that the Petitioner herself clearly understood that her experience as bed side clinical teaching cannot be equated to a Lecturer and it is for this reason that in the application form while filling up the details under the heading 'Experience Details' she has not referred to her clinical teachings. Total experience of 16 years 10 months and 20 days claimed by the Petitioner relates to her Junior Residency, Administrative Incharge, Ayurvedic Doctor, Ayurvedic Expert, Clinical Registrar Panchakarma and Panchakarma Vaidya, save and except, for a period of 01 year 01 month and 25 days as Lecturer Panchakarma from 01.02.2009 to 25.03.2010. Petitioner has sought to argue that the clarificatory letter dated 19.09.2022 does not help the Sansthan since it pertains to Regulation 2022 which does not apply to the present case. It is true that the clarification pertains to a subsequent Regulation 2022 but the fundamental point that the Petitioner is glossing over is that NCISM has clarified that bed side clinical experience is not included towards experience in the Regulations concerning the post of Associate Professor and by an analogy, once 'bed side clinical experience' is not included in 2016 Regulation, the same cannot be counted towards experience requisite for the post of Associate Professor. Relevant part



of 2016 Regulation dealing with experience required for the post of Associate Professor is as follows:-

“13. Qualifications and Experience for teaching staff.- The qualifications and experience for teaching staff shall be as follows:-

...

(b) Experience-

...

(ii) For the post of Reader or Associate Professor: Five years teaching experience in concerned subject or five years research experience in regular service in Research Councils of Central Government or State Government or Union territory or University or National Institutions with minimum-three papers published in a recognised journal.”

31. In this view of the matter, while the clarification may not be in relation to 2016 Regulation but would inure to the advantage of the Sansthan as it only goes to show that even as per the opinion of expert body, bed side clinical experience cannot be counted as experience required for Associate Professor as a Lecturer. It is relevant to point out that during the pendency of this petition, an Advertisement No.01/2022 was issued by the Sansthan on 01.02.2022 inviting applications for filling up teaching and non-teaching posts by direct recruitment. Petitioner applied for the post of Associate Professor (Panchakarma) and after scrutinizing her experience of clinical bed side teaching towards fulfillment of essential criteria of experience, she was declared ineligible and an order dated 23.11.2022 was passed. The order has been placed on record by the Sansthan on an affidavit, but no submission was made by the Petitioner if the order was challenged.

32. Insofar as the Petitioner claims that she was working as a Lecturer for 01 year 01 month and 25 days, the same was in a College

Signature Not Verified in U.P. and it is not clear from the application form as to on what



basis, if any, she was given the nomenclature of a Lecturer. Even assuming that this period is to be reckoned, it still falls short of the minimum experience of 05 years of Lecturer and does not help the Petitioner.

33. Heavy reliance was placed by the learned counsel for the Petitioner on Regulation 10(1)(a)(iii) of MSR, 2016 to contend that Petitioner was appointed as a Specialist Doctor with the Sansthan in 2010 and by virtue of this Regulation her experience as a Specialist Doctor/Clinical Teacher must be counted from the date of her appointment i.e. 04.10.2010 pursuant to an offer of appointment dated 01.10.2010. In support of this contention, Petitioner has also relied on a letter authored by the Sansthan on 12.04.2017, which according to the Petitioner, is an admission that persons working as Medical Officers, Clinical Registrars or Vaidyas in the hospital as Experts are eligible for teaching experience required for Lecturer/Assistant Professor. In my view, the contention is misconceived and cannot be accepted. Regulation 10(1)(a)(iii) of MSR, 2016 is extracted hereunder:-

“10. Phase-wise specific requirements of new colleges. (1) An Ayurveda college seeking permission for starting Bachelor of Ayurvedic Medicine and Surgery (Ayurvedacharya) Course under the provisions of section 13A of the Act, shall establish infrastructure and manpower as given below:

(a) Before admission of the first batch of students, the college shall have-

....

(iii) minimum one specialist doctor or one clinical teacher in each of Kayachikitsa, Panchakarma, Shalya, Shalakya, Prasuti evam Stri Roga, Kaumarbharitya appointed for operating the teaching hospital and the experience of specialist doctor or clinical teacher shall be considered as a teacher from the date of appointment of the specialist doctor or two years prior to submission of application by the applicant to the Central Government to establish a college whichever is lesser.”



34. A bare perusal of the Regulation shows that it pertains to phase wise specific requirements of new colleges and applies at a stage when new colleges are formed. Regulation 10(1) provides that an Ayurveda college seeking permission for starting Bachelor of Ayurvedic Medicine and Surgery (Ayurvedacharya) course under provisions of Section 13(A) of the Act shall establish infrastructure and manpower as provided in sub-regulations. This provision, by its plain reading cannot apply to determine the experience requirement as a Lecturer in 2017 in relation to an advertisement for filling up the post of Associate Professor in a college established in the year 2010. Even assuming for the sake of argument that sub-regulation (1)(a)(iii) of Regulation 10 applies, it only provides that experience of the Specialist Doctor/Clinical Teacher appointed for operating the teaching hospital in the fields mentioned therein, before admission of the first batch of students, shall be considered as a Teacher from the date of appointment of the Specialist Doctor or two years prior to submission of application by the Applicant to the Central Government to establish a college whichever is 'lesser'. Therefore, the provision itself applies to count an experience from the date of appointment or two years prior to the application to establish a college and qualifies and restricts it by the word 'lesser'. Therefore, even if the experience from the appointment of the Petitioner is counted, it would be restricted to two years' period prior to submission of the application to establish a college, as that is the lesser period. While the Petitioner has not mentioned the precise date when the application was made by the Sansthan to establish the college, however, taking the case of the Petitioner at the highest, even if it is from 2010, the experience cannot



be counted beyond two years cap and would not make the Petitioner eligible in terms of the RRs and the Advertisement where minimum experience required is of 05 years.

35. Reliance by the Petitioner on the letter dated 12.04.2017 is misconceived. Reading of the letter shows that the Sansthan has raised a query to CCIM (now NCISM) with regard to applicability of MSR, 2016 to the Clinical Registrars, Medical Officers and Vaidyas in the hospital. In response, CCIM vide letter dated 17.04.2017 had clarified that Regulation 10(1)(a)(iii) does not contain any provision regarding the eligibility of Medical Officer, Emergency Medical Officer and Clinical Registrar for teaching experience as Lecturer/Assistant Professor. Relevant part of the letter is as follows:-

***“Subject: Teaching Experience of CR/MO/Vaidya in Hospital
Section-reg***

Sir,

With reference to your letter dated 12.04.2017 on the subject mentioned above, I am directed to inform you to refer the Indian Medicine Central Council (Requirement of Minimum Standard for Under-Graduate Ayurveda Colleges and attached Hospital) Regulations, 2016, subregulation 10(a)(iii) which read as under:-

The experience of specialist doctor or clinical teacher shall be considered as a teacher from the date of appointment of the specialist doctor or two year prior to submission of application by the applicant to the Central Government to establish a college whichever is lesser.

Further, no provisions have been made regarding the eligibility of Medical Officer, Emergency Medical Officer and Clinical Registrar for the teaching experience as Lecturer/assistant Professor.”

(Emphasis supplied)

36. Therefore, once an expert body which is a Statutory body constituted for the purpose of determining and fixing the standards has clarified that Regulation 10(1)(a)(iii) does not apply to the Vaidyas in



the hospital, little reliance can be placed on the letter of the Sansthan dated 12.04.2017. In fact, this clarification completely dents the case of the Petitioner that by virtue of the said Regulation, her experience as Panchakarma Vaidya including clinical teaching be treated as experience of teaching as a Lecturer. In fact, this Court also does not read the above Regulation any differently from what has been interpreted by the Statutory body and thus the Sansthan is right that Petitioner does not fulfil the criteria of eligibility under the experience column laid down in the RRs and the Advertisement. In view of the ineligibility of the Petitioner, no mandamus can be issued to the Sansthan to consider the case of the Petitioner for appointment to the post of Associate Professor (Panchakarma) in the Sansthan. It is not for this Court to substitute its wisdom for that of the Sansthan or the expert Statutory body NCISM in view of the wealth of judicial precedent, referred to above.

37. Petitioner has placed reliance on certain judgments to further her case, however, this Court is of the opinion that none of them apply to the present fact situation. In *State of Maharashtra (supra)*, the Petitioner had approached the Supreme Court since the Respondents therein had taken a policy decision not to grant 'No Objection Certificate' to any institution for starting new B.Ed. college for the academic year 2005-06. In *Asim Kumar Bose (supra)*, the Supreme Court made an exception in light of the fact that the Appellant therein had acquired requisite teaching experience, as envisaged by the prescribed rules and was therefore eligible to be considered for appointment to the post of Associate Professor. The same cannot be of help to the Petitioner as in that case the Appellant was an ex-officio



Associate Professor in the medical college to which the hospital was attached. Judgment in *Faculty Association, Maulana Azad Medical College and Associate Hospital (supra)*, would not aid the Petitioner, as in the said case Regulation 11.1(d) of PGME Regulations, 2000 itself treated Consultants or Specialists having the requisite experience not attached to medical colleges but post-graduate institutions covered by Regulation 8(1A) as Professors, Associate Professors and Assistant Professors and the Division Bench held that Petitioners were unable to establish and show that the said Regulation was bad in law while the Respondents had established that the Regulation was enacted by MCI with the object and purpose to allow and permit post-graduate courses already in existence to continue. Moreover, the Court also found that Regulation 11.1 was not in conflict with the Central Health Service Rules, 1996 and the teaching and non-teaching cadres remained distinct and separate, where Consultants and Specialists in the non-teaching sub-cadre remained members of the said cadre and did not occupy posts meant exclusively for the teaching sub-cadre.

38. There is no merit in the writ petition and the same is accordingly dismissed. Pending application stands disposed of.

JYOTI SINGH, J

AUGUST 29, 2023/kks/shivam