



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2659 OF 2021  
WITH  
CIVIL APPLICATION NO. 12898/2022 IN WP/2659/2021

Vd. Mrs. Rekha Bhagwat Shinde,  
Age 56 years, Occ. Service,  
R/o. Staff Quarter No. 5, PMT Ayurved  
College, A/P & Tq. Shevgaon, Dist. Ahmednagar. ... **Petitioner**

VERSUS

National Commission for Indian System  
of Medicine,  
Office at Plot No. T-19, 1<sup>st</sup> & 2<sup>nd</sup> Floor,  
Block-IV, Dhanwantari Bhavan, Road. No. 66,  
Punjabi Bagh (West), New Delhi. ... **Respondent**

...  
Advocate for Petitioner : Mr. S.T. Shelke  
Advocate for Respondent : Mr. Alok Sharma

**CORAM** : **MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**  
**RESERVED ON** : **07.08.2024**  
**PRONOUNCED ON** : **14.08.2024**

**JUDGMENT : (MANGESH S. PATIL J.)**

Heard. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is challenging the impugned communication dated 23.12.2020 (sic), whereby the predecessor of the respondent refused to allot Teacher Code to her on the ground that her date of birth was 20.01.1964. She had joined as a Medical Officer on 06.07.2007. She was appointed as a lecturer on 02.11.2017 but had acquired the minimum qualification -

M.D./M.S. Ayurved in July 2017 after attaining 45 years of age.

3. Mr. Shelke, learned advocate for the petitioner would submit that the petitioner has been serving as a lecturer in a private Ayurvedic Medical College. Previously she was appointed as a medical officer. She could complete the minimum qualification of M.D. in summer of 2017. Having acquired requisite qualification, the management appointed her to the post of lecturer with effect from 06.10.2017. The Maharashtra University of health Sciences, Nashik, also granted approval to her appointment from 06.10.2017.

4. Mr. Shelke would submit that the qualification and experience for teaching staff is prescribed in clause 13 of Section 4 of Part III of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016. It also prescribes *inter alia* age limit of 45 years for the post of Assistant Professor or Lecturer. The petitioner was appointed as a lecturer beyond the age of 45 years. Earlier also the respondent's predecessor council had rejected the request for allotment of a Teacher Code. The order was challenged in Writ Petition No. 2119/2019. Since it was brought to the notice of this Court that the Executive Committee of the respondent's predecessor council in its 246<sup>th</sup> meeting, dated 02.06.2017, vide agenda item no. 9 had resolved to grant relaxation of age limit for the post of lecturer for in-service candidates of the private colleges in tune with a similar relaxation that was available to the Medical Officers/Clinical Registrars of Government Medical Colleges. This Court allowed the writ petition and directed the respondent's predecessor council to reconsider the proposal in the light of that resolution.

5. Mr. Shelke would then submit that in the light of the directions of this Court the impugned communication was issued. He would submit that once relaxation was granted and in-service medical officer could be appointed as a lecturer beyond the age of 45 years even in a private medical college, the

impugned communication is clearly inconsistent with the resolution (supra). The date of acquiring the essential educational qualification and the age on that date was absolutely irrelevant. When the petitioner had already acquired the essential qualification even before she was appointed as a lecturer, there was no reason for the respondent's predecessor council to refuse to allot her Teacher Code.

6. Mr. Shelke, on a query would further submit that the whole purpose of allotment of a Teacher Code is to monitor functioning of the medical colleges and attendance of the faculty. He would submit that the impugned order being grossly illegal be set aside.

7. Mr. Sharma, learned advocate for the respondent would submit that though the petitioner had acquired the essential qualification prior to her appointment as a lecturer, the resolution only contemplated relaxation of age limit to the in-service medical officers of private colleges. He would submit that when clause no. 13(b)(iii) of the regulation, expressly mandated and provided the upper age limit of 45 years for the post of lecturer and further provided the essential qualification as a post graduate, it was implied that the educational qualification also should have been acquired before attaining the age of 45 years. Admittedly, the petitioner having acquired M.D., which is the essential qualification, beyond the age of 45 years, she was not entitled to derive any benefit from the resolution on item No. 9 of 246<sup>th</sup> meeting. He would, therefore, submit that there is no error or illegality in the impugned order. He, however, admits that the whole purpose of allotment of a Teacher Code is to enable the respondent to monitor functioning of the medical colleges. It had no role in grant of approval or otherwise to the appointment of a teacher. Grant of approval or otherwise to an appointment rests with the Maharashtra University of Health Sciences.

8. There is no dispute about the fact that the petitioner was earlier

appointed as a medical officer in a private Ayurvedic Medical College. Clause 13 of Section 4 of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016 provides for qualifications and experience for teaching staff. Under sub clause 13(a)(ii) post-graduate qualification in the subject or specialty is the minimum qualification for being appointed as a lecturer, and under clause 13(b)(iii), the upper age limit for the post of lecturer is 45 years. It also grants age relaxation to the in-service candidates working as medical officers in the Government Medical Colleges and Hospitals, and could be appointed as lecturers beyond 45 years of age.

9. Finding that there was no such similar concession to the medical officers from the private colleges, a resolution was passed in respect of Agenda Item no. 9 in the 246<sup>th</sup> meeting of the Executive Committee of the respondent's predecessor council dated 02.06.2017. It was resolved as under:

**Agenda Item No. 9      Consideration of upper age limit for  
the post of lecturer for in-service  
candidates.**

It was noted that there are many occurrences found at the time of issuing the Teacher's code that, either medical officer/clinical registrar of both Govt. and Private Colleges have joined as lecturers beyond the age of 45 years. Whereas in view of the MSE (UG) regulations notified in 7.11.2016 the maximum age for the appointment of lecturer is 45 years and relaxable in case of in service candidates. Therefore, as there are a number of such cases found, the benefit given to in-service candidates of govt.colleges/hospitals may be extended to the lecturers of private colleges after cross verifying their previous service from the past records of the colleges furnished to CCIM.

10. The impugned communication was issued by observing that the petitioner had joined as a medical officer on 06.07.2007, and had crossed age of 53 years when she was appointed to the post of lecturer and had acquired the minimum qualification of M.D. Ayurved in July 2017. It was expressly observed that she had acquired the minimum qualification of M.D. beyond the age of 45 years and was not eligible for issuance of Teacher Code.

11. It is thus evident that the resolution supra is being interpreted by the respondent to mean that the age relaxation that was to be considered had nothing to do with the essential qualification. In other words, what is being conveyed by the impugned communication is that relaxation was to be granted to such medical officers, for appointment as lecturers even if they are so appointed beyond the age of 45 years but had acquired the essential qualification before attaining that age.

12. A plain reading of the clause 13 would demonstrate that it does not lay down any such distinction. When the essential qualification required is a post graduate qualification and the upper age limit for the post of lecturer is provided as 45 years, it was implied that even the essential qualification is acquired prior to attaining the age of 45 years. However, to our mind, when the resolution was passed to grant relaxation to such upper age limit, the council must have been aware about clause 13 and could have expressly resolved that the age relaxation could be granted only to such candidates, who had acquired essential qualification prior to attaining age of 45 years, but were appointed to the post of lecturer after completing 45 years of age. The resolution on Agenda Item No. 9 does not seek to make any such distinction or to put any qualification by expressly stating that the age relaxation could be granted to an in-service medical officer, provided he had acquired the essential qualification before completing 45 years of age. The impugned decision seeks to introduce such a rider to the resolution, which cannot be permitted.

13. Above all, the entire exercise of allotment of Teacher Code being undertaken by the respondent is to monitor functioning of the medical colleges. It had no role as far as granting approval to the appointment of the teaching staff. MUHS is the concerned governing body, which has the task of considering the appointments on the parameters laid down by the respondent. When MUHS has already granted approval to the petitioner's appointment, legality of which is not being questioned by the respondent, the object of allotment of teacher code is apparently a formality. The impugned communication, therefore, is liable to be set aside.

14. The writ petition is allowed. The impugned communication is quashed and set aside. The respondent shall take a fresh decision in the light of the above observations and pass appropriate order, as expeditiously as possible, and in any case within four weeks.

15. Rule is made absolute in above terms.

16. Pending Civil Application is disposed of.

**( SHAILESH P. BRAHME, J.)**

**(MANGESH S. PATIL, J.)**

mkd/-