

A DR. PURSHOTAM KUMAR KAUNDAL

v.

STATE OF H.P. AND OTHERS

(Civil Appeal No.1956 of 2014)

B FEBRUARY 11, 2014

**[RANJANA PRAKASH DESAI AND  
MADAN B. LOKUR, JJ.]**

C **HIMACHAL PRADESH MEDICAL EDUCATION  
SERVICE RULES, 1999:**

*r.2(n) - Promotion to the post of Assistant Professor in Pharmacology - Respondent no.5 possessing M.D. in Pharmacology from the Maharishi Dayanand University - Consideration of case of respondent no.5 for promotion - Challenged on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by the MCI - Held: There is nothing to suggest that recognition of the post graduation degree must be by the MCI - As per the Service Rules wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules - r.2(n) defines a post graduate qualification as meaning a qualification as specified in Appendix C-I and II - Appendix C-II contains a list of post graduate qualifications - Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein - Except the post graduation degrees specified therein the Service Rules merely required a recognized post graduate degree for meeting the eligibility criteria - Thus, respondent no.5 was entitled to be considered for promotion and if found suitable, entitled to all consequential benefits - Service law - Promotion.*

**Respondent no.5 had obtained a post graduation degree in Pharmacology from the Maharishi Dayanand University, Rohtak on 31st December, 1991. When his**

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case came up for consideration for promotion before the Departmental Promotion Committee on 28th August, 2001, he was not considered apparently on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by the Medical Council of India. This decision was based on a letter dated 8th July, 2001 issued by the Deputy Secretary in the MCI to the Director of Medical Education and Research, Himachal Pradesh.

Respondent no.5 challenged the failure of the Departmental Promotion Committee to consider him for promotion. A Single Judge of the High Court rejected the writ petition filed by respondent no.5 on the ground that Section 11(1) of the Medical Council Act, 1956 provides that only those medical qualifications granted by any university or medical institution in India which are included in the First Schedule to the Act shall be recognized medical qualifications for the purposes of the Act and since an M.D. in Pharmacology from the Maharishi Dayanand University was not included in the First Schedule to the Act, respondent no.5 was not eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. The Single Judge also referred to Section 2(h) of the Act which defines a recognised medical qualification as meaning any of the medical qualifications included in the schedules of the Act. It was held that the qualification obtained by respondent no.5 from the Maharishi Dayanand University did not fall under any schedule to the Act. Aggrieved, respondent no.5 preferred LPA. The Division Bench of the High Court allowed the LPA and directed the Department to hold a review departmental promotion committee for the post of Assistant Professor within a period of eight weeks. It also held that respondent no.5 would be entitled to all consequential benefits in case he is found suitable by the review departmental promotion committee. The Division Bench of the High Court was of

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A the view that the eligibility criteria only required a recognized post graduation degree and did not require a post graduation degree recognized by the MCI. The degree obtained by respondent no.5 was a recognized post graduation degree inasmuch as it was conferred by  
B a recognized statutory university. The Division Bench of the High Court also noted that in a later departmental promotion committee held on or about 25th November, 2012 respondent no.5 was found eligible for being considered for promotion to the post of Assistant  
C Professor and was in fact so promoted, while holding the same qualifications.

The question for consideration in the instant appeal was whether respondent No.5 was not eligible for being considered for promotion to the post of Assistant  
D Professor in accordance with the Himachal Pradesh Medical Education Service Rules, 1999.

Dismissing the appeal, the Court

E HELD: 1. No fault can be found with the view taken by the High Court in the letters patent appeal filed by respondent no.5. The Service Rules mainly concern themselves with a recognized post graduation degree. There is nothing to suggest that recognition of the post graduation degree must be by the MCI. Perusal of the  
F Service Rules showed that wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules. Rule 2(n) of the Himachal Pradesh Medical Education Service Rules, 1999 defines a post graduate qualification as meaning a qualification as specified in  
G Appendix C-I and II. Appendix C-II contains a list of post graduate qualifications. Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein. The chart showed that except the post graduation degrees specified therein the  
H Service Rules merely require a recognized post graduate

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degree for meeting the eligibility criteria. [Paras 11, 12, 13]  
[476-E-G; 479-A]

2. The plea of the appellant cannot be accepted that if the appeal is dismissed, rights that have accrued or vested in his client, including his seniority over respondent no.5 will be disturbed and this is not permissible. In view of the fact that respondent no.5 was wrongly not considered for promotion to the post of Assistant Professor in Pharmacology, he deserves to be now considered and if found suitable, entitled to all consequential benefits. [Para 14] [479-B-C]

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1956 of 2014.

From the judgment and order dated 19.10.2011 of the High Court of H.P. at Shimla in LPA No. 176 of 2010.

Ravi Bakshi, Yash Pal Dhingra for the appellant.

Pragati Neekhara, Syed Mehdi Imam, Gaurav Shrama, Amit Kumar for the Respondents, Caveator-in-Person.

The Judgment of the Court was delivered by

**MADAN B. LOKUR, J. 1.** Leave granted.

2. The only question for consideration is whether respondent No.5 Dr. D.D. Gupta was eligible for being considered for promotion to the post of Assistant Professor in accordance with the Himachal Pradesh Medical Education Service Rules, 1999. In our opinion, the question should be answered in the affirmative and against the appellant Dr. Purshotam Kumar Kaundal.

3. The eligibility criteria for promotion to the post of Assistant Professor, as laid down in the Service Rules is as follows:-

"By promotion from amongst the lecturers who possess three years regular service or regular combined with

A continuous ad hoc (rendered upto 31.3.1998) service, if  
 any, in the grade in the concerned specialty failing which  
 by appointment (by selection from amongst the members  
 of H.P. Civil Medical Service (General Wing) having  
 recognized post-graduation degree or its equivalent  
 B qualification in the concerned specialty and possess at  
 least three years teaching experience as Lecturer/  
 Registrar/Demonstrator/Tutor/Sr. Resident/Chief Resident  
 in the concerned specialty after doing post-graduation in  
 the concerned specialty failing which by direct recruitment."

C 4. Dr. Gupta had obtained a post graduation degree in  
 Pharmacology from the Maharishi Dayanand University, Rohtak  
 on 31st December, 1991. He believed that he met the eligibility  
 criterion as per the Service Rules and ought to have been  
 considered for promotion to the post of Assistant Professor.

D 5. However, when his case came up for consideration for  
 promotion before the Departmental Promotion Committee on  
 28th August, 2001 he was not considered apparently on the  
 ground that he did not possess an M.D. degree in  
 E Pharmacology duly recognized by the Medical Council of India  
 (for short the MCI). We were told that this decision was based  
 on a letter dated 8th July, 2001 issued by the Deputy Secretary  
 in the MCI to the Director of Medical Education and Research,  
 Himachal Pradesh in which it is stated as follows :-

F "Kindly refer to your letter No. HFW (DME) H(1)A-20/99,  
 dated 1.9.2001, this is to inform you that MD  
 (Pharmacology) qualification granted by Maharishi  
 Dayanand University in respect of students being trained  
 at Pt B.D. Sharma Postgraduate Institute of Medical  
 G Science is not recognized by the Council for purposes of  
 IMC Act, 1956."

H 6. Dr. Gupta challenged the failure of the Departmental  
 Promotion Committee to consider him for promotion by filing  
 an original application before the State Administrative Tribunal.

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The original application was transferred to the High Court of Himachal Pradesh and registered as CWP (T) No.7948 of 2008. A

7. By a judgment and order dated 9th August, 2010 a learned Single Judge of the High Court rejected the writ petition filed by Dr. Gupta. The learned Single Judge held that Section 11(1) of the Indian Medical Council Act, 1956 (for short the Act) provides that only those medical qualifications granted by any university or medical institution in India which are included in the First Schedule to the Act shall be recognized medical qualifications for the purposes of the Act. The learned Single Judge held that since an M.D. in Pharmacology from the Maharishi Dayanand University was not included in the First Schedule to the Act, Dr. Gupta was not eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. It was also held that since Maharishi Dayanand University did not apply for recognition of the qualification to the Central Government in terms of Section 11(2) of the Act, Dr. Gupta was also not entitled to the benefit of that sub-section of Section 11 of the Act. The learned Single Judge also referred to Section 2(h) of the Act which defines a recognised medical qualification as meaning any of the medical qualifications included in the schedules of the Act. It was held that the qualification obtained by Dr. Gupta from the Maharishi Dayanand University did not fall under any schedule to the Act. Accordingly, the writ petition was dismissed by the learned Single Judge. B C D E F

8. Feeling aggrieved, Dr. Gupta preferred LPA No.176 of 2010 in the High Court. By its judgment and order dated 19th October, 2011 the High Court agreed with Dr. Gupta and allowed the letters patent appeal and set aside the judgment and order of the learned Single Judge. The official respondents were directed by the High Court to hold a review departmental promotion committee for the post of Assistant Professor within a period of eight weeks. It was also held that Dr. Gupta would G H

A be entitled to all consequential benefits in case he is found suitable by the review departmental promotion committee for appointment to the post of Assistant Professor in 2001.

B 9. The High Court was of the view that the eligibility criteria only required a recognized post graduation degree. It did not require a post graduation degree recognized by the MCI. The degree obtained by Dr. Gupta was a recognized post graduation degree inasmuch as it was conferred by a recognized statutory university. Therefore, Dr. Gupta was eligible for being considered for promotion to the post of Assistant Professor in Pharmacology.

D 10. The High Court also noted that in a later departmental promotion committee held on or about 25th November, 2012 Dr. Gupta was found eligible for being considered for promotion to the post of Assistant Professor and was in fact so promoted, while holding the same qualifications.

E 11. We are of the opinion that no fault can be found with the view taken by the High Court in the letters patent appeal filed by Dr. Gupta. The Service Rules mainly concern themselves with a recognized post graduation degree. There is nothing to suggest that recognition of the post graduation degree must be by the MCI. On the contrary, we have gone through the Service Rules and find that wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules.

G 12. Rule 2(n) of the Service Rules defines a post graduate qualification as meaning a qualification as specified in Appendix C-I and II. We are concerned with Appendix C-II which contains a list of post graduate qualifications. Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein. These are as follows:

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Sl.	Subject No.	Part A	Part B
23.	Cardiology	D.M. Cardiology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Cardiology.	-
24.	Gastro-Entrology	D.M. Gastro-enterology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Gastro-enterology.	-
25.	Theoracic Surgery	M.Ch.C.T.S. 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. C.T.S.	-
26.	Urology	M.Ch. Urology 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Urology	-
31.	Nephrology	D.M. Nephrology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Nephrology	-

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A	32.	Neo-Natology	D.M. Neo-Natology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Neo-Natology.	—
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C	33.	Paediatric Surgery	M.Ch.Paediatric Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Paediatric Surgery.	—
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E	34.	Neuro-Surgery	M.Ch.Neuro Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Neuro Surgery.	—
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	35.	Plastic Surgery	M.Ch.Plastic Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Plastic Surgery.	—
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H	36.	Surgical Gastro-Enterology	M.Ch.Surgical Gastro-enterology 2/3 years course as recognized by M.C.I. after M.S. Surgery or M.B.B.S. and 5 years direct course leading to M.Ch. Gastro-Enterology.	

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13. It is quite clear from a perusal of the above chart that except the post graduation degrees specified therein the Service Rules merely require a recognized post graduate degree for meeting the eligibility criteria.

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14. Learned counsel for Dr. Kaundal submitted that if the appeal is dismissed, rights that have accrued or vested in his client, including his seniority over Dr. Gupta, will be disturbed and this is not permissible. The submission is stated only to be rejected. In view of the fact that Dr. Gupta was wrongly not considered for promotion to the post of Assistant Professor in Pharmacology, he deserves to be now considered and if found suitable, entitled to all consequential benefits. In this context, we may note that the State of Himachal Pradesh has not challenged the decision of the High Court directing reconsideration.

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15. It was also contended that the post graduation degree obtained by Dr. Gupta was subsequently recognized by the MCI by a Notification issued in 2004 and that the Notification would not have retrospective effect so as to make Dr. Gupta eligible for consideration for promotion. It is not necessary for us to deal with this contention since we have held that Dr. Gupta's post graduation degree did not require any recognition by the MCI.

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16. Finally, it was contended that if Dr. Gupta is promoted it would be contrary to the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998. This submission was not made by Dr. Kaundal at any point of time and was only raised in passing by his learned counsel in his rejoinder submissions. We are not inclined to entertain this submission at this stage.

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17. We find no merit in this appeal and it is accordingly dismissed.

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Appeal dismissed.

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