

A REGIONAL INSTITUTE OF MEDICAL SCIENCE AND ANR.

v.

S. BHAGYABATI DEVI

MAY 17, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

C *Service law: Time Scale Promotion Rules, 1991—Rules 17(B) and 31—Medical officer (SPM)—Appellant working as medical officer (SPM) promoted to the post of Assistant Professor w.e.f. 1995—Respondent working as medical officer promoted as Assistant Professor w.e.f. 1998—Respondent filed writ petition questioning seniority of appellant, on the plea that appellant having never held any teaching post was not entitled to promotion—High Court directed that respondent shall be treated to be senior to appellant—Correctness of—Held: Correct—Post of medical officer (SPM) is not equivalent to the teaching post—Performing a teaching job or working as a demonstrator once in a while would not render non-teaching post to a teaching post.*

E Respondent was appointed as a Medical Officer in the year 1984. On completion of 10 years, she was appointed as an Assistant Professor with effect from 1.7.1998. Dr. T was appointed as a Medical Officer (SPM) in the year 1983. In terms of the rules framed by the Executive Council of RIMS, she could be considered for promotion to the post of Assistant Professor on the expiry of 10 years of working in the post of Medical Officer. She was promoted with effect from 1.2.1995 in the post of Assistant Professor.

F Respondent filed a writ petition before High Court questioning the seniority assigned to Dr. T on the plea that she having never held any teaching post while acting as Medical Officer (SPM) was not entitled to promotion to the post of Assistant Professor.

G The High Court having regard to the fact that both Dr. T and respondent had further been promoted to the post of Associate Professor, did not disturb the said appointments, but directed that respondent shall be treated to be senior to Dr. T. Aggrieved by the order of High Court, RIMS and Dr. T both appealed before this court.

H

Appellants contended that although rendition of service in a teaching post for 10 years is a condition precedent for becoming eligible for the purported Time Scale Promotion to the post of Assistant Professor under the Time Scale Promotion Rules, 1991, Dr. T must be held to have fulfilled the said criteria as her posting in the Department of Community Science was treated as regular teaching service. In the alternative, it was submitted that the amendment of the Rules carried out in 2005 is clarificatory in nature.

Dismissing the appeals, the Court

HELD : 1. In exercise of power conferred under Rules 17(B) and 31 of the Constitutional bye laws of the Regional Institute of Medical Sciences, Imphal, the Chairman, Executive Council framed rules known as Time Scale Promotion Rules, 1991. "Registrar Grade" has been defined in Rule 3(d) of the said Rules to include Medical Officer (Teaching and Non-Teaching). Rule 3(g) defines teaching post to mean all posts in the grade of Registrar. On or about 28.10.2005, Time Scale Promotion Rules had been amended to include Medical Officers (non-teaching) to Senior Medical Officers in the pay scale of Rs. 10,325-325-15,200/-. The Rules provide for creation of teaching posts as well as non-teaching posts. The Registrar Grade as defined in Rule 2(D) includes Medical Officer, both teaching and non-teaching.

[Para 6 and 11] [87-G; 88-A; 91-C; 92-A]

2.1. RIMS has not produced any duty chart for the Medical Officers (SPM). From the documents whereupon reliance has been placed, it only appears that the Medical Officers (SPM) are required to take classes once in a while. Dr. T was not, therefore, required to take classes on a regular basis. For the purpose of arriving at a conclusion as to what would be the nature of the post held by the incumbent the duties attached to the post would be of seminal importance. The Rules do not provide for the nature of duty attached to the Medical Officer (SPM). No other document in that behalf has also been brought on record. Even whether preventive medicine is taught or not as a subject has not been disclosed. Performing a teaching job once in a while or working as a Demonstrator once in a while could not render the non-teaching post to a teaching post. The RIMS might have thought that the post of Medical Officer (SPM) is a teaching post, but when a challenge was thrown by respondent, it was obligatory on its part to establish its contentions by placing cogent materials before the High Court. It has utterly failed to do so. The correspondence exchanged by and between the RIMS and Medical Council of India are also of no assistance. Clarification was asked for in that behalf only in 2004. The Medical Council even in its response to the said letter did not

A say that Medical Officer (SPM) would be a teaching post, it merely laid down the norms in regard to the strength of the cadre. Even the strength of the cadre was determined only in 2005. [Para 15] [92-A, B, C, D, E]

B *Rajasthan Public Service Commission v. Kaila Kumar Paliwal and Anr.*, (2007) 6 SCALE 531 and *Director, AIIMS and Ors. v. Dr. Nikhil Tandon and Ors.*, [1996] 7 SCC 741, referred to.

D 2.2. Medical Council of India did not recognize the post of Medical Officer (SPM) to be a teaching post. No other material was also brought on record to show otherwise. [Para 19] [93-D]

C 3. The Rules amended in the year 2005 cannot be held to be a clarificatory one. It is a substantive amendment. Thereby those who are on the non-teaching side have for the first time been brought within the purview of the Rules. The qualification for eligibility for consideration has also been altered. [Para 20] [93-D, E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2694 of 2007.

From the Final Judgment and Order dated 17.08.2005 of the High Court of Gauhati, Imphal Bench in Writ Appeal No. 211/2004/4/2005.

E WITH

C.A. No. 2695 of 2007.

Jaideep Gupta, Sr. Adv., Kh. Nobin Singh, S.K. Bhattacharya and L.K. Paonam for the Appellants.

F Raju Ramachandran, Sr. Adv., Sapam Biswajit Meitei, Ashok Kumar Singh and Manjula Gupta for the Respondent.

The Judgment of the Court was delivered by

G S.B. SINHA, J. 1. Leave granted.

2. These two appeals being inter-related and arising out of a common judgment were taken up for hearing together and are being disposed of by this common judgment. Regional Institute of Medical Sciences (for short "RIMS") is a Society registered under the Societies Registration Act. Dr. (Mrs.) S. Bhagyabati Devi (for short "Bhagyabati") and Dr. Taruni Ngangbam

H

(for short "Taruni") have been working in RIMS.

3. Dr. Taruni was appointed as a Medical Officer (SPM) in the year 1983. She did her post graduation in the year 1992. In terms of the rules framed by the Executive Council of RIMS, she could be considered for promotion to the post of Assistant Professor on the expiry of 10 years of working in the post of Medical Officer. She was promoted with effect from 1.2.1995 in the post of Assistant Professor by an Order dated 8.4.1999. Dr. Bhagyabati was appointed as a Medical Officer in the year 1984. She completed her post graduation in June, 1996. On completion of 10 years, she was appointed as an Assistant Professor with effect from 1.7.1998. It is not in dispute, that both Dr. Taruni and Dr. Bhagyabati have since been appointed as Associate Professors.

4. Dr. Bhagyabati filed a writ-petition before the Imphal Bench of the Gauhati High Court *inter alia* questioning the seniority assigned to Dr. Taruni on the plea that she having never held any teaching post while acting as Medical Officer(SPM) was not entitled to promotion to the post of Assistant Professor.

The learned Single Judge having regard to the fact that both Dr. Taruni and Dr. Bhagyabati had further promoted to the post of Associate Professor did not disturb the said appointments, but directed that Dr. Bhagyabati shall be treated to be senior to Dr. Taruni.

5. By reason of the impugned judgment, the Division Bench has upheld the impugned judgment of the learned Single Judge.

Both RIMS and Dr. Taruni are, thus, before us.

6. We may at the outset notice the relevant rules. As indicated hereinbefore, Rules were framed by the Executive Council in exercise of its power conferred upon it under the Constitutional Bye Laws of the Regional Institute of Medical Sciences.

The constitution of the Society was approved in a Special Annual General Body Meeting held on 4.2.1995. The Executive Council has been constituted in terms of clause (9) of the said constitution. Clause (11) provides for the powers and functions of the Council. In exercise of its power conferred under Rules 17(B) and 31 of the Constitutional bye laws of the Regional Institute of Medical Sciences, Imphal, the Chairman, Executive Council framed rules known as Time Scale Promotion Rules, 1991 (The Rules). "Registrar

A Grade" has been defined in Rule 3(d) of the said Rules *inter alia* to include Medical Officer (Teaching and Non-Teaching). Rule 3(g) defines teaching post to mean all posts *inter alia* in the grade of Registrar. Rule 4 provides for Time Scale Promotion in the following terms:-

B "The Scheme is in the nature of a flexible complementing Scheme wherein no additional posts are created, the existing persons on the basis of critical assessment are promoted to the next higher level or scales are upgraded without altering the combined authorized strength of posts."

C 7. Object of the Rules was to remove frustration due to lack of opportunity for promotion in normal courses.

Rule 6(F) of the Rules reads as under:-

D "(F) Assistant Professor (Non-functional) from Registrar, Demonstrator, Resident Pathologist, Resident Anaesthesiologist, Senior Tutor, M.Os (Teaching, Senior Resident with P.G. Degree holder (Scale Rs. 3000-100-3500-125-5000/-)

E (i) They must have requisite and recognized Post Graduate qualification as per M.C.I. norms.

(ii) They must render 10 years of regular service in the teaching posts of the same discipline.

(iii) Within 10 years of regular teaching service as the case may be they should have minimum 1 year of teaching experience of the same discipline after obtaining P.G. Degree.

F *** **

8. The principal contention of Dr. Bhagyabati before the High Court was that the post of Medical Officer (SPM) was not a teaching post. Contention of RIMS as well as Dr. Taruni on the other hand was that the said post is a teaching post.

G 9. RIMS recently by a letter dated 2.3.2005 addressed to the Secretary, Medical Council of India wanted to have a clarification in the matter stating:-

H "I am writing this letter soliciting your indulgence to provide a clarification as to the Post of Medical Officer (Community Medicine) as a teaching post in Medical Colleges in the country. Medical Officers

of Community Medicine of this Institute have been imparting teaching and training programme to the undergraduate, post graduate students and interns in urban and rural health centers and also involving in the direct delivery of Health care service in Rural and Urban areas and thus securing the implementation Reorientation of Medical Education Scheme (ROME). Following the enforcement of regulations of the MCI an undergraduate Medical Education by the Government of India, Ministry of Health & Family Welfare vide their letter No. V-11917/4/77-ME(p) dated 13th November 1977 our Institute is also treating the said post of Medical Officer (Community Medicine) as one of teaching posts in our Service Rule, a controversy which may create required to be resolved in accordance with the MCI Regulations.

A positive clarificatory note on the subject will be highly appreciated."

Our attention has also been drawn to a letter issued by the Medical Council of India addressed to the Director, RIMS dated 15.4.2005 in response to the said letter to show that there must exist four posts of tutors/demonstrators in each Medical College and one Medical Officer of Health-cum-Lecturer and one lady Medical Officer in each medical college in the Department of Community Medicine.

10. Regulations of the Medical Council of India in this behalf as modified upto 1979 is as under:-

"Regulations of the Medical Council of India on Under-graduate Medical Education under Section 33 of the Indian Medical Council Act, 1956 by the Government of India, Ministry of Health & Family Welfare, vide the letter No. V-11917/4/77-ME(P) dated the 30th November, 1977. Incorporating amendments approved by the Govt. of India Ministry of Health & Family Welfare vide their letter No. V.11017/4/77-MPT/ME(Policy) dated 15th October, 1979.

As far as teaching of the Community Medicine is concerned, health medical Officers in the service who have adequate field experience should be utilized for teaching of community medicine giving them appropriate status, if necessary. Likewise medical college teachers should by rotation be posted in field practice areas, with batches of students to introduce community orientation in training programmes."

It appears that the Department of Community Medicine of RIMS had

A assigned practical epidemiology training to the students of the Medical College asking Dr. Taruni to impart training on 31.1.1992 alongwith two others by taking classes from 2 to 4 p.m.

B Our attention has further been drawn to Annual Report for the year 2003-2004 where Community Medicine was said to be consisting of two lady medical officers.

16. Our attention has further been drawn to a Memorandum dated 9.7.1987 which is to the following effect:-

C "MEMORANDUM

The duty roster of VIth semester students posted at S.P.M., Deptt. will be as follows. This roster/programme will be followed every month until further order.

D	Days of the week	Section	Staff
E	1. Monday, Tuesday & Wednesday	Family Social	Visit Medico Work
F	2. Thursday, Friday & Saturday	National Health Programmes & Urban Clinic	1. One Demonstrator. on rotation for one month 2. All the Medical Social workers
G	Notes :- National Health Programme viz :-	NMEP, NICPm NTBCP, F.P. NCP for Blind and Visual impairment. The visit will of one day only.	1. Demonstrators of U.I.P. & rural Health Centres, on Rotation 2. For Urban clinic Urban doctor will take the responsibility

H

Demonstrator on rotation duty:-

- (a) Dr. Taruni Ng.
- (b) Dr. Bijoy
- (c) Dr. Indibor
- (d) Dr. Russia
- (e) Dr. Shyamkanhai

Any one doctor will be with Family visit another and with national Health programmes. This will take with immediate effect. Dr. Indibor will be in the family visit Section & Dr. Taruni in the National Health Programme Section for the month of July, 1987."

11. We may furthermore notice that on or about 28.10.2005, Time Scale Promotion Rules had been amended to include Medical Officers (non-teaching) to Senior Medical Officers in the pay scale of Rs. 10,325-325-15,200/-)

12. The learned Single Judge of the High Court as also the learned Division Bench categorically held that post held by Dr. Taruni was not a teaching post and, thus, was not eligible for being considered for promotion to the post of Assistant Professor.

13. It appears that before the High Court submissions were also made on behalf of the RIMS and Dr. Taruni that all posts specified in the Registrar Grade are equivalent posts. The said contention was rejected by the learned Single Judge and upheld by the Division Bench on the premise that a declaration therefor was necessary, and as there was no material on record to show that a decision on the said issue had been taken, no relief could be granted in that behalf.

14. Before us Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the RIMS and Mr. S.K. Bhattacharya, learned counsel appearing on behalf of Dr. Taruni submitted that although rendition of service in a teaching post for 10 years is a condition precedent for becoming eligible for the purported Time Scale Promotion to the post of Assistant Professor under the Rules, Dr. Taruni must be held to have fulfilled the said criteria as her posting in the Department of Community Science was treated as regular teaching service. In the alternative, it was submitted that the amendment of the Rules carried out in 2005 is clarificatory in nature.

A 15. The Rules provide for creation of teaching posts as well as non-teaching posts. The Registrar Grade as defined in Rule 2(D) includes Medical Officer, both teaching and non-teaching. Before the High Court as also before us, RIMS has not produced any duty chart for the Medical Officers (SPM). From the documents whereupon reliance has been placed, it only appears that the Medical Officers (SPM) are required to take classes once in a while. Dr. B Taruni was not, therefore, required to take classes on a regular basis. For the purpose of arriving at a conclusion as to what would be the nature of the post held by the incumbent, the duties attached to the post would be of seminal importance. The Rules do not provide for the nature of duty attached to the Medical Officer (SPM). No other document in that behalf has also been C brought on record. Even whether preventive medicine is taught or not as a subject has not been disclosed. Performing a teaching job once in a while or working as a Demonstrator once in a while, could not render the non-teaching post to a teaching post. The RIMS might have thought that the post of Medical Officer (SPM) is a teaching post, but when a challenge was thrown D by Dr. Bhagyabati, it was obligatory on its part to establish its contentions by placing cogent materials before the High Court. It has utterly failed to do so. The correspondences exchanged by and between the RIMS and Medical Council of India are also of no assistance. Clarification was asked for in that behalf only in 2004. The Medical Council even in its response to the said letter did not say that Medical Officer (SPM) would be a teaching post, it E merely laid down the norms in regard to the strength of the cadre. Even the strength of the cadre was determined only in 2005.

16. Which post would be a teaching post is a question of fact. In *Rajasthan Public Service Commission v. Kaila Kumar Paliwal & Anr.*, [2007] 6 SCALE 531, this Court held:-

F "We are not oblivious that the question as to whether a person fulfils the criteria of teaching experience or not would depend upon the rules operating in the field. When the rules are clear and explicit, the same has to be given effect to. Only in a case where the rules are not clear, the candidate concerned must place adequate material to show that G he fulfils the requisite qualification. [See *State of Bihar and Another etc. etc. v. Asis Kumar Mukherjee and Others etc. etc.*, A.I.R. (1975) SC 192]"

H 17. The submissions made on behalf of RIMS that the post of Medical Officer, SPM is equivalent to a teaching post has rightly been rejected by the

High Court

A

18. in *Director, AIIMS and Ors. v. Dr. Nikhil Tandon and Ors.*, [1996] 7 SCC 741, it was held:-

"12. We are of the opinion that the two years' training at Cambridge University undergone by Tandon while working for his Ph.D. cannot be treated as a qualification *recognised* as equivalent to DM. Schedule I to the AIIMS Recruitment Rules speaks of DM qualification or a qualification recognised as equivalent thereto. It is not mere equivalence that is enough. It must also be recognised as equivalent. Recognised evidently means recognised by the Institute or at least by the Medical Council of India. Admittedly, neither has recognised the said research work/training for two years in the Cambridge University as equivalent to DM. It is agreed before us that the degrees awarded by the Cambridge University are not recognised in India since 1978."

B

C

19. Medical Council of India did not recognize the post of Medical Officer (SPM) to be a teaching post. No other material was also brought on record to show otherwise.

D

20. The Rules amended in the year 2005 cannot be held to be a clarificatory one. It is a substantive amendment. Thereby those who are on the non-teaching side have for the first time been brought within the purview of the Rules. The qualification for eligibility for consideration has also been altered.

E

21. We, therefore, are of the opinion that there is no merit in these appeals which are dismissed accordingly with costs. Counsel's fee assessed at Rs. 10,000/- payable by RIMS to respondent No. 1.

F

D.G.

Appeal dismissed.