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*P.S. Bajwa*

*Before Rajesh Bindal, J.*

**DR. SURUCHI ADITYA—Petitioner**

*versus*

**PANJAB UNIVERSITY AND OTHERS—Respondents**

**CWP No. 14727 of 2012**

September 5, 2012

*Constitution of India 1950 - Art. 226 - Writ Jurisdiction - Eligibility conditions for selection to post of Associate Professor/Reader in Department of Pharmacology - Minimum Qualifications for Teachers in Medical Institutions Regulations 1998, as amended*

*from time to time - Whether proviso can override main provision - Held, no - Proviso is an enabling provision and cannot be used to carve out an exception in the main provision but has to be in conformity thereof - Advertisement for selection based on such a proviso, held, bad.*

*Held*, that the case set up by respondents No. 1 to 3 is that since MCI Regulations were adopted which enabled the Institute for making election to the post in question for a period of four years on 24.7.2009 in terms of the un-amended qualifications, the advertisement is strictly in conformity thereof. However, in my opinion, the contention raised is totally misconceived. The provision providing for qualifications is in two parts. The first part being the qualifications which have been prescribed after the provision was amended providing for teaching experience less than what was provided for in un-amended regulations as it was reduced from five years to four years. The second part being the desirable qualification of four published research papers was amended requiring at least two research publications.

(Paras 15)

*Further held*, that vide amendment carried out on 15.12.2009, two provisos were added. As far as first proviso is concerned, the same is supplemental to the qualifications itself. It only explains that research publications should be as first author and for promotion to the post of Associate Professor, it should be within the tenure as Assistant Professor.

(Paras 16)

*Further held*, that as far as second proviso is concerned, the effect of the same was altogether different. It was, in fact, taking away the application of the amended qualifications for a period of four years from 24.7.2009. The proviso is in the kind of an enabling provision in terms of which an institute can make appointments/promotions in terms of un-amended regulations. Adoption of qualifications prescribed by the University for the post of Associate Professor/Reader by the Institute, which is otherwise mandatory, would mean that the qualifications as amended vide notification dated 24.7.2009 and as explained in the first proviso added vide notification dated 15.12.2009, will be applicable. After adoption of the qualifications,

issuing an advertisement in terms of the exception carved out in the second proviso added vide notification dated 15.12.2009 would not be in conformity with the 1998 Regulations as for that purpose, a conscious decision was required to be taken that for a period of four years, the Institute will carry on making appointments/promotions in terms of the un-amended Regulations by recording reasons therefore, but in the present case nothing has been produced to show that any such exercise was done. Minutes of the meeting clearly provide that qualifications for the post be modified in terms of MCI Regulations. The modified qualification is in terms of the amended Regulations and not the exception.

(Para 17)

Ashwinie Kumar Bansal, Advocate, *for the petitioner.*

B. L. Gupta, Advocate, *for respondents No. 1 to 3.*

**RAJESH BINDAL J.**

(1) The petitioner has approached this court challenging the conditions of eligibility laid down in the advertisement issued for selection to the post of Associate Professor/Reader in the Department of Pharmacology.

(2) Learned counsel for the petitioner submitted that the petitioner having completed her MBBS course from the University of Jammu on 25.5.2000 and MD from Pandit Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, M.D. University Rohtak in the year 2004, joined Government Medical College and Hospital, Sector 32, Chandigarh as Demonstrator on 6.9.2004 and continued to work there till she was appointed as Lecturer in the Department of Pharmacology in Dr. Harvansh Singh Judge Institute of Dental Sciences (for short, 'the Institute') on 1.5.2007 and is working there as such. The grievance of the petitioner is that in March, 2012, one post of Associate Professor/Reader in the Department of Pharmacology was advertised, in which along with educational qualifications, five years teaching experience in the subject in recognised Medical and Dental College as Assistant Professor/Lecturer was required. The desirable qualification was minimum of four research publications indexed in index Medicus/National journals.

(3) The submission is that the regulations framed by Medical Council of India (for short, 'MCI') providing minimum qualifications for different posts in Medical College are applicable in Dental Colleges as well. The regulations are known as The Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (for short, 'the 1998 Regulations'). The qualifications prescribed for the post of Reader/Associate Professor in addition to Masters degree in the subject was five years teaching experience as Assistant Professor/Lecturer in Pharmacology in a recognised Medical College and the desirable qualification was minimum of four research publications indexed in index Medicus/National Journals. The qualification was amended vide notification dated 24.7.2009 vide which teaching experience as Assistant Professor was reduced from five years to four years, whereas minimum two research publications in Indexed/National journals were also required. The provisions were further amended vide notification dated 15.12.2009 by adding a proviso in the aforesaid provision giving opportunity to the institutes for a period of four years w.e.f. 24.7.2009 for making appointments in terms of the qualifications as were existing in the regulations prior to the amendment w.e.f. 24.7.2009.

(4) It was further contended that the University had adopted the qualifications as prescribed by MCI, which means as amended upto date. The amended qualifications provided teaching experience for four years. The proviso, which enabled an institution to make recruitments for a period of four years w.e.f. 24.7.2009 in terms of the un-amended qualifications, had to be specifically adopted by taking a conscious decision by recording the reasons, but in the present case, though the qualifications as amended by MCI were adopted, but still when the advertisement was issued for selection to the post of Associate Professor/Reader, un-amended qualifications were prescribed, which is contrary to the rules.

(5) Learned counsel further placing reliance upon a judgment of this court in *Pritpal Singh versus Union of India and another (1)*, submitted that a proviso cannot over-ride the main provision. Once the main provision provided for a qualification in the form of teaching experience for four years, by way of a proviso, the same cannot be made as five years.

(6) On the other hand, learned counsel for respondents No. 1 to 3 submitted that before the advertisement was issued for selection to various posts, a Committee was constituted to look into the qualifications. In the meeting of the Committee headed by Principal of the Institute on 9.3.2012, it was decided that as per Dental Council of India, the qualifications for medical staff are to be treated as per MCI and the qualifications for various posts including the post in question be modified in terms of MCI guidelines. Once the guide-lines clearly provided for continuation of the unamended regulations for a period of four years w.e.f. 24.7.2009, there is nothing wrong in mentioning the same qualifications in the advertisement for selection to the post of Associate Professor/Reader.

(7) Learned counsel further submitted that prior to the advertisement in question, some relaxations were being made in the qualifications by the University by even counting experience as Demonstrator as teaching experience considering the fact that the candidates for various posts were not available. He further submitted that the unamended regulations provided for five years teaching experience, but with publication of papers as desirable was prescribed for the reason that there may not be sufficient number of candidates having published papers as it takes lot of time in research. MCI had also given four years as breathing time for the same. Relaxation, if any, granted by the Institute prior in time does not confer any right on the petitioner as such as the advertisement issued presently is strictly in terms of the Regulations as adopted by the Institute. He further submitted that though interviews for other posts advertised have already been held, but appointment letters are yet to be issued. As far as selection to the post in question is concerned, considering the pendency of the present petition, interviews have not been held as the eligibility itself is in question.

(8) Heard learned counsel for the parties and perused the paper book.

(9) It is the admitted case of respondents No. 1 to 3 that qualifications for medical staff to be appointed in the Institute is as per the qualifications laid down for various posts by MCI for which 1998 Regulations have been

framed. For the post of Associate Professor/Reader, MCI had prescribed the following qualifications in 1998 Regulations:

"Post	Academic qualifications	Teaching/Research experience
⌘ (B) Reader/Associate Professor	⌘ M.D. (Pharmacology)/ MBBS with Ph.D (Med.) Pharmacology)/M.Sc. Med. Pharmacology) with Ph.D. (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with D.Sc. (Med. Pharmacology)	⌘ (I) As Assistant Professor/ Lecturer in Pharmacology for five Years in a recognised medical college. <u>Desirable</u> (II) Minimum of four Research publications indexed in Index Medicus/national journals."

(10) The aforesaid qualifications were amended by making changes in the experience required vide notification dated 24.7.2009. The qualifications after amendment being:

"Post	Academic qualifications	Teaching/Research experience
⌘ (B) Reader/Associate Professor	⌘ M.D. (Pharmacology)/ MBBS with Ph.D (Med.) Pharmacology)/M.Sc. Med. Pharmacology) with Ph.D. (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with D.Sc. (Med. Pharmacology)	⌘ (I) As Assistant Professor in Pharmacology for four years In the recognised medical college. <u>Desirable</u> (II) Minimum of two research publications in indexed/national journals.

(11) Still further, vide notification dated 15.12.2009, a proviso was added in the aforesaid qualifications, which provided that publication should be as first author and should have been published during the tenure as Assistant Professor. It was further provided that for transitory period of four years w.e.f. 24.7.2009, appointment/promotion to the post of Associate Professor can be made by an Institute in terms of the un-amended qualifications. The provision after amendment is reproduced below:

"Post	Academic qualifications	Teaching/Research experience
xx (B) Reader/Associate Professor	xx M.D. (Pharmacology)/ MBBS with Ph.D (Med.\ Pharmacology)/M.Sc. Med. Pharmacology) with Ph.D. (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with D.Sc. (Med. Pharmacology)	xx (I) As Assistant Professor in Pharmacology for four years In the recognised medical college. <u>Desirable</u> (II) Minimum of two research publications in indexed/national journals.  Provided that these research publications are published/accepted for publications in the journals by the National Associations/ Societies of the respective specialities as the First Author. Further provided that the requirement of 2 research publications for promotion to the post of Associate Professor should be fulfilled with 2 research publication must be published during the tenure of Assistant Professor. Further provided that for the transitory period of 4 years w.e.f. 24th July, 2009, the appointment/promotion to the post of Associate Professor can be made by the institutes in accordance with the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998" as prevailing before notification of "Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009." (A) Professor."

12. The decision taken in the meeting of the Committee held on 9.3.2012 constituted for the purpose of determination of qualifications for various posts in medical side in the Institute, is extracted below:

“(iv) As per the Dental Council of India the qualifications for the medical staff are to be as per Medical Council of India (MCI) and accordingly it is suggested that the qualifications for the following positions of Associate Professors/Readers in Anaesthesia, Pharmacology, General Surgery and Senior Assistant Professors/ Senior Lecturers in Anatomy, Physiology, General Surgery, General Medicine be modified. Details of these qualifications are attached herewith as Annexure I, which are as per MCI guidelines.”

(13) In the advertisement issued for selection to the post of Associate Professor/Reader in various subjects, the following qualifications and experience were required:

**“PHARMACOLOGY**

**ESSENTIAL**

- (i) M.D. (Pharmacology)/MBBS with Ph.D. (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with Ph. D. (Med. Pharmacology)/ M.Sc. (Med. Pharmacology) with D. Sc. (Med. Pharmacology).
- (ii) Five years teaching experience in the subject in a recognised medical/dental college as Assistant Professor/Lecturer.

**DESIRABLE**

Minimum of four Research publications indexed in index Medicus/National journals.”

(14) A perusal of the aforesaid qualifications prescribed in the advertisement shows that the same are as per un-amended Regulations as existed prior to the amendment w.e.f. 24.7.2009.

(15) The case set up by respondents No. 1 to 3 is that since MCI Regulations were adopted which enabled the Institute for making selection to the post in question for a period of four years on 24.7.2009 in terms of the un-amended qualifications, the advertisement is strictly in conformity thereof. However, in my opinion, the contention raised is totally misconceived. The provision providing for qualifications is in two parts. The first part being the qualifications which have been prescribed after the provision was amended



providing for teaching experience less than what was provided for in un-amended regulations as it was reduced from five years to four years. The second part being the desirable qualification of four published research papers was amended requiring at least two research publications.

(16) Vide amendment carried out on 15.12.2009, two provisos were added. As far as first proviso is concerned, the same is supplemental to the qualifications itself. It only explains that research publications should be as first author and for promotion to the post of Associate Professor, it should be within the tenure as Assistant Professor.

(17) As far as second proviso is concerned, the effect of the same was altogether different. It was, in fact, taking away the application of the amended qualifications for a period of four years from 24.7.2009. The proviso is in the kind of an enabling provision in terms of which an institute can make appointments/promotions in terms of un-amended regulations. Adoption of qualifications prescribed by the University for the post of Associate Professor/Reader by the Institute, which is otherwise mandatory, would mean that the qualifications as amended vide notification dated 24.7.2009 and as explained in the first proviso added vide notification dated 15.12.2009, will be applicable. After adoption of the qualifications, issuing an advertisement in terms of the exception carved out in the second proviso added vide notification dated 15.12.2009 would not be in conformity with the 1998 Regulations as for that purpose, a conscious decision was required to be taken that for a period of four years, the Institute will carry on making appointments/promotions in terms of the un-amended Regulations by recording reasons therefor, but in the present case nothing has been produced to show that any such exercise was done. Minutes of the meeting clearly provide that qualifications for the post be modified in terms of MCI Regulations. The modified qualification is in terms of the amended Regulations and not the exception.

(18) In view of the aforesaid discussions, in my opinion, the advertisement issued for the post in question providing qualifications as per un-amended qualifications is not in conformity with the Rules and Regulations, hence, the same is set aside.

(19) The writ petition stands disposed of.