

Government of Andhra Pradesh and Another

Vs

Dr R. Murali Babu Rao and Another

Dr C. H. Umesh Chandra

Vs

State of Andhra Pradesh and Others

Dr A. Rajagopala Raju and Another

Vs

Government of Andhra Pradesh and Others

Civil Appeals Nos. 5723-24 and 5725 of 1985 with Special Leave Petitions (Civil) Nos. 1665-66 of 1986

(A.P. Sen, B.C. Ray JJ)

09.03.1988

JUDGMENT

SEN, J. –

1. These three appeals and the special leave petitions are directed against the judgment and order of the Andhra Pradesh Administrative Tribunal, Hyderabad dated February 22, 1985 quashing the panel of names prepared by the State Government under Rule 8 of the Andhra Pradesh Medical and Health Service Special Rules, 1982 to fill up the promotional post of Professor of Cardiology as on July 1, 1983 reckoning the teaching experience of all the Assistant Professors in that super speciality in order of seniority, holding that the Assistant Professors of Cardiology in different medical colleges in the State who had the requisite five years teaching experience under Rule 5 of the Rules having the alternate qualification in clause (b) of Annexure II were eligible for promotion as such and directing the State Government to draw up a fresh panel after considering the claims of all such Assistant Professors of Cardiology treating them as possessing the requisite teaching experience in terms of Rule 5 for the promotional post of Professor of Cardiology as on July 1, 1983. That turns on the meaning of the expression 'two years training in Cardiology' as specified in clause (b) of column (5) of serial No. 17 of Annexure II to the Rules prescribing the qualifications for the post of Professor of Cardiology. The Tribunal was of the view that such Assistant Professors of Cardiology were entitled to have the benefit of teaching experience gained by them as such after obtaining the post-graduate degree in MD/MRCP in that speciality on the crucial date July 1, 1983 when the State Government purported to prepare a panel under Rule 8 of the Rules. The issue involved is of far-reaching importance to the entire medical profession as similar problem is faced by the State Governments in promoting Readers/ Associate Professors in a speciality to the post of Professor in that speciality in the medical colleges.

2. The matters were heard a long time back and closed for judgment, but then a similar question arose in Civil Appeal No. 4456 of 1986 - State of Orissa v. Dr. Sivsanker Lal Bajoria - and therefore the matters were re-listed. By order dated December 12, 1986 this Court granted special leave to the State Government of Orissa against the judgment and order of the Orissa High Court evolving a rule of substantial compliance. But learned counsel for the parties in these matters stated that they had made their submissions on merits and desired that the Court should proceed to judgment.

3. At the very outset, we wish to place on record that in Civil Appeal No. 4456 of 1986 we had on October 29, 1986 issued notice to the Medical Council of India to enable it to clarify its stand as to the eligibility of Assistant Professors/ Readers in Cardiology to the promotional post Associate Professor / Professor of Cardiology and in particular as to the import of the term 'two years special training' within the meaning of Regulation 5(2)(b) of the Indian Medical Council Regulations, 1970, framed under Section 33 of the Indian Medical Council Act, 1956. We desired the Indian Medical Council to specify the particular institution where such special training is imparted. It would be profitable to reproduce the relevant averments in the affidavit sworn by the Assistant Secretary of behalf of the Medical Council of India placing its point of view :

With reference to the question whether any syllabus has been prescribed for further studies in Cardiology is concerned, I state that the Council is a regulatory body which has its own rules under the Act. It does not prescribe any syllabus which is within the jurisdiction of every University and medical institutions. The Medical Council of India only prescribes broad guidelines for training in post-graduate/post-doctoral courses leading to post-graduation in D. M. (Cardiology), period of study, conduct of examination etc.; true copy of the said broad guidelines which will cover post-graduation courses is annexed herewith. It may be submitted that there are no special guidelines for Cardiology.

However it is submitted that some Universities/Institutions might have prescribed the syllabus.

With reference to the second question whether further training/instructions are imparted in any college/institution/ university or hospital, I submit that various departments attached to various colleges have started imparting post-graduation courses after obtaining permission from the Medical Council of India. Till this day, a list of such institutions which are imparting such recognised post-doctoral training in Cardiology is given below :

1. Madras Medical College, Madras (Madras University)
2. Post Graduate Institute of Medical Education and Research, Chandigarh (P.G.I., Chandigarh)
3. All India Institute of Medical Sciences, New Delhi
4. G. B. Pant Hospital (Delhi University)
5. G. S. V. M. Medical College, Kanpur (Kanpur University)

Colleges/Institutions which have already been approved for conducting D. M. courses in Cardiology are as under :

Permission accorded (still to be recognised)

1. Osmania Medical College (Osmania University, Hyderabad)
2. Gandhi Medical College (Osmania University, Hyderabad)
3. Armed Forces Medical College, Pune (Poona University)
4. Kasturba Medical College, Manipal (Mangalore University)
5. Bangalore Medical College, Bangalore (Bangalore University)
6. S. C. B. Medical College, Cuttack (Utkal University) (Permitted in September 1986)
7. Grant Medical College, Bombay (Bombay University)
8. Seth G. S. Medical College, Bombay (Bombay University)
9. T. N. Medical College, Bombay (Bombay University)

4. The affidavit sworn by the Assistant Secretary to the Medical Council of India is admirably vague and reveals a sad state of affairs. It is quite manifest that when the Secretary to the Medical Council of India addressed a letter dated April 26, 1976 conveying the recommendations of the Medical Council of India purporting to lay down that after May 31, 1977 for all teaching appointments to posts higher than Tutor in higher specialities i.e. Cardiology/Neurology/Gastro - Enterology/Thoracic Surgery/ Neuro-Surgery/Plastic Surgery/Paediatric Surgery/Urology, the candidates must possess post-graduate degree qualifications in the speciality concerned i.e. DM/M. Ch. after MD/MS or other equivalent qualifications as may be approved by the Council from time to time. There was no prospectus for a course of study for post-graduation in a super speciality nor were there any institutions for imparting post-doctoral training in all the subjects. There was also a Note added that the already existing qualifications with 'two years special training' in a recognized training center in the speciality concerned, shall cease to be sufficient qualification for appointment to the aforesaid teaching post from that date. For the sake of completeness, we think it necessary to set out the aforesaid letter of the Secretary, which runs as follows :

After May 31, 1977, for all teaching appointments to posts higher than Tutor in higher specialities i.e. Cardiology, Neurology/ Gastro-Enterology/Thoracic Surgery/Neuro-Surgery/Plastic Surgery/ Paediatric Surgery/Urology, the candidates must possess post-graduate degree qualifications in the speciality concerned i.e. DM/MCh after MD/MS or other equivalent qualification as may be approved by the Council from time to time. The existing alternative qualifications i.e. MD/MS or an equivalent qualification with two years special training in a recognised training centre in the speciality concerned, shall cease to be sufficient qualification for appointment to aforesaid teaching posts from that date :

Provided that the requirements of possessing post-graduate degree qualification in the concerned higher speciality shall not be applicable for higher appointments in the case of existing teachers holding regular teaching posts whose appointment was initially made on the basis of two years special training in the speciality after the requisite MD/MS.

5. It would be noticed that the affidavit does not disclose the date or dates from which the institutions listed above, namely, Madras Medical College, Madras, Post Graduate Institute of Medical Education and Research, Chandigarh, All India Institute of Medical Sciences, New Delhi, G. B. Pant Hospital, Delhi and G. S. V. M. Medical College, Kanpur were recognised for imparting post-graduate/post-doctoral training. Nor does it specify the Universities/Institutions which have prescribed a syllabus for the post-graduate/post-doctoral course leading to post-graduation in DM (Cardiology), period of study, conduct of examination etc.

6. It is not necessary to set out the facts in any detail and it is sufficient to give only the salient facts to elucidate the point in controversy. On July 1, 1983 the State Government purported to prepare a panel of all Assistant Professors of Cardiology in Government Medical Colleges in the State having the requisite teaching experience under Rule 5 after obtaining the post-graduate qualification as specified in Annexure II. There existed on that date four vacancies in the post of Professor of Cardiology which occurred on November 1, 1982, March 1, 1983, May 1, 1983 and in June 1983. According to the government, the teaching experience contemplated by Rule 5 of the Rules was the teaching experience gained by the Assistant Professor in the concerned speciality after obtaining the second post-graduation degree in that speciality. The government therefore included in the panel the names of Dr. G. Subramanyam, Dr. A. Rajagopala Raju and Dr. Soghra Begum, Assistant Professors of Cardiology, who had as on the crucial date July 1, 1983 five years teaching experience after obtaining their post-graduation degree in DM (Cardiology) as enjoined by Rule 5 read with the first proviso thereto, and accordingly by order dated August 17, 1983 promoted them to the post of Professor of Cardiology. Thereupon, the respondents Dr. R. Murali Babu Rao and Dr. G. Sai Gopal moved the Andhra Pradesh Administrative Tribunal assailing the impugned order of promotion. The claim of the respondent Dr. R. Murali Babu Rao was that he having obtained his degree in MD/MRCP in Medicine was posted as Assistant Professor of Cardiology w.e.f. January 18, 1978 and while continuing to work as such, he was selected to undergo a super speciality course in Cardiology i.e. DM and was deputed for that purpose on January 18, 1980. After completing his DM (Cardiology) in April, 1981, he was posted as Assistant Professor of Cardiology from June 12, 1981. Union that basis, he claimed that apart from being seniormost Assistant Professor of Cardiology, he had five years of teaching experience in the Department of Cardiology as Assistant Professor of Cardiology as on January 18, 1983. According to him, if a panel had been prepared on January 1, 1983, he would have been the seniormost candidate in service with requisite qualifications for any vacancy from January 1, 1983 to July 1, 1983. He characterised the action of the State Government in the matter of computation of five years teaching experience after post-graduation as required under Rule 5 of the Rules only after the second post-graduation degree in DM (Cardiology) as being wholly arbitrary and irrational. The State Government in the counter before the Tribunal repudiated his claim and contended inter alia that under Rule 5 of the Rules, one must possess five years teaching experience in the speciality concerned after obtaining the post-graduate qualification in the concerned speciality i.e. after the second post-graduate course. It was averred that after completion of his post-graduate course in DM (Cardiology), the respondent had been posted as Assistant Professor of Cardiology on June 12, 1981 and thus he would complete the three years period as Assistant Professor of Cardiology after acquiring his post-graduate degree in DM (Cardiology) only on June 11, 1984. In the normal course, it was said, he would then become qualified for promotion as Professor of Cardiology.

7. The claim of the other representationist Dr. G. Sai Gopal was more or less similar. He acquired his degree in MD in Medicine in 1973 and was posted as Assistant Professor of Cardiology in September 1973. He obtained his second post-graduate degree in DM (Cardiology) on December 14, 1981. His grievance is that he has been discriminated against by the government. While he was

working as Assistant Professor of Cardiology after obtaining his post-graduate degree in MD in Medicine, in 1978 he applied for study leave to join the All India Institute of Medical Sciences, New Delhi for undergoing further studies for the second post-graduation degree in DM (Cardiology). It was refused and he was asked to resign from service while the government granted such leave to respondent 3 Dr. Soghra Begum and therefore he should have been treated at par with her as if leave and been granted, and thus he would have completed his DM (Cardiology) course in the year 1980 itself. During the year 1979 the government however relented and granted him leave to study DM course in Cardiology in the All India Institute of Medical Sciences, New Delhi where he completed his DM (Cardiology) on December 13, 1981. As he had put in 1 year 6 month 27 days after his post-graduate degree in DM (Cardiology) and even after giving credit for 2 years 4 month and 18 days i.e. the second post-graduation course period, he was short of the requisite five years teaching experience and thus the government considered him ineligible for promotion.

8. Of the three Assistant Professors of Cardiology promoted as Professors, the government placed before the Tribunal a tabulator chart showing that Dr. A. Rajagopala Raju had a teaching experience of about 3 years 3 months as on January 1, 1983 and with the gaining of teaching experience during the second post-graduation degree of about two years, he had a total teaching experience of over five years. As regards Dr. Soghra Begum, it was averred that she already had 3 years 2 months and 16 days teaching experience as Assistant Professor of Cardiology after obtaining her post-graduate degree in MD/MRCP in Medicine, when the government deputed her to undergo further studies for the second post-graduate course in DM (Cardiology) and therefore the government, as in the case of Dr. A. Rajagopala Raju, decided to count the period when she was undergoing the second post-graduate course in DM (Cardiology) towards her teaching experience.

9. It would appear from the tabular chart that Dr. G. Subramanyam who had also been promoted to the post of Professor of Cardiology was not a party to the proceedings before the Tribunal and had in fact been promoted to that post in November 1982. In view of this, and as he was admittedly senior to the respondent Dr. R. Murali Babu Rao, he did not press his claim against Dr. G. Sai Gopal.

10. The appellant C. H. Umesh Chandra has come up in appeal as the view expressed by the Tribunal prejudicially affects him. He obtained his post-graduate degree in MD in Medicine in December 1975 and his second post-graduate degree in DM (Cardiology) in April 1980. He had put in as Assistant Professor of Cardiology 3 years and 2 months. Even after giving credit for 1 year and 9 months i.e. the period of his second post-graduation course in DM (Cardiology), the government was of the view that he was not eligible. In view of the fact that he obtained his second post-graduation degree in DM (Cardiology) in April 1980, he seeks to support the stand of the government as he has a better chance for promotion than the others to the promotional post of Professor of Cardiology.

11. To appreciate the contentions advanced, it is necessary to set out the relevant provisions of the Andhra Pradesh Medical and Health Service Special Rules, 1982, as amended from time to time. They are extracted below :

3. Clinical and Non-Clinical Specialities. - The Clinical and Non-Clinical Specialities shall be as shown in Annexure I to these rules.

(4) Teaching experience for promotions. - (a) Professors-Clinical, Non-Clinical and Dental. - A Deputy Civil surgeon an Assistant Professor shall be eligible for

promotion as Professor after putting in a total teaching experience of 5 years in either or both categories in the concerned specialities.

(b) Deputy Civil Surgeon (Clinical, Non-Clinical, Dental). -

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(c) The teaching experience specified in sub-rules (a) and (b) above, shall be computed as on January 1 or July 1 of the year which panels for promotions are prepared.

(5) Teaching experience. - Teaching experience specified in Rule 4 shall mean teaching experience in the speciality concerned in a Medical College or an institute recognised by the Medical Council of India after obtaining post-graduate qualification as specified in Annexure II :

Provided that the teaching experience during second post-graduation in a recognised College or Institute within the country or abroad in the concerned speciality of those who are :

- (i) holding teaching appointments; or
- (ii) holding beds under their charges; or
- (iii) doing tutorial work;

shall count towards teaching experience for purposes of this rule.

7. Special Training. - Special training specified in these rules shall mean the work done by an Assistant Professor or Deputy Civil Surgeon in the concerned recognised unit and exclusively devoted to the speciality. Teaching experience during the special training period in the speciality shall count towards the training.

(8) Preparation of panels. - (1) The government shall prepare a panel to fill up all the promotional posts included in Class I available on January 1 and July 1 of the year based on the eligibility of the persons including the teaching experience as on January 1 and July 1 of the year.

(9) Qualifications. - (1) No person shall be eligible for promotion to the posts specified in column (3) of Annexure II unless he/she possesses the qualifications specified in the corresponding entry in column (5) thereof.

(2) Preference shall be given to persons who possess the qualifications specified in item (a) over those who possess the qualifications in item (b) of column (5) of Annexure II for the posts of Professors and Deputy Civil Surgeons belonging to the specialities specified in Annexure III.

Annexure II (Non-Clinical Specialities) see Rules 5 and 9-----
-----Sl. Name of Post Qualifications DegreesNo. Speciality-----
----- (1) (2) (3) (4) (5)-----

-17 Cardiology Professor/ Must possess one of (a) DM Dy. Civil the following (Cardiology) Surgeon post-graduates (b) MD/MRCP qualification in in Medicine the concerned with 2 years speciality from a training in recognised University/ Cardiology. Board/Body.-----
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12. The entire controversy is due to the failure of the State Government to give the benefit of the teaching experience gained by Assistant Professors after they obtained their post-graduate degree in MD/MRCP in Medicine under clause (b) of column (5) in serial No. 17 of Annexure II. In the proceedings before the Tribunal, the State Government in the counter revealed that there was correspondence between the Directorate of Medical and Health Department with Secretary to the Medical and Health Department since the year 1981 for deletion of the alternate qualification prescribed in clause (b) of column (5) in serial No. 17 of Annexure II, namely, MD/MRCP in Medicine, as amended from time to time, for all teaching appointments in the super specialities, as per the recommendations of the Medical Council of India. On the recommendation of the Directorate, it was said that the State Government had decided to delete the alternate qualification prescribed in Rule 5 of the Rules for eligibility to the higher post of Professor in a super speciality, and had sent a draft amendment to the Special Rules for concurrence to the Andhra Pradesh Public Service Commission and the same was awaited. The recommendations of the Indian Medical Council had not by then i.e. till the hearing before the Tribunal, been translated into action. The judgment of the Tribunal however reveals that the alternate qualification in clause (b) of column (5) in serial No. 17 of Annexure II i.e. MD/MRCP in Medicine with two years training in Cardiology stood deleted w.e.f. December 12, 1983. On the crucial date however i.e. on July 1, 1983, when the impugned panel was prepared, the alternate qualification in clause (b) was still there.

13. The contention on behalf of the State Government and the other appellants before us, as was before the Tribunal, is that the rules made under the proviso to Article 309 of the Constitution, are subject to the recommendations made by the Medical Council of India which is invested with statutory power under Section 19-A of the Indian Medical Council Act, 1956 insofar as they relate to coordination and determination of standards for medical education and in particular to prescription of qualifications for appointment to teaching posts in higher specialities. It is said that the directions of the Council, as conveyed by the Secretary by his letter dated April 26, 1976 were mandatory, notwithstanding any provision to the contrary contained in the Andhra Pradesh Medical and Health Service Special Rules, 1982 and must therefore prevail and were binding on the government. The government duly considered the claims of the respondents aforesaid and came to the decision that they were ineligible for promotion to the post of Professor of Cardiology inasmuch as they did not possess the requisite five years teaching experience in the speciality concerned after obtaining their post-graduation qualification within the meaning of Rule 5 of the Rules i.e. second post-graduation degree in DM (Cardiology). The further contention is that, at any rate the alternate qualification in clause (b) of column (5) in serial No. 17 of Annexure II, namely, MD/MRCP in Medicine with two years training in Cardiology, having been deleted by GOMS No. 789, Medical and Health Department, dated December 12, 1983, it was not necessary for the government to comply with the direction made by the Tribunal to draw up a panel of the eligible candidates afresh under Rule 8 of the Rules. The contention, in the alternative, was that the Tribunal failed to appreciate that the teaching experience gained by Assistant Professors of Cardiology before obtaining the second post-graduate degree in the speciality concerned i.e. after the post-graduate degree in MD/MRCP in Medicine, could not be taken into consideration inasmuch as under Rule 9(2) preference has to be given to persons who possess the qualifications specified in clause (a) over those who possess the qualifications specified in clause (b) for the post of Professor belonging to the speciality specified therein and therefore it was not justified in quashing the panel prepared by the

State Government under Rule 8. We are afraid, these contentions cannot prevail.

14. The fallacy underlying the arguments is obvious. Rule 4 in terms speaks of the eligibility of such class of Assistant Professors of Cardiology for promotion to the post of Professor of Cardiology who possess five years teaching experience. The expression 'teaching experience' as defined in Rule 5 speaks of 'teaching experience in the speciality concerned in a medical college or an institute recognised by the Medical Council of India after obtaining post-graduate qualification as specified in Annexure II'. The words used are 'after obtaining post-graduate qualification'; it does not speak of the second post-graduate qualification. Rule 5 therefore takes in both the qualifications specified in clauses (a) and (b) of column (5) in serial No. 17 of Annexure II, namely, (a) DM (Cardiology) (b) MD/MRCP in Medicine with two years training in Cardiology. On the crucial date July 1, 1983, clause (b) was very much there and the government was bound to consider the claims of the aforesaid respondents like other officers belonging to that class before drawing up a panel under Rule 9(2) an Assistant Professor with the requisite five years teaching experience after obtaining his second post-graduate degree in DM (Cardiology) would have preferential claim over those having qualification mentioned in clause (b) i.e. MD/MRCP in Medicine with two years training in Cardiology, the State Government was entitled to ignore the claims of the latter class altogether. On its plain construction, Rule 9(2) is a rule of preference and has therefore to be applied at the stage of making appointments to the post of Professor of Cardiology and not while drawing up a panel under Rule 8. The government was obviously misled by the wrongful assumption (i) that since the alternate qualification in clause (b) of column (5) in serial No. 17 of Annexure II had been deleted by GOMS No. 789 dated December 12, 1983, it was not necessary for it to consider the claims of the aforesaid respondents and others similarly situate in drawing up a list of eligible Assistant Professors of Cardiology to fill up the promotional post of Professor of Cardiology, and (ii) that such officers were rendered ineligible by reason of Rule 9(2) and therefore their claims need not be considered. The Tribunal was therefore justified, in our opinion, in quashing the impugned panel prepared by the State Government under Rule 8 of the Rules and in directing the government to prepare a panel afresh after considering the claims of all Assistant Professors of Cardiology with five years teaching experience after their post-graduation in MD/MRCP in Medicine with two years training in Cardiology.

15. There is no substance whatever in the contention that the alternate qualification in clause (b) being in the conflict with the recommendation of the Medical Council of India, must be deemed to have been repealed by implication and was not est w.e.f. May 31, 1977. The government had no doubt before it the recommendations of the Council as conveyed by the letter of the Secretary dated April 26, 1976 that after May 31, 1977, for all teaching posts higher than Tutor in higher specialities i.e. Cardiology/Neurology/Gastro-Enterology/Thoracic Surgery/Neuro Surgery/Plastic Surgery/Paediatric Surgery/Urology, the candidates must possess the post-graduate qualification in the speciality concerned i.e. DM/MCh after MD/MS or other equivalent qualification, as may be approved by the Council from time to time. The letter also went on to say that the existing qualification MD/MS or an equivalent qualification with two years special training in a recognised training centre in the speciality concerned, shall cease to be sufficient qualification for appointment to the aforesaid teaching posts from that date. Nevertheless, the government failed to appreciate that the recommendation which was later approved of by the Government of India and acquired the status of a regulation, was only recommendatory and could not override a rule framed under the proviso to Article 309 of the Constitution. The panel had to be drawn by the State Government strictly in conformity with the rules of recruitment made under the proviso to Article 309 and not on the basis of the recommendations of the Council.

16. As is manifest from the affidavit filed by the Indian Medical Council, it is only a recommendatory body. This Court has in a series of decisions defined the precise functions and duties of the Medical Council of India. The Indian Medical Council constituted under Section 3 of the Act is an expert body intended and meant to control the minimum standards of medical education and to regulate their observance. We may only cite the case of State of Madhya Pradesh v. Km. Nivedita Jain [(1981) 4 SCC 296] where the court had to consider the effect of the Regulations framed by the Medical Council and the various executive orders issued by the State Government. Analysing the various provisions of the Act in depth, it was observed as follows : (SCC p. 308, para 18)

An analysis of the various sections of the Act indicate that the main purpose of the Act is to establish Medical Council of India, to provide for its constitution, composition and its functions; and the main function of the Council is to maintain the medical register of India and to maintain a proper standard of medical education and medical ethics and professional conduct for medical practitioners. The scheme of the Act appears to be that the Medical Council of India is to be set up in the manner provided in the Act and the Medical Council will maintain a proper medical register, will prescribe minimum standards of medical education required for granting recognised medical qualifications, will also prescribe standards of post-graduate medical education and will further regulate the standards of professional conduct and etiquette and code of ethics for medical practitioners.

A fortiori, the recommendations made by the Council or the Regulations framed by it are only recommendatory and not mandatory. It is not for the Council to prescribe qualifications for recruitment to posts of Professors, Readers and Lecturers. It can only lay down broad guidelines therefor. Such qualifications have necessarily to be prescribed by the framing of Rules under the proviso to Article 309 Right to be considered for promotion is a condition of service and it can only be regulated by a rule framed under the proviso to Article 309.

17. The Medical Council in its affidavit has itself said that it only prescribes broad guidelines for training in post-graduate/post-doctoral courses leading to post-graduation in DM (Cardiology), period of study, conduct of examinations etc. It goes further and accepts that there are no special guidelines laid down for Cardiology and asserts that some universities/institutions might have prescribed the syllabus. It has listed five institutions which are imparting post-doctoral training in Cardiology. Such being the legal position, the contention of the State Government and the other appellants that the recommendations of the Medical Council as conveyed by the letter of the Secretary dated April 26, 1976 rendering Assistant Professors of Cardiology having the alternate qualification of post-graduate degree in Md/MRCP in Medicine ineligible for promotion to the post of Professor of Cardiology even though they had the requisite five years teaching experience, appears to be wholly misconceived and unwarranted. In support of the contention, learned counsel appearing for the State Government and the other appellants relied upon the following observations made by this Court in Union of India v. Dr. S. B. Kohli [(1973) 3 SCR 117 : (1973) 3 SCC 592 : 1973 SCC (L & S) 136 : AIR 1973 SC 811] :

Before the growth of specialised qualifications, Surgeons obtaining the FRCS in general surgery used to specialise in Orthopaedics and other specialities either by doing a diploma in Orthopaedics or simply by practice and experience. The regulations framed by the Medical Council require that in addition to the general FRCS, a surgeon must have a diploma in Orthopaedics before he could be appointed

a Professor, Reader or Lecturer in Orthopaedics. That regulation has been accepted by the government. This gives an indication of what is considered a post-graduate degree in the concerned speciality. Therefore, in the present case, a mere degree of FRCS as such cannot be deemed to be a post-graduate qualification in the concerned speciality of Orthopaedics. To hold otherwise would mean that a person who has the qualification of FRCS could be deemed to be specialised in Tuberculosis and Orthopaedics, although he is also a specialist in general surgery. Therefore, the second respondent does not hold a post-graduate degree in the concerned speciality, Orthopaedics and as such, his promotion to the post of a Professor in Orthopaedics was illegal and against the Central Health Service Rules.

18. We fail to see the relevance of these observations to the facts of the present case. In Kohli case [(1973) 3 SCR 117 : (1973) 3 SCC 592 : 1973 SCC (L & S) 136 : AIR 1973 SC 811], the question turned on the construction of the phrase 'a post-graduate degree in the concerned speciality' in items 2 and 3 of Annexure II of the Second Schedule of the Central Health Service Rules, 1963. The question that arose for consideration was whether the second respondent in that case who was FRCS (General Surgery) of the Edinburgh University, had a post-graduate degree in the concerned speciality and was eligible for promotion to the post of Professor of Orthopaedics Surgery in the Maulana Azad Medical College, New Delhi. It was contended before the High Court on behalf of the Central Government that the amendments made in the Central Health Service Rules were intended to give effect to the Regulations framed by the Indian Medical Council. The Court held that the various entries in Annexure II of the Second Schedule had to be interpreted in a reasonable manner and pointed out that the degree in FRCS was in General Surgery. The amended rule made by the Central Government was to implement the Regulation framed by the Indian Medical Council that in addition to the General FRCS, a Surgeon must have a diploma in Orthopaedics before he could be appointed a Professor, Reader or Lecturer in Orthopaedics. In that context, the court held that the Central Government having accepted the recommendation of the Council and framed a rule, a mere degree of FRCS as such could not be deemed to be a post-graduate qualification in the concerned speciality, Orthopaedics. In the present case, we are concerned with the meaning of the expression 'teaching experience' occurring in Rule 5 of the Rules and with the class of officers who after their appointment as Assistant Professors of Cardiology, on having obtained post-graduate degree in MD/MRCP, have been teaching the subject Cardiology for years together. Indeed, the alternate qualification specified in clause (b) of column (5) in serial No. 17 of Annexure II takes in this class of officers and makes them eligible under Rule 5. We have already repelled the contention that the alternate qualification in clause (b) being in conflict with the recommendation of the Council must be deemed to have been repealed by implication w.e.f. May 31, 1977 or rendered non est as from that date. On the crucial date July 1, 1983, clause (b) was still there and the government was therefore bound to consider the claims of such officers before drawing up a panel under Rule 8.

19. Faced with this difficulty, learned counsel appearing for the State Government and the other appellants strenuously contended before us that the respondents i.e. Assistant Professors of Cardiology with the requisite teaching experience of five years after obtaining their post-graduate degree in MD/MRCP in Medicine did not come within the purview of clause (b) of column (5) in serial No. 17 of Annexure II. Emphasis was laid on the words 'with two years training in Cardiology' and it was submitted that none of the respondents had the requisite training. We enquired from the learned counsel if there was any institution imparting such training in Cardiology but they were unable to throw any light on the subject. The expression 'special training' is defined in Rule 7 to mean the work done by an Assistant Professor in the concerned recognised unit and exclusively devoted to the speciality. The question then arises for the applicability of Rule 7. There

are two conditions to be fulfilled, firstly, there must exist an institution set up either by the Medical Council of India or by the government or universities exclusively devoted to imparting teaching in different courses of Cardiology and secondly, such institution should have been recognised by the government. There is no such material on record to establish that there is any such recognised unit either in the State of Andhra Pradesh or elsewhere. That apart, we fail to appreciate the reason why the Associate Professors, Readers, Assistant Professors of Cardiology teaching the subject Cardiology in the medical colleges for years together, should not be regarded as persons having special training in Cardiology within the meaning of clause (b) of column (5) in serial No. 17 Annexure II. Any other view would lead to a very anomalous situation.

20. It would be a travesty of justice if the officers belonging to the class like the respondents-representationist Dr. R. Murali Babu Rao and Dr. G. Sai Gopal, namely, Assistant Professors of Cardiology with five years teaching experience after their post-graduation in MD/MRCP in Medicine as on July 1, 1983, were not empanelled by the State Government under Rule 8 to fill up vacancies in the post of Professor of Cardiology, even though they possessed the requisite qualifications under Rule 5 of the Rules. It must be remembered that the alternate qualification is clause (b), namely, MD/MRCP in Medicine with two years training in Cardiology was still there and it was not open to the government to ignore the same merely because it was in conflict with the recommendation of the Medical Council of India, as conveyed in the letter of the Secretary dated April 26, 1976.

21. In the world as a whole today, particularly in the developed countries, both the health and the wealth of mankind is better than it was. Even in the developing world, the health conditions of many communities have improved considerably in recent decades. For the developing countries as a whole, life expectancy at birth increased from 32 years before the Second World War, to about 49 years in the 1960s, compared with about 70 years for the industrial world. With the conquest of tuberculosis and other infectious diseases, disorders of the blood vessels, hypertension, ischemia, acute myocardial infarction, arteriosclerosis, acute heart failure etc. are the chief causes of death in at least half of population, and perhaps a quarter as many deaths from cancer. New physiological and biophysical methods of study, together with post war developments in surgery and open heart surgery, have revolutionised the investigation and management of heart disease in the western world. Our country is not lagging behind and during the last few decades has seen the emergence of the new class of specialised physicians dealing with cardiovascular disorders, known as Cardiologists, for the management and treatment of patients suffering from heart diseases.

22. From time to time, a personality scintillates across the medical firmament who dazzles all beholders. Few people of his generation have surpassed the eminence of Dr. S. K. Mukerji, MD/MRCP (Lond.), FRCP (Lond.), Emeritus Professor of Medicine, Medical College, Indore who perhaps today is the leading Physician and Cardiologist in the country and at whose feet many Physicians and Cardiologists have attained great distinction. He has had a remarkable ability to objectify an important clinical finding and to cite all relevant literature without disquieting the patient. Indeed his clinical analysis usually gained the confidence and respect of his patient in a most reassuring manner. His originality in selecting clinical problems and investigating them by the available physiological methods, especially disorders of the heart and circulation, are familiar to the entire medical world. He truly depicts the characteristics of thoughtful physician excelled in the care of the sick, as delineated by T. R. Harrison, renowned physician and author of the standard text book 'Principles of Internal Medicine' in his preface in these words :

No greater opportunity or obligation can fall the lot of a human being than to be a

physician. In the care of the suffering he needs technical skill, scientific knowledge and human understanding. He who uses these with courage, humility, and wisdom will provide a unique service for his fellow-man and will build an enduring edifice of character within himself. The physician should ask of his destiny no more than this, and he should be content with no less.

23. Another outstanding personality whose name comes to our mind is that of Dr. P. N. Laha, Md, Double MRCP (Lond.), Emeritus Professor of Medicine, Medical College, Gwalior who has taught many of the leading Cardiologists in the country. A delightful, vivacious, passionate physician, he stimulates everyone with whom he comes in contact and he has placed an indelible stamp on the medical events of his days. His many illuminating articles on different branches of Cardiology appear in the authoritative text-book 'Principles of Medicine' edited by Dr. Rustom J. Vakil who, along with Dr. (Col.) K. K. Datey. were two of the foremost Cardiologists in the country. Two of the physicians who attained great eminence in the field of Cardiology were the late Dr. Sujoy B. Roy, Head of the Department of Cardiology, All India Institute of Medical Sciences, New Delhi and the late Dr. K. L. Wig, Professor of Medicine, Director, Post Graduate Institute of Medical Education and Research, Chandigarh and later Director, All India Institute of Medical Sciences, New Delhi in their time. Other equally eminent Cardiologists who have brought honour to the country are Dr. P. C. Dhanda, MD/MRCP, Head of the Department of Medicine, Maulana Azad Medical College, New Delhi, Dr. (Lt. Col.) K. L. Chopra, Professor of Cardiology, Medical College, Poona, Advisor to the Armed Forces, Head of the Cardiology Department, Mool Chand Khairati Ram Hospital, President, Heart Care Foundation, Dr. Padmavati, Professor and Head of the Cardiology Department, G. B. Pant Hospital, President, All India Heart Foundation, Dr. M. L. Bhatia, Head of the Cardiology Department, All India Institute of Medical Sciences, Dr. R. K. Caroli, Professor of Cardiology and Head of the Cardiology Department, Dr. Ram Manohar Lohia Hospital, Dr. S. C. Manchanda, Professor of Cardiology, All India Institute of Medical Sciences, Dr. B. K. Goyal, Visiting Professor of Cardiology in different Medical Colleges in Bombay, Dr. (Lt. Col.) K. K. Malhotra, eminent Physician and Senior Specialist and Consultant (Cardiology), Dr. Ram Manohar Lohia Hospital, Dr. P. D. Nigam, Professor of Cardiology and Head of the Department, Dr. Ram Manohar Lohia Hospital, Dr. M. Khalilullah, Director, G. B. Pant Hospital, Dr. N. S. Dixit, Head of the Cardiology Department, Batra Hospital, Dr. K. Banerji, MD, Professor of Medicine, Medical College, Jodhpur, Dr. C. R. Bhandari, Professor of Medicine, Medical College, Jabalpur, Dr. V. G. Nivasarkar, Professor of Medicine, Medical College, Gwalior, Dr. R. K. Sen, Sr. Consultant, B. L. Kapur Hospital, New Delhi, a well known Physician and Cardiologist, Dr. S. K. Minocha, MD, Sr. Physician and Cardiologist, Dr. Ram Manohar Lohia Hospital etc. We would be surprised if many of these renowned Cardiologists who are MD, MRCP (Lond.) are not examiners for DM (Cardiology). Indeed, many of their students after doing their MD in Medicine and after their post-graduation go for further studies for the second post-graduation in DM (Cardiology) under their direction.

24. We have no doubt in our mind that the Medical Council of India with the best of intentions due to fall in standards of education felt it necessary in the public interest to prescribe second post-graduation in a super speciality i.e. DM (Cardiology) to be an essential qualification for the promotional post of Professor of Cardiology. However, it must not be forgotten that there are many distinguished Physicians with specialisation in Cardiology, working as Professors of Medicine teaching students in different branches of Cardiology as a subject in various medical colleges throughout the country whose services are frequently called in as Consultants in cases of emergency. There are also many distinguished Assistant Professors/Readers/ Associate Professors of Medicine in such medical colleges in different States teaching Cardiology as a subject who have gained sufficient expertise and knowledge in different branches of Cardiology. It would be rather

unfortunate if such Assistant Professors/Readers/Associate Professors of Medicine merely because they are MD/MRCP in Medicine were considered to be ineligible for appointment to the post of Professor of Cardiology even though they may have the requisite teaching experience in many branches of Cardiology for the last 15 to 20 years in Medical colleges. In view of this, the expression 'five years teaching experience' occurring in Rule 5 of the Rules as well as the phrase 'with two years training in Cardiology' in clause (b) of column (5) in serial No. 17 of Annexure II of the Rules, must, in our opinion, receive a liberal construction. We are inclined to the view that the experience gained by them while teaching students in different branches of Cardiology should be treated as sufficient to meet the requirements of Rule 5 of the Rules as well as clause (b). We hope and trust that the Medical Council of India, Union Government and the State Governments, as also the State Medical Councils would give a second thought to the problem and try to evolve a solution to the problem by which the right of such persons to be considered for promotion to the post of Professor of Cardiology can be kept preserved, without allowing any fall in the standards of further education.

25. For the reasons stated, the appeals as well as the connected special leave petitions must fail and are dismissed. There shall be no order as to costs.

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