

SUPREME COURT OF INDIA

C.H.Umesh Chandra

Vs.

State of A.P.

C.A.Nos.5723-5724 and 5725 of 1985

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

09.03.1988

JUDGEMENT

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 22nd February, 1985 quashing the panel of names prepared by the State Government under R. 8 of the Andhra Pradesh Medical and Health Service Special Rules, 1982 to fill up the promotional post of Professor of Cardiology as on 1st, July, 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 R. 5 of the Rules having the alternate* qualification in cl. (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 R. 5 for the promotional post of Professor of Cardiology as on 1st July, 1983. That turns on the meaning of the expression 'two years training in Cardiology' as specified in cl. (b) of column 5 at 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 1st July 1983 when the State Government purported to prepare a panel under R. 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 Government in promoting Readers/Associate Professors in a speciality to the post of Professor in that speciality in the medical colleges.

* alternative - Ed.

'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 Anr. - and therefore the matters were re- listed. By order dated 12th December, 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.

At the very outset, we wish to place on record that in Civil Appeal No. 4456 of 1986 we had on 29th October, 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 of 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 S. 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 on 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/ instruction 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 (Banglore University)

6. S.C.B. Medical College, Cuttack (Utkal University) (Permitted in Sept. 86)

7. Grant Medical College, Bombay (Bombay University)

8. Seth G.S. Medical College, Bombay (Bombay University)

9. T.N. Medical College, Bombay (Bombay University)"

(Emphasis supplied

2. 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 26th April, 1976 conveying the recommendations of the Medical Council of India purporting to lay down that after 31st May, 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 postgraduate 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 centre in the speciality concerned shall cease to be sufficient qualification for appointment to the aforesaid teaching posts 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 31st May, 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 postgraduate degree qualifications in the speciality concerned i.e. D.M./M. Ch. after M.D./M.S. or other equivalent qualification as may be approved by the Council from time to time. The existing alternative qualifications i.e. M.D./M.S. 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 M.D./M.S."

3. 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 postgraduate/post-doctoral training. Nor does it specify the Universities/ Institutions which have prescribed a syllabus for the postgraduate/post-doctoral courses leading to post-graduation in D.M. (Cardiology), period of study, conduct of examination etc.

4. 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 points in controversy. On 1st July, 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 R. 5 after obtaining the post-graduate qualifications as specified in Annexure II. There existed on that date four vacancies in the post of Professor of Cardiology which occurred on 1st Nov. 1982, 1st March, 1983, 1st May, 1983 and in June, 1983. According to the Government, the teaching experience contemplated by R. 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. Rajgopala Raju and Dr. Soghra Begum, Assistant Professors of Cardiology, who had as on the crucial date 1st July, 1983 five years teaching experience after obtaining their post-graduation degree in DM (Cardiology) as enjoined by R. 5 read with the first proviso thereto, and accordingly by order dated 17th August, 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. 18th Jan. 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 18th Jan. 1980. After completing his DM (Cardiology) in April, 1981, he was posted as Assistant Professor of Cardiology from 12th June, 1981. Upon 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 18th Jan. 1983. According to him, if a panel had been prepared on 1st Jan. 1983, he would have been the seniormost candidate in service with requisite qualifications for any vacancy from 1st Jan. 1983 to 1st July, 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 R. 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 R. 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 postgraduate course in DM (Cardiology), the respondent had been posted as Assistant Professor of Cardiology on 12th June, 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 11th June, 1984. In the normal course, it was said, he would then become qualified for promotion as Professor of Cardiology.

5. 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 Sept. 1973. He obtained his second post-graduate degree in DM (Cardiology) on 14th Dec. 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 No. 3 Dr. Soghra Begum and therefore he should have been treated at par with her as if leave had 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 13th Dec. 1981. As he had put in 1 year 6 months 27 days after his post-graduate degree in DM (Cardiology) and even after giving credit for 2 years 4 months 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.

6. Of the three Assistant Professors of Cardiology promoted as Professors, the Government placed before the Tribunal a tabular chart showing that Dr. A. Rajagopala Raju had a teaching experience of about 3 years 3 months as on 1st January, 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 postgraduate course in DM (Cardiology) towards her teaching experience.

7. 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 Nov. 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.

8. 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.

9. 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 or 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) :*****

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

"(5). Teaching experience :- Teaching experience specified in R. 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 1st January and 1st July of the year based on the eligibility of the persons including the teaching experience as on 1st January and 1st July 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

"S.No. Name of speciality Post Qualifications Degrees

(1) (2) (3) (4) (5)

17. Cardiology Professor/Dy. Civil Surgeon Must possess one of the following post-graduate qualifications in the concerned speciality from a recognised University/Board/Body.

(a) D.M. (Cardiology)

(b) M.D./M.R.C.P. in Medicine with 2 years training in Cardiology."

10. 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 Cl. (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 cl. (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 has decided to delete the alternate qualification prescribed in R. 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 Cl. (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. 12th Dec , 1983. On the crucial date however i.e. on 1st July, 1983, when the impugned panel was prepared, the alternate qualification in Cl. (b) was still there.

11. 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 Art. 309 of the Constitution, are subject to the recommendations made by the Medical Council of India which is invested with statutory power under S. 19A of the Indian Medical Council Act, 1956 insofar as they relate to co-ordination 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 26th April, 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 are 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 R. 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 Cl. (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 12th Dec. 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 R. 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 R. 9(2) preference has to be given to persons who possess the qualifications specified in cl. (a) over those who possess the qualifications specified in Cl. (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 R. 8. We are afraid these contentions cannot prevail.

12. 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 R. 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 Cls. (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 1st July, 1983, cl. (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 R. 8. There is no warrant for the submission that since under R. 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 Cl. (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, R. 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 R. 8. The Government was obviously misled by the wrongful assumption (i) that since the alternate qualification in Cl. (b) of column (5) at serial No. 17 of Annexure II had been deleted by GOMS No. 789 dated 12th December, 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 R. 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 R. 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.

13. There is no substance whatever in the contention that the alternate qualification in Cl. (b) being in conflict with the recommendation of the Medical Council of India must be deemed to have been repealed by implication and was non est w.e.f. 31st May, 1977. The Government had no doubt before it the recommendations of the Council as conveyed by the letter of the Secretary dated 26th

April, 1976 that after 31st May, 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/M.Ch- 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 Art. 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 Art. 309 and not on the basis of the recommendations of the Council.

14. 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 S. 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 : (AIR 1981 SC 2045) 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 (at p. 2053 of AIR) :

"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."

(Emphasis supplied)

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 Art. 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 Art. 309.

15. 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 26th April, 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. S.B. Kohli*, (1973) 3 SCR 117 : (AIR 1973 SC 811 at pp 812 and 813) :

"Before the growth of specialised qualifications Surgeons obtaining the F.R.C.S. 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 F.R.C.S., 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 F.R.C.S. 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 F.R.C.S. 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 postgraduate 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."

16. We fail to see the relevance of these observations to the facts of the present case. In Kohli's case, 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 F.R.C.S. (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 Orthopaedic Surgery in the Maulana Azad Medical College, New Delhi. It was conceded 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 F.R.C.S. 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 F.R.C.S., 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 F.R.C.S. as such could not be deemed to be a postgraduate qualification in the concerned speciality, Orthopaedics. In the present case, we are concerned with the meaning of the, expression 'teaching experience' occurring in R. 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 cl. (b) of column 5 in serial No. 17 of Annexure II takes in this class of officers and makes them eligible under R. 5. We have already repelled the contention that the alternate qualification in Cl. (b) being in conflict with the recommendation of the Council must be deemed to have been repealed by implication w.e.f. 31st May, 1977 or rendered non-est as from that date. On the crucial date 1st July, 1983, Cl. (b) was still there and the Government was therefore bound to consider the claims of such officers before drawing up a panel under R. 8.

17. 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 Cl. (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 R. 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 R. 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 cl. (b) of column 5 in serial No. 17 Annexure II. Any other view would lead to a very anomalous situation.

18. It would be travesty of justice if the officers belonging to the class like the respondents-representationists 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 1st July, 1983, were not empanelled by the State Government under R. 8 to fill up vacancies in the post of Professor of Cardiology, even though they possessed the requisite qualifications under R. 5 of the Rules. It must be remembered that the alternate qualification in Cl. (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 26th April, 1976.

18-A. 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.

19. 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.), F.R.C.P. (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 a thoughtful physician excelled in the care of the sick, as delineated by T. R. Farrison, 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 men 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."

Another outstanding personality whose name comes to our mind is that of Dr. P.M. 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 day. His many illuminating articles on different branches of Cardiology appear in the authoritative textbook '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, Postgraduate 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. Dhunda,

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. B.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.

20. 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 R. 5 of the Rules as well as the phrase 'with two years training in Cardiology' in Cl. (b) of column 5 at 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 R. 5 of the Rules as well as of Cl. (b). We hope and trust that the Medical Council of India, Union Government and the State Governments, so 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.

21. 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.

Petitions dismissed.

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