

Post Graduate Institute and Others

Vs

Dr. J. B. Dilawari and Others

Civil Appeals Nos. 2651-53 of 1984

(Ranganath Misra, M.M. Dutt JJ)

26.04.1988

ORDER

1. The Post Graduate Institute of Medical Education and Research, abbreviated as PGI (hereinafter referred to as 'the Institute') at Chandigarh is an institution of national importance created under a parliamentary legislation by that name under the Central Act 51 of 1966. It is a body corporate and in terms of Section 5 of the Act, the Institute consists of 20 members - the Vice-Chancellor of the Punjab University, the Director General of Health Services of India, the Director of the Institute - all ex-officio; three representatives of the Central Government to be nominated by the Central Government, one each from the Ministries of Finance, Education and Health and Family Planning; seven persons of whom one is to be a non-Medical Scientist representing the Indian Science Congress Association to be nominated by the Central Government; four representatives of the medical faculties of India Universities also to be nominated by the Central Government according to the rules and three Members of Parliament, two being from the Lok Sabha and one from the Rajya Sabha. The Central Government nominates one of the Members other than the Director as the Institute President. The Institute has a Governing Body in which vests the executive power. The Chief Executive Officer is the Director. Sections 12 and 13 of the Act indicate respectively the objects and functions of the Institute. The Institute has been conceived as one of excellence in its filed providing physical and intellectual milieu for young scientists working in the multiple disciplines of medicine, to advance the frontiers of knowledge, to render humane service to the sick and the suffering and to train medical and para-medical manpower.

2. One of the several specialities in the Institute was Gastroenterology which started functioning almost contemporaneously with the opening of the Institute. Necessity for a separate speciality of Paediatric Gastroenterology came to be felt within a few years of working. In 1975, in response to the Central Government's suggestion for drawing up a scheme for upgradation of some of the departments, the Institute proposed the creation of a super speciality in Paediatric Gastroenterology and Clinical Hepatology. On January 12, 1983, the Academic Council of the Institute approved the creation of the post of Professor of Paediatric Gastroenterology and the other posts of the super speciality. On January 14, 1983, the Governing Body approved the decision of the Council and on the following day the Institute approved the Governing Body's decision. On February 25, 1983, the job specifications and qualifications for the post of Professor were settled and on March 25, 1983, advertisement inviting applications for that post and other posts was made. In August 1983, interviews were held. Respondent 1, Dr. Dilawari did not apply for the post but applied to the High Court under Article 226 of the Constitution on August 2, 1983, assailing the creation of the posts of Professor, the advertisement for filling up the post and asked for quashing them. In the meantime, Dr. (Mrs.) Saroj Mehta, appellant in Civil Appeal No. 2652 of 1984, held that the creation of the post was vitiated as the requirements of the law had not been followed. It also found that the

prescription of the qualification for the said post were tailored to suit the candidature of Dr. Saroj Mehta and the entire exercise leading to the selection of Dr. Mehta was vitiated by mala fides. Three appeals have been filed - Civil Appeal No. 2651 of 1984 by the Institute and the Institute Body, Civil Appeal No. 2652 of 1984 by Dr. Saroj Mehta, the selected candidate, and Civil Appeal No 2653 of 1984 by Dr. S. K. Mehta, the Head of the Department of Gastroenterology of the Institute.

3. It is relevant to point out at this stage that Dr. Saroj Mehta happens to be the wife of Dr. S. K. Mehta who is the Professor and Head of the Department of Gastroenterology. This relationship was one of the main aspects pleaded in support of the plea of mala fides.

4. These appeals were heard at considerable length and in course of hearing, keeping in view the status of the Institute and the anxiety of the Central Government to upgrade the super speciality and allow it to function in an appropriate manner, different alternatives had been proposed and discussed.

5. The membership of the Institute Body has in the meantime undergone a considerable change. Similarly the relevant statutory Boards and Committees of the Institute are by now being manned by new blood in different degrees. What exactly should be the appropriate qualification for the Professor of the super speciality in Paediatric Gastroenterology is a matter for the expert body to decide and the court should be slow to impose its opinion. Undoubtedly, on the earlier occasion, the creation of the post and the fixing of the qualification had been done with a considerable amount of haste which is not the usual way of functioning of governmental agencies. It has been contended on behalf of the Institute that this had become necessary as there was pressure from the government for creation and filling up of the vacancies quickly. We are of the view that no useful purpose would be served by questioning the creation of the post of Professor. There is sufficient material on record that for quite some time it was being planned to open a super speciality in Paediatric Gastroenterology. Medical science of late has been advancing at quick pace. Specialised medical attention and treatment for what once was taken to be incurable and beyond human capacity for healing is now coming within the ambit of reasonable medicare. The proposal that a prestigious institution of national importance like the Institute should have a speciality in Paediatric Gastroenterology was, therefore, appropriate and in case such a speciality was to function, it was reasonable to provide for a Professor therefore. Since the contest between Dr. Saroj Mehta and Dr. Dilawari is for selection to the post of Professor, a dispute relating to the creation of the post is indeed not relevant to such a dispute. Unless the post exists, there is no scope for a contest over selection. Besides, genuine objection, if any, should have emanated from the Central Government and not from contenders for the post. For this bunch of appeals, therefore, the dispute over the creation of the post of Professor in the super speciality is indeed irrelevant and that question, therefore, shall be taken as so concluded.

6. Respondent 1's contentions which prevailed with the High Court are that the creation of the post was not in accordance with law, the qualifications prescribed for the Professor in the super speciality were not appropriate and the entire action beginning from creation of the post to selection of Dr. Saroj Mehta is vitiated by mala fides.

7. With the finding recorded above, the first contention is negatived. Next comes the question as to whether the prescription of the qualifications for the post of Professor was appropriate. Dr. Dilawari has taken the stand that the qualifications were tailored to ensure Dr. Saroj Mehta's selection and though M.D. in Paediatrics should not be the qualification for the post of Professor in the super speciality, the Institute accepted it. The High Court accepted the allegation. We do not intend to

pronounce any view on settling the qualifications as we propose to ask the Institute and its authorities to refix the same.

8. Specialisation is the order of the day. About half a century back, a general medical practitioner was in a position to attend to all human ailments in accordance with the then known methods of treatment. Today for the purpose of medical attention the human body has been divided into several parts and expertise with regard to these has so developed that specialisation has become the order of the day. Though the court, it is stated, is the expert of experts, it is proper to take note of its limitations. Realization of this situation has led to a series of pronouncements where this Court has reiterated the position that matters involving expertise should be left to be handled by expert bodies.

9. Dr. Dilawari's pleadings and the High Court's findings offer challenge to the prescribed qualifications. We are of the view, and parties have agreed as we have already indicated, that the job requirements and prescription of qualifications for the post of Professor should be redetermined by the Academic committee and the other authorities under the Act, Rules and/or Regulations.

10. Undoubtedly, the process of finalising the qualifications was somewhat expeditious and the explanation for such conduct has been anxiety to quicken the process of setting up the super speciality in a complete form. Anxiety to have something done quickly is not necessarily mala fide. In view of the allegations of Dr. Dilawari and the finding of the High Court and it being our view that we should not take on ourselves the final decision of fixing up the appropriate qualifications for the Professor of the super speciality, we direct that the prescription of qualifications for the post of Professor shall be redone by complying with the procedure laid in the Act, the Rules, Regulations and Standing Instructions. The same should be finalised by the concerned relevant authorities within three months from the date of the receipt of the order by the Director of the Institute. The redetermination of this qualification by the authorities with the aid and assistance of necessary expertise either by affirming the earlier conclusion or by changing the same would take away the second ground of attack, namely, that the post was created with qualifications so prescribed that Dr. Saroj Mehta would emerge as the only successful candidate. Once the qualifications are prescribed in the manner required by law the same should be sent to the Registry of this Court by the Director within two weeks after the three months period for further hearing of the appeals. The appeals are now adjourned to August 16, 1988.

11. We hope and trust that every one concerned with the process we have indicated above, would act in an appropriate way as provided for in the Act, the Rules and the Regulations. The entire has reposed its confidence in the Institute with the hope that the Institute would ultimately be responsible for the health care of the nation. This trust can be discharged only when every organ of the Institute functions in an appropriate way within the limits set by the law. When we express our hope and trust, we also do so on behalf of the nation.

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