

Director, A. I. I. M. S.

Vs

Nikhil Tandon and others

Civil Appeal No. 3591-92 of 1996

(B. P. Jeevan Reddy, K. Venkataswami JJ)

20.02.1996

JUDGEMENT

B. P. JEEVAN REDDY J.

1. The All India Institute of Medical Sciences (A. I. I. M. S.) published a notification calling for applications for appointment to several posts including a post of Assistant Professor in Endocrinology. According to the notification published in the newspapers dated August 20, 1992, the last date for applying was October 7, 1992. We are concerned herein with the selection and appointment to the post of Assistant Professor (Endocrinology). Pursuant to the said notification, several persons applied for these posts including Dr. Nikhil Tandon and Dr. Ajay Sood. Qualifications criteria of eligibility was as provided in the Rules and Regulations prescribed by the Institute, i. e., A. I. I. M. S. The selection committee met and prepared a panel of two candidates. Tandon was placed at No. 1 and Sood at No. 2. The selection committee recommended that since both the candidates are of high merit, it would be appropriate if the Institute creates another post to accommodate Sood. It, however, appears that the Institute could not create an additional post and since there was only one post, it appointed Tandon to it. Sood went to Delhi High Court by way of a writ petition questioning the selection and appointment of Tandon. Though several grounds were raised in the writ petition, only one point was urged at the time of hearing, viz., that Tandon was not qualified to hold the said post and, therefore, his selection and appointment is illegal. The Delhi High Court has upheld the said contention and has set aside the selection and appointment of Tandon. These two Special Leave Petitions are preferred by Tandon and the Institute.

2. Leave granted in both the Special Leave Petitions.

3. The Institute was established and is governed by the All India Institute of Medical Science Act, 1959. Section 5 declares the Institute to be an Institution of national importance. Section 23 provides that "(N)otwithstanding anything contained in the Indian Medical Council Act, 1933, the medical degrees and diplomas granted by the Institute under this Act shall be recognised medical qualifications for the purposes of that Act and shall be deemed to be included in the first Schedule to that Act." Section 24 empowers the Institute to grant medical degrees, diplomas and other academic distinctions and titles under the Act. Section 28 confers the rule-making power of the Act whereas Section 29 empowers the Institute to make regulations in respect of matters provided therein with the previous approval of the Central Government.

4. The All India Institute of Medical Sciences Recruitment Rules, 1981 prescribe the method and mode of recruitment to the posts in the Institute. Rule 12 which carries the sub-heading "Qualifications" says that the academic and professional qualifications including experience

prescribed for each post shall be as per Schedule-I to the Rules. Rule 11, which carries the sub-heading "Postgraduate Qualifications." reads. "Post-Graduate qualification means a postgraduate qualification recognised as per the Medical Council of India Act and for this purpose the holder of an M. A. M. S. (Membership of the Academy of Medical Sciences) awarded after an examination held by the Indian Academy of Medical Sciences will be deemed to possess a recognised postgraduate (degree) qualifications." Schedule-I to the Rules prescribes the qualifications for the teaching posts mentioned therein. SI. No. 7 of the Schedule pertains to the post of Assistant Professor. It reads :

"Assistant Professor (Medical), Pay scale : Rs. 3500-125-4500+NPA.

Essential : 1 to 3 same as for Professor (Medical)

EXPERIENCE (for general disciplines):

Three years teaching and/or research experience in recognised Institution in the subject of speciality after obtaining the qualifying degree of MD/MS or qualification equivalent thereto.

EXPERIENCE (For Superspecialities disciplines) : One year teaching and/or research experience after obtaining M. Ch/ D. M. or qualification recognised equivalent thereto."

5. We are not concerned herein with the experience part of it, but only with the qualifications mentioned as essential. The essential qualifications for Assistant Professor's post are the same as prescribed for the post of Professor (Medical) which is mentioned as SI. No. 1 in the Schedule, which reads :

"Professor (Medical)

Pay Scale Rs. 5900-200-7300+NPA

Essential Qualifications :

1. A medical qualification included in the I or II schedule or part II of the third schedule to the Indian Medical Council Act of 1959 (persons possessing qualifications included in part II or third schedule should also fulfil the conditions specified in Section 13 (3) of the Act.)

2. A post-graduate qualification e. g. MD/MS or a recognised qualification equivalent thereto in the respective discipline/subject.

and/or

3. M. Ch. for surgical superspecialities and D. M. for Medical superspecialities or qualification recognised equivalent thereto."

Here again, there is no dispute that Tandon possesses essential qualifications mentioned under Items 1 and 2. The only dispute is whether he possesses the qualifications prescribed under Item No. 3. To be more precise, the question is

whether Tandon holds "D. M. for medical superspecialities or qualification recognised equivalent thereto." Admittedly, Tandon does not hold the qualification of D. M. the question is whether he holds the qualification which is recognised as equivalent to D. M.? Tandon says, he does and the Institute supports him whereas Sood says that Tandon does not.

6. After obtaining his M. D., Tandon went to United Kingdom and was working in the Cambridge University for Ph. D. qualification. He joined the Ph. D. course there on April 17, 1990. By April 17, 1992, he had completed two years. As a matter of fact, he completed his three years course on April 17, 1993 and it is stated that he obtained his Ph. D. qualification on June 22, 1993. Tandon says, his two years training at Cambridge University while working for Ph. D. is the qualification recognised as equivalent to D. M.

7. According to the notification calling for applications issued by the Institute, the last date for submitting the applications was October 7, 1992. It, therefore, follows that the qualifications of an applicant should be ascertained with reference to that date alone. (So far as "experience" is concerned, the notification issued by the Institute itself says that "the effective date up to which the experience must be completed will be June 30, 1993." But as stated hereinabove, we are not concerned with the experience part of the qualification in this matter.) By October 7, 1992, Tandon had put in more than two years training while working for his Ph. D. in the Cambridge University. The question, to repeat, is whether that training for two years can be treated as a qualification recognised as equivalent to D. M.?

8. Sri Arun Jaitley, learned counsel for the Institute and Sri Soli J. Sorabjee, learned counsel for Tandon, submitted that in the absence of any orders by the Institute recognising any particular qualification as equivalent to D. M., it would be legitimate to refer to the qualifications prescribed by the Indian Medical Council for similar posts. Learned counsel relied upon the Brochure issued by the Medical Council of India entitled "Recommendations on the qualifications required for Appointment of persons to the posts of Teachers in Medical Colleges and attached Hospitals for graduate and postgraduate teaching" in the year, 1989. The Brochure mentions the special academic qualifications and teaching experience required for several posts mentioned therein. So far as the posts of Professor in Endocrinology is concerned, the academic qualifications prescribed are "D. M. (Endocrinology), M. D. in medicine with two years special training in Endocrinology." Learned counsel pointed out that in the said Brochure wherever it is required that the special training must be obtained in India, it has been so specified. By way of illustration, they rely upon the academic qualification prescribed for the post of Professor in the Department of Physical Medicine and Rehabilitation (at page 22). the academic qualification mentioned for the said post is "M. S. in General Surgery/M. S. (Orthopaedics) with two years' special training in the speciality of Physical Medicine and Rehabilitation (Rehabilitation Medicine) or two years of equivalent training approved in the subject in any approved Institution in India." By contrasting the language of the said qualification with the language employed in the academic qualification prescribed for the post of Professor in Endocrinology, it is contended that two years special training in Endocrinology need not be in an Institute in India or, for that matter, any recognised or approved institution in India and that it is enough if such special training is obtained in any Institution of repute. Learned counsel stressed the well established reputation of the Cambridge University where Tandon was undergoing the training and doing research for his Ph. D. Reliance was also placed upon the letter dated September 16, 1993 issued from the Medical Council of India addressed to Tandon, which reads as follows :

"MEDICAL COUNCIL OF INDIA

No. MCI-12(1)/93-Med./14815 Date : 16-9-93

To

Professor P. N. Tandon

Deptt. of Neurosurgery,

All India Instt. of Medical Sciences,

Ansari Nagar,

New Delhi - 110029.

Sub :- Teachers Eligibility Qualifications - Appointment of persons to the different posts of teachers in the Deptt. of Endocrinology.

Sir.

With reference to your letter dated nil on the subject noted above, I am to state that the Medical Council of India in its recommendations on Teachers Eligibility Qualifications to the different posts of teachers in the Deptt. of Endocrinology have prescribed as under :

(See Table below)

Post Qualification Teaching Exp.

Professor D. M. (Endocrinology) M. D. in Medicine with 2 years special training (a) As Reader in Endocrinology for 4 years in a medical college.

Reader -do- (b) As Lecturer in Endocrinology for 5 years in a medical college.

Lecturer -do- (c) Requisite recognised postgraduate qualification in the subject.

It is clarified that a person is eligible to be appointed as teacher in the speciality either with DM (Endocrinology) or with M. D. in Medicine with 2 years special training in Endocrinology.

Yours faithfully,

Sd/-

(MRS. M. SACHDEVA

SECRETARY"

9. On the question whether D. M. is a postgraduate qualification or a superspeciality, learned

counsel stressed the language in qualification No. 2 prescribed for the post of Professor in Schedule-I to the A. I. I. M. S. Recruitment Rules, 1981, viz., "a post-graduate qualification, e. g., M. D./M. S. or a recognised qualification equivalent thereto....." Learned counsel emphasised the fact that the Institute is an autonomous and statutory body and is entitled to decide for itself which qualification is equivalent to D. M. Inasmuch as the Institute has treated the two years' special training of Tandon at the Cambridge University as equivalent to D. M. qualification, it is not open to any other person to question it. They pointed out that not only the Institute but the selection committee was also satisfied that Tandon did satisfy the requirements of Rules and that in such a case, it was not appropriate for the High Court to interfere and declare that Tandon was not qualified.

10. Sri Devendra Singh, learned counsel for Sood, on the other hand, supported the reasoning and conclusion of the High Court. The learned counsel submitted that D. M. is a post-graduate qualification as has been mentioned in the prospectus issued by the Institute itself concerning admission to course conducted by it. Learned counsel relied upon the Recommendations of the Medical Council of India on Post-graduate Medical Education (revised up to January, 1988) wherein at page 6, the following statement occurs :

"1. Nomenclature :

The Committee was of the opinion that the following nomenclature should be uniformly adopted for all clinical and non- clinical subjects.

For the postgraduate degree, the following degrees were recommended :

(c) D. M. M. Ch. for specialities in which a candidate should have taken prior to M. D./M. S., i. e., for specialities in Category 'C'.

11. Counsel placed reliance on Rule 11 of the Recruitment Rules which says that "post-graduate qualification means a postgraduate qualification recognised as per the Medical Council of India Act" and contended on that basis that since the qualifications or the training in any Institution in United Kingdom is not recognised by the Medical Council of India, neither of them can be treated as postgraduate qualification. Counsel pointed out that while prior to 1978, the United Kingdom qualifications were recognised in India, they are not so recognised since 1978. If a degree awarded by the Cambridge University is not recognised for the purpose of appointment to any post in India, the learned counsel says, the training undergone by a person in such University cannot also be taken into account. The training contemplated by the First Schedule to the Recruitment Rules is the training which is recognised by the Medical Council of India, i. e., in an Institute approved or recognised by Medical Council of India. He submitted that neither is there a general order nor a special order recognising the alleged training undergone by Tandon as a qualification equivalent to D. M. by the Institute or by the Medical Council of India.

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

if Tandon had obtained his Ph. D. qualification from Cambridge University on or before October 7, 1992, it could not have been recognised as a qualification equivalent to D. M. If so, it is understandable how the two years research/training put in by Tandon while working for the said qualification can be counted as a qualification recognised as equivalent to D. M. It may be equivalent; it may be more. But the question is whether it is recognised - and admitted it is not. We are impressed by the argument of Shri Jaitley that the words "M. D. in Medicine with two years special training in Endocrinology" in the Recommendations of Medical Council of India with respect to the post of Professor in Endocrinology means two years' special training in Endocrinology anywhere in the world. The said words have to be read and understood in the context of the A. I. I. M. S. Recruitment Rules and the First Schedule thereto. The submission based upon the contrast in the language used in describing the qualifications for Professor in endocrinology and Professor in the department of Physical Medicine and Rehabilitation is unacceptable. Sri Jaitely could not point out any such requirement against any other qualification in the said Recommendations. Based upon the use of the words, "in any approved Institution in India," in the qualifications mentioned for one among the several posts in the Recommendations, it is not possible to hold that the qualifications awarded by Institutions which are not recognised by the Medical Council of India or the training undergone in such Institutions has become recognised. The acceptance of this argument would mean that the qualifications not recognised by the Institute or Medical Council of India become recognised in this indirect manner. We cannot countenance such an argument.

13. It is also not possible to agree with the learned counsel for the appellants that because the Institute was of the opinion that Tandon was qualified according to the Rules and forwarded his name for consideration by the selection committee, it amounts to "recognition" of the said two years' training as a recognised equivalent qualification. Recognition must be by a general order/proceeding published for the information of all concerned. It cannot be a matter decided in a given case for the purpose of that case.

14. In the written arguments submitted by Tandon, a new submission is urged based upon certain statements contained in the Special Leave Petition. It is submitted that though the qualifications awarded by the Cambridge University may not be recognised by the Medical Council of India, the qualifications awarded by University of London and University of Sheffield continue to be recognised. It is submitted that part of the training/research undertaken by him while working for his Ph. D. was at Sheffield and, therefore, it must be treated as a recognised qualification. Firstly, this submission, which is factual in nature, was not urged in the High Court. Secondly, even if it is assumed for the sake of argument that the qualifications and degrees awarded by the University of Sheffield continue to be recognised; it appears from the averments made and documents filed by Tandon that his experience in the University of Sheffield is from October, 1991 to April, 1993. He was permitted by the Cambridge University, on November 20, 1990, to shift to the University of Sheffield. By a communication dated June 6, 1991, the University of Sheffield agreed to the transfer of his studies for the degree of Ph. D. from Cambridge to Sheffield "for the period October, 1991 to April, 1993," It is thus evident that by October 7, 1992, he had not undergone two years training at Sheffield. If so, the said circumstance cannot also advance his case.

15. In view of the above, it is not necessary for us to go into other questions arising herein including the question whether the D. M. qualification is a post-graduate qualification for the purposes of the appointment in the institute.

16. It is a matter of regret that a selection made by a competent and qualified selection committee

has to be set aside on the aforesaid ground but the Court is left with no alternative in the circumstances. It would have been in the fitness of things, if the Institute could create another post and accommodate both Tandon and Sood, as recommended by the selection committee, Even now, it is not too late for the Institute to consider the said suggestion of the selection committee.

17. The appeals accordingly fail and are dismissed. No. costs. Appeals dismissed.