

SUPREME COURT OF INDIA

State of Kerala

Vs.

Mahesh Kumar

C.A.No.1147-1151 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

23.02.2009

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.

2. These appeals filed by the State of Kerala are directed against the judgment and order dated 3.6.2005 passed by the Division Bench of the High Court of Kerala at Ernakulam affirming the order dated 15.9.2004 of the learned Single Judge of the same High Court.

3. The relevant facts for disposal of the appeals are as under: Dr. Padiar Memorial Homoeopathic Medical College, Chottanikkara (hereinafter referred to as 'Padiar Medical College') is a private college established in the year 1920 and governed by its Board of Trustees. On 30.12.1998 a decision in consultation with the Government of Kerala, was taken by the management of the college to introduce the 'direct payment system'. At that time there were only 31 teaching staff and 20 non teaching staff. Consequent thereupon the management appointed 45 non-teaching staff and 21 teaching staff by letter dated 2.1.1999. On 24.1.2000, an agreement was executed between the Government of Kerala and the Governing Body of the College for bringing the said college under the 'direct payment system' w.e.f. 1.1.2000. It was decided that all the members of the teaching staff who have not got themselves registered under Rule 49 of the Travancore-Cochin Medical Practitioners Rules (in short the 'Rules') cannot avail of the benefit of the 'direct payment system'. Rule 49 is extracted hereunder : Rule 49 of the Travancore-Cochin Medical Practitioners Rule "49. Every person whose name has been entered in the Register shall be entitled to receive from the Registrar a certificate of Registration. Such certificate shall set forth the full name of the person registered, his designation, his address, the date and place of registration and the qualifications in respect of which he has been registered. Such certificate shall be in Form I as laid down in Appendix B."

4. G.O. (Ms) 511/95/H&FWD dated 10.11.1995 issued by the Department of Health and Family Welfare, Government of Kerala, provided that the system of direct payment will be

introduced in the following three private Homoeopathic Colleges in the State, subject to the conditions stipulated hereunder :

"1. Athurasramam Nair Service Society Homeopathic Medical College, Kurichy, Kottayam

2. Dr. Padiyar Memorial Homoeopathic Medical College, Chottanikara.

3. Sir Vidadhiraja Homeopathic Medical College, Nemom, Thiruvananthapuram
Conditions : (a) Direct payment of salary will take effect from 01.11.1995 (b) All these private Homeopathic Colleges will enter into agreements with the Government to the effect that in respect of appointments of Staff and enrollment of students, they will abide by terms and conditions similar to those adopted in respect of private Engineering Colleges in the State. (c) Dr. Padiyar Memorial Homeopathic College will not claim any Special rights of a Minority Institutions or of a self-financing institution. (d) Shree Vidyadhiraja Homeopathic College shall obtain recognition from University of Kerala as a Precondition for implementation of the ``direct payment system''"

5. The Government Order G.O.(MS) No. 100/2000ds)H&FWD dated 25.4.2000 was issued regarding the introduction of `direct payment system' with effect from 1.1.2000 which, inter alia, provided that `direct payment system' can be introduced in the Padiar Memorial Homeo College, allowing the management to fill up 15% seat for BHMS as is being enjoyed by the NSS Homeo College, Kurichy if they executed an agreement to this effect as provided in the conditions stipulated in the aforesaid Government order dated 10.11.1995. This Government order authorised the Senior Principal & Controlling Officer for Homoeopathic Education to take necessary action for making the staff fixation. Consequently, on 16.11.2001 he sent a list of 40 teaching and 50 non- teaching staff having qualification according to the government rules as on 1.1.2000 and considering the department seniority for staff fixation. The Government accepted and approved the said list as per Government Order G.O. (MS) No. 99/02/ H&FWD dated 25.4.2002 relevant portion of which is reproduced hereinbelow :

"In the G.O. read above, direct payment system was introduced in the Dr. Padiar Memorial Homoeopathic Medical College, Chottanikkara, with effect from 01.01.2000, subject to the conditions set out in the agreement entered into between Government and the Management of the College. It was stipulated therein that until fixation of staff strength and approval of salary are done, members of the staff in the college will be paid pay and allowances at the approval rate at which they were drawing their pay for the month of December, 1999. As per the agreement entered into between Government and the amendment of the College on 24.01.2000, Government are liable to disburse the pay and allowances due to the staff of the college which accrue from 01.01.2000 directly through the Principal of the Institution based on the existing staff pattern of Page 4 of 14 the Government Homoeopathic Medical College and the hospitals attached therewith. As per the direction of the High Court in the judgment dated 19.07.2001 in WA No. 2255/00 in OP No. 19111/00 filed

by Dr. Renjini N. Menon, final orders in the matter have to be issued within the period of 3 months from the date of receipt of a copy of the judgment. Accordingly as directed by the Government, the Principal and Controlling Officer, Government Homoeo Medical College, Thiruvananthapuram, furnished the list of 40 senior most and qualified teaching staff based on departmental seniority and 50 non-teaching staff of the Dr. Padiar Memorial Homoeo Medical College as on 01.01.2000 to be considered for staff fixation. Government have examined the matter in detail and are pleased to approve the staff pattern consisting of 40 senior most and qualified teaching staff and 50 non-teaching staff of Dr. Padiar Memorial Homoeopathic Medical College, Chottanikara, as on 01.01.2000 as detailed in Annexure I & II of this order. The Principal and Controlling Officer, Government Homeo Medical College, Thiruvananthapuram will fix the pay and allowances of the above staff due to their respective post with effect from 01.01.2000."

6. By the aforesaid Government order dated 25.4.2002 the Government had provided that 'direct payment system' would be introduced in Padiar Medical College with effect from 1.1.2000. However, the entire staff belonging to the college would not have come to be entitled to the benefit of direct payment, since the staff pattern consisting of 40 senior most and qualified teaching staff and 50 non-teaching staff alone was to be recognized as eligible for the said benefit. The resultant position was that 8 persons (respondents herein), working as faculty members i.e. teaching staff, were not to get recognition or payment. They challenged their exclusion from the list of approved members of the teaching staff as on 1.1.2000 by approaching the High Court complaining that the Government order dated 25.4.2002 subjected them to prejudice and discrimination. The challenge was upheld and the appeals have been filed by the State Government.

7. The learned Single Judge of the High Court, by its order dated 15.9.2004, allowed the petitions filed by the respondents and quashed the said government order dated 25.4.2002 to the extent it has excluded the respondents from the list of qualified teaching staff as on 1.1.2000 while including those teachers who are juniors to the respondents and directed the Government of Kerala to include the respondents at the appropriate place in the list on the basis of their seniority thereby entitling them for the salary in the pay scale made applicable under the 'direct payment system'. This order of the learned Single Judge was affirmed by the impugned judgment of the High Court. 8. Being aggrieved by both the orders passed by the learned Single Judge as also the Division Bench of the Kerala High Court, the State of Kerala preferred the present appeals on which we have heard the learned counsel appearing for the parties.

9. The Government as per Government Order G.O. (MS) No. 99/02/ H&FWD dated 25.4.2002 accepted and approved the staff fixation list sent by the Senior Principal & Controlling Officer but while doing so it limited the number of teaching staff to 40 instead of 48 which comprises of the total number of teachers and thereby the balance 8 were ordered to be kept out of the said benefit with the direction that they would not come within the purview of "direct payment system". Therefore, the issue that falls for consideration in these

appeals is whether the said remaining 8 respondents were qualified to get the said benefit along with remaining 40 who have been granted such benefit.

10. Mr. C.S. Rajan, learned senior counsel appearing for the appellants submitted that the High Court failed to appreciate that the management made appointments by letter dated 2.1.1999 against Rules and also against the agreement which was entered into by the Governing Body of the College Management with the Government with regard to introducing the 'direct payment system' as the Management did not take consent for the appointments made after the decision of the Government to introduce 'direct payment system'. He also submitted that none of the aforesaid remaining 8 respondents have got their degrees registered under the Travancore-Cochin Medical Council (hereinafter referred to as the 'Medical Council') as on 1.1.2000 which was an essential qualification and as such they are disqualified for the post of tutor as on 1.1.2000 and consequently they were not included in the list for 'direct payment system'. He further submitted that as the said 8 respondents were not having permanent registration under the Medical Council on the relevant date i.e. on 1.1.2000, they were not entitled to be appointed as teaching staff in the college.

11. Mr. R. Rajendran Nair, learned counsel appearing for the respondents, however, refuted the aforesaid allegations and supported the judgments passed by both the learned Single Judge as also by the Division Bench of the High Court which concluded that the respondents were fully qualified to be included in the staff fixation list as on 1.1.2000. He submitted that Rule 49 of the Rules does not contemplate fresh registration on acquiring additional qualification and that the aforesaid 8 respondents acquired registration under Travancore-Cochin Medical Council in 1992 itself when they passed Diploma in Homoeopathy. He further submitted that the said 8 respondents also possessed Diploma in Homoeopathic Medicine and Surgery which is a recognized medical qualification already included in the Second schedule and, therefore, their original/initial registration with the Medical Council is a valid one.

12. In the light of the aforesaid submissions we have carefully examined the records. As per G.O. (Ms.) No. 255/84/HD dated 11.10.1984, the qualifications prescribed for the post of tutor in the Government Homeopathic Medical College are as follows: 1. A Degree in Homoeopathy from a recognized University in India or a recognized Homoeopathic Diploma with M.B.B.S. qualification or Dip. N.I.H. awarded by the National Institute of Homoeopathy, Calcutta. 2. Permanent Registration under the Medical Council".

13. The Central Council of Homoeopathy (Minimum Standards of Education) Regulations, 1983 provides for a minimum strength of teaching staff which was essential for a college offering degree course. On the other hand, Rule 49 of the Rules does not contemplate fresh registration on acquiring additional qualification. The said rules were made in terms of the rule making power as provided for in the *Travancore-Cochin Medical Practitioners Act, 1953 (for short the 'Act')*.

14. The Act of 1953 and the Rules made thereunder are the State enactments governing the field of registration of Medical Practitioners in the State. There is a Central Act called the Homoeopathy Central Council Act, 1973. Section 15 thereof reads as follows:

"15. Rights of persons possessing qualifications included in the second or the third schedule to be enrolled : (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment on any State Register of Homoeopathy. (2) No person, other than a practitioner of Homoeopathy who possesses a recognized medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy. (a) Shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority ; (b) Shall practice Homoeopathy in any State ;....."
15. Section 23 of the Act prescribes the eligibility for registration. It stated thus:

"23. Eligibility for registration : (1) Subject to the provisions of sub section (2) and (5) :-

i. Every holder of a recognized qualification and every practitioner holding appointment under the Government at the commencement of this Act and

ii. Every person who, within the period of one year or such other longer period as may be fixed by the Government from the date on which this Act come into force, prove to the satisfaction of the appropriate council that he has been in regular practice as a practitioner for a period of not less than five years preceding the first day of April, 1953. Shall be eligible for registration under this Act. Provided, however, that no practitioner shall be registered under clause (ii) after the expiration of one year, or such other longer period as may be fixed by the government, from the date on which this Act comes into force."

16. Section 27 of the Act is also relevant and, therefore, the said provision is also quoted below:

"27. Registration of additional qualifications.

(1) If any person whose name is entered in the Central Register of Homoeopathy obtain any title, diploma or other qualification for proficiency in Homoeopathy, which is a recognized medical qualification, he shall, on application made in this behalf in the prescribed manner, be entitled to have any entry stating such other title, diploma or other qualification made against his name in the Central Register of Homoeopathy either in substitution for or in addition to any entry previously made."

17. The Central Council of Homoeopathy (Minimum Standards of Education) Regulations, 1983 prescribes the qualification for the post of Demonstrator/Tutor as under :

"A. (i) A recognized diploma after 4 years study or a degree in Homoeopathy. OR (ii) A degree in modern medicine. Preferential qualification : (A) Having both a recognized diploma or a degree in Homoeopathy and qualification included in the III Schedule of the Homoeopathy Central Council Act, 1973. OR M.D. or M.S. or Post Graduate diploma or Degree in the subject concerned. (B) Experience of working at any State Homoeopathic Dispensary, Government Homoeopathic Dispensary at any recognized Homoeopathic or Allopathic College and Hospital."

18. On a careful reading of the aforesaid provisions of the statute it appears to us that every holder of recognized qualification is eligible for registration under the Medical Council. The aforesaid remaining 8 respondents are also, therefore, eligible to get the benefit of 'direct payment system'. The registration granted by the Medical Council on the basis of recognized qualification fully satisfied the qualification prescribed for the post of tutor, namely, permanent registration under the Medical Council.

19. Be that as it may, without entering into the controversy raised by the parties hereto, when 40 teaching and 50 non-teaching staff have been brought within the purview of the 'direct payment system' by the appellant, we see no justification as to why only the remaining 8 persons should be deprived from getting the same benefit. When the State Government has accepted the responsibility with regard to the aforesaid 40 teaching and 50 non-teaching staff, the remaining 8 who are otherwise qualified and have the registration should not be discriminated upon for we feel that they should also get the similar benefits as are being given to other 40 persons.

20. Therefore, in the peculiar facts and circumstances of this case, we direct that the aforesaid remaining 8 persons be also given the same benefit as has been given to 40 teaching and 50 non-teaching staff and they shall be so accommodated in terms of their seniority. We, however, make it clear that this order is made in the peculiar facts and circumstances of this case and would not, therefore, be treated as a precedent in any other matter.

21. Accordingly, these appeals are dismissed.