

SUPREME COURT OF INDIA

Dr.M.Dakshayani

Vs.

The State of Karnataka

C.A.No.4236 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

20.04.2018

JUDGMENT

L. Nageswara Rao,J.,

SLP(Civil) No.1775 of 2012

1. Leave granted.

2. The promotion of Respondent No.2 to the post of Assistant Professor (Ophthalmology) and further promotion to the post of Professor (Ophthalmology) was challenged by the Appellant before the Karnataka Administrative Tribunal (for short "the Tribunal). The Tribunal set aside the orders of promotion of Respondent No.2 to the post of Assistant Professor and Professor (Ophthalmology). The Writ Petition filed by the Respondent No.2 against the judgment of the Tribunal was allowed, the legality of which is assailed in this Appeal.

3. The relevant facts for adjudication of the dispute are as follows:

The Appellant was appointed as Assistant Surgeon after being selected by the Karnataka Public Services Commission on 11th December, 1987 whereas Respondent No.2 was appointed as Assistant Surgeon on 10th September, 1991. Respondent No.2, along with 125 other Medical Officers and Assistant Surgeons, was posted in Health & Family Welfare Department as Lecturer on deputation basis by an Order dated 20th May, 1992. The conditions attached to the deputation made in public interest were that the appointment will not confer any right to change over as lecturing staff and that the deputation duty will not be counted for seniority in the Medical Education Department. The Appellant was permitted to change the cadre and was appointed as a Lecturer (Ophthalmology) on 10th November, 1999. By an Order dated 15th November, 1999 the Respondent No.2 was also permitted a change in the cadre to the post of Lecturer. It was mentioned in the said Order that the Respondent No.2 could not be absorbed as a Lecturer in the

Department of Medical Education along with 115 other Doctors due to lack of a Post-Graduate Degree. It was further stated therein that Respondent No.2 was permitted by the Government to pursue a Post-Graduate Degree. The Order dated 15th November, 1999 will come into force after Respondent No.2 acquires a Post-Graduate Degree. The Respondent No.2 completed Post-Graduation after which she was appointed as a Lecturer on 18th May, 2001. She was promoted as Assistant Professor on 6th June, 2001. The Appellant challenged the said Order of promotion dated 6th June, 2001 before the Karnataka Administrative Tribunal. During the pendency of the matter before the Tribunal, Respondent No.2 was further promoted as Professor (Ophthalmology) on 1st September, 2006. The Appellant was successful in her challenge before the Tribunal. The High Court reversed the Order of the Tribunal by allowing the Writ Petition filed by Respondent No.2.

4. The Tribunal held that Respondent No.2 was a beneficiary of undue benefits. The Tribunal found fault with the deputation of Respondent No.2 as a Lecturer on 14th September, 1991 in spite of the fact that Respondent No.2 did not possess a Post-Graduate Degree. The Government was criticized by the Tribunal for permitting a change in cadre to Respondent No.2 though she was ineligible. The promotion of Respondent No.2 as Assistant Professor on 6th June, 2001 was held to be illegal. On the basis of the above said findings, the Tribunal set aside the promotion of Respondent No.2 as Assistant Professor and Professor. The Government was directed by the Tribunal to consider the Appellant for promotion with effect from the date she became eligible.

5. The High Court reversed the judgment of the Tribunal by holding that Respondent No.2 rendered service as Lecturer for more than nine years whereas the requisite teaching experience for promotion to the post of Assistant Professor is only three years. The High Court held that Respondent No.2 was entitled to be considered for promotion after acquiring a Post-Graduate Degree. The High Court relied upon a judgment of this Court in *A.K. Raghmani Singh & Ors. v. Gopal Chandra Nath & Ors*¹. to hold that the service rendered by Respondent No.2 prior to her acquiring the Post-Graduate Degree can be counted towards requisite experience for the purpose of promotion to the post of Assistant Professor.

6. The point that arises for our consideration in this case is whether the service rendered by Respondent No.2 as Lecturer before she acquired a Post-Graduate Degree can be counted as qualifying service for promotion as Assistant Professor. It is relevant to refer to the judgment of this Court in *Shailendra Dania & Ors. v. S.P. Dubey & Ors*². . After a detailed consideration it was held therein that the earlier decisions of this Court on the above issue in *N. Suresh Nathan v. Union of India*³, *M.B. Joshi v. Satish Kumar Pandey*⁴, *D. Stephen Joseph v. Union of India*⁵, *Anil Kumar Gupta v. Municipal Corp. of Delhi*⁶, *A.K. Raghmani Singh & Ors. (supra)* and *Indian Airlines Limited v. S. Gopalakrishnan*⁷ were based on the interpretation of the respective rules called in question, the context of the entire scheme governing service conditions and the facts of each case. It is relevant to examine the legal regime in this case. The Karnataka Health & Family Planning services (Collegiate Branch) Recruitment Rules, 1967 govern the posts of Lecturer, Assistant Professor and Associate Professor in the Department of Ophthalmology.

The qualifications for promotion to the post of Assistant Professor from the cadre of Lecturer are as follows:

" QUALIFICATIONS

1. Should be the holder of a degree in Medicine of any University established by law in India, &
2. Should have any of the Post graduate qualifications in Ophthalmology specified in Annexure A or B and,
3. Should have teaching experience in Ophthalmology of not less than three years in a post of Lecturer or Lecturer-cum-Registrar of higher post."

7. Promotions to the post of Associate Professor and Reader can be made from the post of Assistant Professors, Assistant Associate Professors and Lecturers in Ophthalmology. The qualifications prescribed for promotion to the post of Associate Professor and Readers are as follows:

" QUALIFICATIONS

- (1) Should be the holder of a degree in recognize of any University established by law in India, &
- (2) Should have any of the Post graduate qualifications in Ophthalmology specified in Annexure A or B and,
- (3) Should have teaching experience in Ophthalmology of not less than three years after acquiring post graduate qualification of which not less than two years shall be in post not lower in rank that of an Assistant Associate Professors. "

8. The teaching experience of three years as a Lecturer for the promotion to the post of Assistant Professor is in addition to the Post-Graduate qualification. It does not appear from the scheme of the Rules that the experience of three years should be after acquisition of Post-Graduate Degree. In Anil Kumar Gupta (supra), this Court considered a similar rule where the essential qualification was a degree and two years professional experience. It was held that the experience of two years after obtaining the degree was not required. The Rules pertaining to promotion as Superintending Engineer fell for interpretation before this Court in A.K. Raghmani's case (supra). The requirement of the Rule was that the Executive Engineer and Surveyor of Works should possess a Degree in Civil/ Mechanical Engineering or its equivalent from a recognized institution with 6 years regular service in the grade. The word "with" was interpreted by this Court as follows:

" 7. The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is

used to connect two nouns it means: "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' — 'as well'."

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years' experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with". "

9. The High Court was right in relying upon the judgment in A.K. Raghmani's case (supra) to hold that the rule in the instant case does not require three years teaching experience after acquisition of Post-Graduate Degree. The eligibility criteria for promotion as Assistant Professor are Degree in Medicine, Post-Graduation qualification in Ophthalmology and three years teaching experience as Lecturer. A plain reading of the qualification prescribed for promotion as Assistant Professor would make it clear that three years teaching experience as Lecturer along with a Post-Graduation Degree is sufficient. There is no requirement of three years experience after a person acquires Post-Graduation Degree.

10. There is yet another reason for our conclusion that three years experience as Lecturer for promotion to the post of Assistant Professor need not be after completion of the Post-Graduate Degree. The Recruitment Rules prescribe qualifications for appointment to the posts of Lecturer, Assistant Professor and Associate Professor. The qualifications for appointment to the posts of Assistant Professor and Associate Professor are different. The teaching experience that is required for promotion to the post of Associate Professor and Reader is three years after acquiring Post-Graduate qualification. Whereas, the qualification for promotion to the post of Assistant Professor is teaching experience of not less than three years as a Lecturer. A comparison of the qualifications prescribed for promotion to the posts of Associate Professor and Assistant Professor would make it clear that the prescription of experience after acquisition of Post-Graduate qualification required for promotion to the post of Associate Professor is not part of the qualifications required for promotion as Assistant Professor. A conscious omission of the condition of experience after acquiring Post-Graduate Degree in the qualifications for Assistant Professor supports our view that three years experience as a Lecturer is sufficient. It need not be after completion of Post-Graduation.

11. It is necessary to refer to the other submissions that are made on behalf of the parties. It has been brought to our notice by the Respondents that no appointment was made to the posts of Lecturers in Government Medical Colleges in the State of Karnataka for a long period of time between the years 1984 to 1999. As there were a number of posts of Lectures vacant, the Government took a decision to post Assistant Surgeons on other duty to work as Lecturers. In the above circumstances. Respondent No.2 was posted as Lecturer along with 125 other Assistant Surgeons on other duty and she worked as such for more than nine years. According to the Appellant, the service rendered by Respondent No.2 as Lecturer prior to her change of the cadre cannot be taken into account towards the requisite teaching experience. Taking into account the fact that Respondent No.2 has worked for more than nine years as a Lecturer, we do not agree with the contention of the Appellant. The Tribunal erroneously

held that Respondent No.2 was not eligible for being appointed as a Lecturer as she did not have a Post-Graduation qualification in Ophthalmology. The qualification for appointment as a Lecturer by direct recruitment is a Degree in Medicine, preference being given to a candidate with Post-Graduation qualification in Ophthalmology. The qualification prescribed for appointment by transfer to the post of Lecturer is a Degree in Medicine and Post-Graduation qualification in Ophthalmology. It is clear that a Post-Graduation qualification is required for appointment by transfer as a Lecturer. Respondent No.2 was appointed by transfer as a Lecturer in 2001 after acquiring a Post-Graduate qualification. It was not necessary that Respondent No.2 should have possessed a Post-Graduation qualification for working as a Lecturer on other duty as the qualification for appointment as a Lecturer by direct recruitment was only Graduation. In any event, a number of Assistant Surgeons along with Respondent No.2 were directed to work as Lecturers in view of an administrative exigency that arose due to the existence of several vacancies in the post of Lecturers. There were other graduate Assistant Surgeons who were appointed on other duty as Lecturers and appointed by transfer as Lecturers after acquiring a Post-Graduate Degree. We do not agree with the Appellant that Respondent No.2 was not qualified for being sent on other duty as a Lecturer.

12. For the aforementioned reasons, the Appeal is dismissed. Contempt Petition (Civil) No. 716 of 2018 in Civil Appeal arising out of Special Leave Petition (Civil) No. 1775 of 2012

13. The Contempt Petition has been filed for willful violation of the Orders passed by this Court on 27th January, 2017 and 8th February, 2016 in the above Appeal. While issuing notice on 27th January, 2012 an Order of status quo was passed. The Order dated 27th January, 2012 was clarified on 8th February, 2016 wherein it was made clear that the Order of status quo was restricted to the post of Professor and above and not with reference to other posts.

14. Respondent No.2 was appointed as Head of the Department of Ophthalmology subject to the final decision in the above Appeal. It was mentioned in the Order dated 5th January, 2018 that the arrangement was temporary in nature and Respondent No.2 was placed In-Charge of the post of the Head of the Department.

15. Respondent No.2 was only placed In-Charge of the post of Head of Department of Ophthalmology temporarily in the interest of administration. We do not agree with the Appellant/ Applicant that there has been any willful violation of the Interim Orders passed by this Court on 27th January, 2012 and 8th February, 2016. Accordingly, the Contempt

16. Petition is dismissed.

Judgment Referred.

¹(2000) 4 SCC0030

²(2007) 5 SCC 0535

³(1992) Supp 1 SCC 0584

⁴(1993) Supp 2 SCC 0419

⁵(1997) 4 SCC 0753

⁶(2000) 1 SCC 0128

⁷(2001) 2 SCC 0362