

SUPREME COURT OF INDIA

Dr.Shadab Ahmed Khan

Vs.

Prof. Mujahid Beg

C.A.No.4278 of 2018

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

23.04.2018

JUDGMENT

L. Nageswara Rao,J.,

SLP (Civil) No.30503 of 2015

Leave granted.

1. The promotion of the Appellants and Respondent Nos.6 and 7 as Professors in the Jawahar Lal Nehru Medical College, Aligarh Muslim University under the Career Advancement Scheme was challenged by Respondent No.1 by filing a Writ Petition in the High Court of Allahabad. The Writ Petition was allowed by the High Court by its judgment dated 07.10.2015. The promotion of the Appellants and Respondent Nos.6 and 7 as Professors was set aside and they were directed to be reverted from the post of Professor. Aggrieved by the said judgment, the Appellants have approached this Court by filing this appeal. The Aligarh Muslim University (Respondent No.3 before the High Court) and Dr. Shahzad F. Haque (Respondent No. 7 before the High Court) have also filed Special Leave Petitions against the said judgment.

2. Respondent No.1 was initially appointed as a Lecturer on 05.08.1992 in the Jawahar Lal Nehru Medical College, Aligarh Muslim University. He was promoted as a Reader under the Career Advancement Scheme on 25.06.2003. He was further selected for appointment to the post of Professor under the Career Advancement Scheme as well as cadre promotion. Respondent No.1 was also promoted to the cadre post in 2009. He waived his right for promotion under the Career Advancement Scheme and was treated as having been promoted to a cadre post. The Appellants and Respondent Nos.6 and 7 were considered for promotion to the post of Professor (Career Advancement Scheme). On the basis of the recommendation of the General Selection Committee, the Appellants and Respondent Nos.6 and 7 were promoted as Professors with effect from the dates of their entitlement. As some of them were promoted as Professors with effect from 2009, they become seniors to Respondent No.1 as Professors. Respondent No.1 submitted a representation to the University against the promotions of the Appellants and Respondent Nos.6 and 7. This representation was rejected

by a letter dated 24.07.2013. Challenging the orders of promotion of the Appellants and Respondent Nos.6 and 7, dated 15.06.2013 and the letter dated 24.07.2013 by which his representation was rejected, Respondent No.1 approached the High Court by filing a Writ Petition.

3. Several points were raised before the High Court regarding the ineligibility of the Appellants and Respondent Nos.6 and 7 for being considered for promotion to the post of Professors. The High Court allowed the Writ Petition only on one point i.e. the lack of qualification of Ph.D. which disentitled Appellants and Respondent Nos.6 and 7 from being appointed as Professor. The High Court did not go into any other issue in view of the findings recorded on the lack of qualification on the part of the Appellants and Respondent Nos.6 and 7.

4. The Aligarh Muslim University is a Central University governed by the Universities Act, 1920. It is an autonomous organization fully funded by the Government of India. The regulations framed by the University Grants Commission (UGC) are applicable to the University. The service conditions, appointments and promotions of teachers in the University are governed by the statutes of the University and the Ordinances promulgated by the Executive Council/Academic Council.

5. For a better understanding of the controversy it would be relevant to refer to the provisions of the UGC regulations. The UGC Regulations of Minimum qualification for Appointment of teachers and other Academic Staff in Universities, Colleges and measures for maintenance of Standards in Higher Education (hereinafter referred to as UGC Regulations) were framed in 2010. The Regulations were made applicable to the University and college teachers, lecturers, directors of physical education admitted to the privileges of the University. Clause 1.1.1 provides that for teachers in the faculty of medicine, the norms/regulations of Ministry of Health and Family Welfare, Government of India shall apply. Clause 4.1.0 which deals with the direct recruitment for the post of Professors provides for Ph.D. qualification for appointment to the said post. Clause 6.4.8 of the UGC Regulations concerns the promotion to be granted under the Career Advancement Scheme and provides that the educational qualification for appointment/promotion as a Professor and Associate Professor is a Ph.D. Clause 4.1.0 and Clause 6.4.8 are not applicable to teachers working in the faculty of medicine as they would be governed by Regulations of Ministry of Health and Family Welfare, Government of India as per Clause 1.1.1.

6. The Aligarh Muslim University made suitable amendments to the Ordinances (Executive) for promotion under the Career Advancement Scheme to bring it in accord with the UGC Regulations of 2010. Clause 12.5 of Chapter IV of the Ordinance (Executive) contemplates that no teacher shall be promoted without a Ph.D. degree. Clause 12 (19) of the Ordinances (Executive) provides for prescription of the minimum qualifications for candidates from the faculty of medicine by the Medical Council of India (MCI) and it reads as follows:-

"12 (19) the candidates from the faculty of medicine and Unani Medicine possessing minimum qualifications as prescribed by the MCI and CCIM/AYUSH, respectively,

for the posts of Associate Professor and Professor may also apply for promotion under these Ordinances subject to their fulfilling other conditions as laid down in these Ordinances."

7. A perusal of the UGC Regulations, 2010, referred to above, would clearly show that the minimum qualifications prescribed by the Government of India are applicable to the teachers working in the faculty of medicine in the University. Clause 12 (19) of Chapter IV of the Ordinances (Executive) makes it clear that teachers in the faculty of medicine should possess qualification as prescribed by the MCI. The MCI regulations, placed before us, shows that MD/MS is the minimum qualification for appointment to the post of Professor in a medical college.

8. The UGC has to be blamed for the confusion that was created in determining the eligibility criterion for promotion to the post of Professor. The Counsel for the UGC appearing in the High Court relied upon Clause 6.4.8 of the UGC Regulations and argued that Ph.D. was required for promotion to the post of Professor in a medical college. A counter affidavit was filed before us on 24.10.2016 taking the same stand. The UGC filed an additional counter affidavit in November, 2016 in which they corrected the mistake committed earlier and stated that the qualification for the teaching post in the faculty of medicine shall be those prescribed by the Ministry of Health and Family Welfare in consultation with the statutory Council i.e. Medical Council of India. We are unable to accept the contention of the Respondent that the MCI Regulations are not applicable as the UGC Regulations speak of Regulations to be framed by the Ministry of Health and Family Welfare, Government of India.

9. The High Court relied upon the submissions of the Counsel for the UGC to hold that Appellants and Respondent Nos.6 and 7 could not be promoted to the post of Professor under the Career Advancement Scheme without possessing the qualification of Ph.D. Further, the High Court committed an error in its interpretation of Clause 12 (19) of the amended Ordinances (Executive). As noted above, Clause 12 (19) states that the qualifications for faculty of medicine are to be prescribed by the MCI. Clause 12 (19) provides that candidates can apply for promotion under the Ordinances subject to their fulfilling other conditions as laid down in the Ordinances. The High Court wrongly held that fulfillment of other conditions as laid down in the Ordinances (Executive) would include Clause 12 (5) which mandates a Ph.D. degree for promotion to the post of Professor. The qualifications that are required for promotion to the post of Professor in a medical college are not governed by the Regulations as is clear from Clause 1.1.1 of the UGC Regulations, 2010. The other conditions laid down in the Ordinances (Executive) are with reference to Clauses 12(6) to 12(18) and not Clause 12 (5). The finding of the High Court that the teaching staff in the medical college should have qualification as prescribed in Clause 12 (5) would be rendering Clause 12 (19) otiose. Clause 6.4.8 and Clause 12.5 are inapplicable to the teaching staff working in medical colleges as they would be governed by the regulations framed by the MCI.

10. The High Court did not adjudicate the other points raised by the Respondent No.1 in the Writ Petition in view of the finding recorded by it on the point of the ineligibility of the Appellants and Respondent Nos.6 and 7 for promotion to the post of Professor.

11. For the reasons mentioned above, we hold that the conclusion of the High Court that Ph.D. is required for promotion to the post of Professor in a medical college is not correct. We set aside the judgment of the High Court and remand the matter back for consideration of the other points raised by Respondent No.1. The Writ Petition stands restored.

12. The appeals filed by the Aligarh Muslim University (SLP (C) No. 34523/2015) and Dr.Shahzad F.Haque (SLP (C)No. 16818/2016) are also disposed of in terms of the findings in Dr. Shadab Ahmed Khan (SLP (C) No. 30503/2015) accordingly.

13. For the aforementioned reasons, the appeals are disposed of.