

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
S. B. KOHLI & ANR.

DATE OF JUDGMENT 20/12/1972

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
DUA, I.D.
VAIDYIALINGAM, C.A.

CITATION:
1973 AIR 811
CITATOR INFO :
D 1974 SC 1 (40A, 46)
F 1974 SC 1631 (28)
R 1978 SC 327 (7, 9)
R 1980 SC 1255 (8, 13)
D 1988 SC 1048 (15, 16)
RF 1989 SC 307 (9)
APR 1989 SC 1256 (8)
F 1989 SC 1308 (7)

ACT:
Central health Scheme Rules -Qualifications for Specialists
Whether the degree of E.R.C.S. is enough for the post of a
professor in Orthopaedics.

HEADNOTE:
Under Central Health Service Rules 1963 as amended, items 2

JUDGMENT:
graduate degree in the concerned speciality mentioned in
Part A of Annexure 11 or equivalent."

In the present case, the first Respondent apart from having
a postgraduate degree in General Surgery (F.R.C.S.) had also
a degree of M.C.H. (Arth), Liverpool; whereas the Second
Respondent had a post graduate degree in General Surgery
(F.R.C.S.) only.

The question that arose for decision was whether the
postgraduate qualification which was required in the case of
a direct recruitment to the post in question was also a
necessary qualification for appointment by promotion to that
post, and what was the meaning of the phrase "a post-
graduate degree in the Concerned Speciality."

HELD : (i) Before the growth of specialised qualifications
Surgeons obtaining the F.R.C.S. in general surgery used to
specialise in orthopaedics and other specialities either by
doing a diploma in Orthopaedics or simply by practice and
experience. The Regulations framed by the Medical Council
require that in addition to the general F.R.C.S., a surgeon
must have a diploma in Orthopaedics before he could be,
appointed a Professor, Reader or Lecturer in Orthopaedics.
That regulation has been accepted by the Government. This
gives an indication of what is considered a post-graduate
degree in the concerned speciality. Therefore, in the
present case, a mere degree of F.R.C.S. as such cannot be

deemed to be a postgraduate qualification in the concerned speciality of Orthopaedics. To hold otherwise would mean that a person who has the qualification of F.R.C.S. could be deemed to be specialised in Tuberculosis and Orthopaedics, although he is also a specialist in general surgery. Therefore, the second Respondent does not hold a post-graduate degree in the concerned speciality, Orthopaedics and as such, his promotion to the post of a professor in Orthopaedics was illegal and against the Central Health Service Rules. Appeal dismissed.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1943 of 1972.

Appeal by special leave from the judgment and order dated May 18, 1972 of the Delhi High Court at New Delhi in Civil Writ No. 1319 of 1971.

L.N. Sinha, Solicitor-General of India, G. L. Sanghi and S. P. Nayar for the appellants.

Respondent No. 1 in person.

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Yogeshwar Prasad, S. K. Bagga and S. Bagga for respondent No. 2.

The Judgment of the Court was delivered by ALAGIRISWAMI, J. This is an appeal by special leave against the judgment of the High Court of Delhi allowing the writ petition filed by the 1st Respondent questioning the appointment of the 2nd respondent to the post of Professor of Orthopaedic Surgery in the Maulana Azad Medical College and reverting her as Associate Professor.

The question that arises for decision in this case is whether the post-graduate qualification which is undoubtedly required, in the case of a direct recruitment to the post in question is also a necessary qualification for appointment by promotion to that post, and what is the meaning of the phrase 'a post-graduate degree in the concerned speciality'. The first respondent possesses the following qualifications : She is M.B.B.S. of the, Bombay University, F.R.C.S. of the Edinburgh University, M.Ch. (Orth). of the Liverpool University and also of F.R.C.S. (Eng.) The second respondent holds an M.B.B.S. degree and in addition the qualification of F.R.C.S. of the Edinburgh University. Consequent on the selection made by the Departmental Promotion Committee, the second respondent was appointed to the post in question, as already mentioned, and as a consequence the first respondent was reverted as Associate Professor.

The case raises the question of interpretation of the Central Health Service Rules, 1963, as amended in the years 1966 and 1968. These rules are made under article 309 of the Constitution posts in the Central Health Service were divided, were fairly simple. In 1966 pursuant to regulations framed by the Indian Medical Council the Government amended the rules creating the category of 'Specialists'. In 1968 further amendments were made in items 2 and 3 of Annexure 1 to the Second Schedule requiring "a post-graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent" for the post of a Professor, Reader or Lecturer. The promotion in question having been made thereafter, the rules as amended in 1966 and 1968 will govern the qualifications necessary for this post.

The post in question is one which falls under Super time Grade 11 in Rule 4 of the Central Health Service Rules.

According to Rule (3) fifty per cent of the vacancies in Supertime Grade II shall be filled by the promotion of (i) General Duty Officers, Grade I with not less than 10 years' of service in that category, or (ii) Specialists' Grade Officers with not less than 8 years of service in the category, in the ratio of 2 : 3 on the recommenda-

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tion of a Departmental Promotion Committee on the basis of merit and seniority of the officer concerned. Provided that no person shall be eligible for appointment to any such post unless he possesses the qualifications and experience requisite for appointment to such post. The question then is : What are the qualifications and experience requisite for appointment to the post of Professor of Orthopaedics ? There is no dispute that according to the Second Schedule, which deals with selection by the Union Public Service Commission a professor in a medical college or teaching institution should have a post-graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent. It is not necessary to refer to the other qualifications because they do not arise for decision in this case. In Annexure 11 to that Schedule against Item 7 (Orthopaedics), the qualifications mentioned are M.S., M.C.H. (Orthopaedics) (Liverpool), F.R.C.S. The 1st respondent, as already mentioned, has got the degree of M.C.H. (Orth.) (Liverpool). The 2nd respondent is a F.R.C.S. If F.R.C.S. mentioned therein can be considered to be a postgraduate degree in the concerned speciality, Orthopaedics, the first respondent's petition cannot obviously succeed. It seems to us that the qualification of F.R.C.S. cannot be deemed to be a post-graduate degree in Orthopaedics.

Are we to take it that because the Annexure II has the heading 'List of Post-Graduate Qualifications' and F.R.C.S. is found beside the item 7 (Orthopaedics), that for the purpose of the rules it is deemed to be a qualification in Orthopaedics though F.R.C.S. is certainly a post-graduate qualification ? As pointed out by the High Court, F.R.C.S. (Edin.), which is the qualification the second respondent possesses, is in General Surgery. The Edinburgh University awards F.R.C.S. in three specialities but not in Orthopaedics. F.R.C.S. (Canada) exists in specialities including Orthopaedics. Before the growth of specialised qualifications, surgeons obtaining the F.R.C.S. in General Surgery used to specialise in Orthopaedics and other specialities either by doing a diploma in Orthopaedics or simply by practice and experience. The regulations framed by the Medical Council require that in addition to the general F.R.C.S. a surgeon must have a diploma in Orthopaedics before he could be appointed a Professor, Reader or Lecturer in Orthopaedics. That regulation has been accepted by the Government. Though the validity of the appointment to the Central Health Service does not have to be tested by reference to the regulations framed by the Indian Medical Council for teaching staff in medical colleges, those regulations and their acceptance by the Government give an indication of what is considered to be a post-graduate degree in the concerned speciality. Before the High Court on behalf of the Government it seems to have been contended that the amend-

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ments made in the Central Health Service Rules give effect to the regulations framed by the Indian Medical Council. Part of the difficulty in this case has arisen because Annexure 11 was not amended when the relevant portion of

Annexure I was amended in 1968. But that does not take away the force of the argument that F.R.C.S. as such cannot be deemed to be a post-graduate qualification in the concerned speciality of Orthopaedics. To hold otherwise would mean that a person who has the qualification of F.R.C.S. could be deemed to be a Specialist in Tuberculosis and Orthopaedics, although he is also a Specialist in General Surgery. The various entries in Annexure II would have to be interpreted in a reasonable manner. Otherwise how could M.D., M.R.C.P., F.R.C.S, and M.S. all be considered to be specialised qualifications in Tuberculosis, or a mere M.D. or M.R.C.P. and F.R.C.S. connote a post-graduate qualification in the speciality of Paediatrics. It stands to reason that these degree must be in the subject of Paediatrics if the holders of those degrees are to be considered specialists in Paediatrics. As mentioned earlier, F.R.C.S. (Canada) has many specialities. M.D. also can be in many specialities as indeed Annexure 11 itself shows. So also M.S. We are, therefore, in complete agreement with the view of the learned Judges of the High Court that F.R.C.S. by itself cannot be said to be a post-graduate degree in Orthopaedics. The mere fact that a degree is mentioned against speciality of Orthopaedics does not make it a post-graduate degree in Orthopaedics. Admittedly the second respondent does not possess the qualification, of F.R.C.S. in Orthopaedics. In the circumstances the fact that F.R.C.S. is also shown against the entry "Orthopaedics" in Annexure II is not an answer to the question whether it is a postgraduate degree in orthopaedics. It was urged that the F.R.C.S. examination has an orthopaedic content. In that sense the holder of every medical degree knows something of every subject in medicine or surgery. Nobody can contend that a mere M.B.B.S. is a degree in surgery or ophthalmology because it has a content of surgery or ophthalmology. We therefore hold that the 2nd respondent does not hold a post-graduate degree in the concerned speciality, Orthopaedics.

It is then necessary to deal with the argument that the qualification set out in Annexure I and II of the Second Schedule were not applicable to cases of promotion. One of the reasons advanced was that it will adversely affect persons who entered service at a time when the qualifications mentioned in Annexure II to Second Schedule were not requisite qualifications for the various posts mentioned in Annexure I. This appears to be a wholly irrelevant consideration unless it could be shown that such a rule cannot be validly made. It was then argued that Rule 8 (3) does not mention the qualifications in Annexures I and 11 as

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necessary qualifications for promotion to Supertime Grade II. We consider this argument without substance because the proviso thereto just means that. The meaning of that proviso is that in this case where a specialist grade officer is sought to be promoted to the post of a Professor in Orthopaedic Surgery he should have a post-graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent, which is the qualification, and 12 years' standing in the profession which is the experience. If this interpretation was not to be given to this proviso it will be wholly superfluous. The fact that that proviso does not refer to the Second Schedule as for instance sub-rule (2A) of rule 8 does not affect the question.

We also do not understand the argument advanced on behalf of the appellant that the interpretation placed by the High Court and accepted by us now on this part of the case would

mean infraction of Article 16 of the Constitution. We do not agree that the decision of this Court in *Roshan Lal v. Union*(1) lays down any such principle. Professors and Additional Professors in teaching institutions do not stand in the same position as General Duty Officers. The argument that it would lead to discrimination in the matter of promotion of specialist is also without substance. To say that to be appointed a Professor in Orthopaedics a person must have a post-graduate degree in Orthopaedics is not to make a classification without reference to the objectives sought to be 'achieved and there can be no question of discrimination.

Another argument put forward was that the nature of the qualifications mentioned in Annexure I are not mandatory and they would become mandatory in cases of promotion if the proviso to rule 8(3) is held to refer to the qualifications in Annexures I and If. This argument was based on the provision in the Annexure I to the Second Schedule which states that the qualifications are relaxable at Commissions discretion in the case of candidates otherwise well qualified. That is no doubt so. But the discretion is given only to the Union Public Service Commission in cases of direct recruitment and not to the Departmental Promotion Committee in cases of promotion. As that is the intent of the law it has to be given effect to. Moreover, the Union Public Service Commission when it proceeds to fill up a post by direct recruitment does so by calling for applications by extensive advertisements and it is but reasonable that if on a consideration of all those applications it finds that persons possessing the prescribed qualifications are not available but there are persons otherwise well qualified, they could be selected. But that is not so in the case of Departmental promotion at least in this case. The rules themselves contemplate that if there are no qualified candidates

(1) [1968] 1 S.C 185.

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then direct recruitment could be resorted to. That question does not arise here.

Another strange argument advanced was that the degree was not the, only criterion of suitability. We must also refer to the argument advanced by Shri Yogeshwar Prasad on behalf of the second respondent that what the Departmental Promotion Committee did was to promote the second respondent to Supertime Grade 11 and his appointment as Professor of Orthopaedics was merely a transfer and this cannot be questioned. The 2nd respondent was represented by Counsel before the High Court. This argument was not then put forward. But that apart, we do not consider that there is any substance in this argument. The parties had no doubt about what was at issue. It was simply the appointment of the 2nd respondent as Professor of Orthopaedics and the consequent reversion of the 1st respondent as Associate Professor, and it was on that basis that the whole case proceeded. The promotion of the 2nd respondent to Supertime Grade 11 was directly related to his appointment as Professor.

In the result the appeal is dismissed with the costs of the 1st respondent to be paid by the appellants.

S.C.

Appeals

dismissed.

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