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(BEFORE RANJANA P. DESAI AND MADAN B. LOKUR, JJ.)

PURSHOTAM KUMAR KAUNDAL . . . Appellant;

*Versus*

STATE OF HIMACHAL PRADESH AND OTHERS . . . Respondents. b

Civil Appeal No. 1956 of 2014<sup>†</sup>, decided on February 11, 2014

**A. Service Law — Promotion — Criteria/Eligibility — Promotion to post of Assistant Professor — Requirement of possession of recognised postgraduate degree — “Recognised” degree — Recognition by MCI — Held, was unnecessary since eligibility criteria required only recognised postgraduate degree and not postgraduate degree recognised by MCI — Wherever recognition by MCI was postulated, there was specific reference to it in service rules — Degree obtained by Respondent 5 was a recognised postgraduate degree being conferred by recognised statutory university — Hence, he was eligible for being considered for promotion — In case he is found suitable, he would be entitled to all consequential benefits including seniority — Education and Universities — Employment and Service Matters re Educational Institutions — H.P. Medical Education Service Rules, 1999 — R. 2(n) Appendix C. II — Indian Medical Council Act, 1956 — Ss. 11(1) & (2) — University Grants Commission Act, 1956 — S. 22 — Recognised degree — What is (Paras 7, 8, 10 and 11)** c

*D.D. Gupta v. State of H.P.*, LPA No. 176 of 2010, decided on 19-10-2011 (HP), *affirmed*

*D.D. Gupta v. State of H.P.*, CWP (Tri) No. 7948 of 2008, decided on 9-8-2010 (HP), *reversed* e

**B. Practice and Procedure — Pleadings/New Plea/Additional Plea/Alternative Plea — New plea — Submission that in case Respondent 5 was promoted it would be contrary to Minimum Qualifications for Teachers in Medical Institutions Regulations, 1988 raised only in passing in rejoinder submissions — Hence, not entertained (Para 13)** f

Appeal dismissed P-M/52907/SL

Advocates who appeared in this case :

Ravi Bakshi and Yash Pal Dhingra, Advocates, for the Appellant;

Ms Pragati Neekhra, Syed Mehdi Imam, Gaurav Sharma and Amit Kumar, Advocates, for the Respondents and Caveator-in-Person.

**Chronological list of cases cited** on page(s)

1. LPA No. 176 of 2010, decided on 19-10-2011 (HP), *D.D. Gupta v. State of H.P.* 288c g
2. CWP (Tri) No. 7948 of 2008, decided on 9-8-2010 (HP), *D.D. Gupta v. State of H.P. (reversed)* 287g, 288c

The Judgment of the Court was delivered by

**MADAN B. LOKUR, J.**— Leave granted. The only question for consideration is whether Respondent 5, Dr D.D. Gupta was eligible for being considered for promotion to the post of Assistant Professor in accordance h

<sup>†</sup> Arising out of SLP (C) No. 7729 of 2012. From the Judgment and Order dated 19-10-2011 of the High Court of H.P. at Shimla in LPA No. 176 of 2010

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with the Himachal Pradesh Medical Education Service Rules, 1999. In our opinion, the question should be answered in the affirmative and against the appellant, Dr Purshotam Kumar Kaundal.

2. The eligibility criteria for promotion to the post of Assistant Professor, as laid down in the Service Rules is as follows:

b “By promotion from amongst the lecturers who possess three years’ regular service or regular combined with continuous ad hoc (rendered up to 31-3-1998) service, if any, in the grade in the specialty concerned failing which by appointment (by selection from amongst the members of H.P. Civil Medical Service (General Wing) having recognised postgraduation degree or its equivalent qualification in the specialty concerned and possess at least three years’ teaching experience as Lecturer/Registrar/Demonstrator/Tutor/Sr. Resident/Chief Resident in the specialty concerned after doing postgraduation in the specialty concerned failing which by direct recruitment.”

c 3. Dr Gupta had obtained a postgraduation degree in Pharmacology from Maharishi Dayanand University, Rohtak on 31-12-1991. He believed that he met the eligibility criterion as per the Service Rules and ought to have been considered for promotion to the post of Assistant Professor. However, when his case came up for consideration for promotion before the Departmental Promotion Committee on 28-8-2001 he was not considered apparently on the ground that he did not possess an MD degree in Pharmacology duly recognised by the Medical Council of India (for short “MCI”). We were told that this decision was based on a Letter dated 8-7-2001 issued by the Deputy Secretary in MCI to the Director of Medical Education and Research, Himachal Pradesh in which it is stated as follows:

d “Kindly refer to your Letter No. HFW (DME) H(1)A-20/99, dated 1-9-2001, this is to inform you that MD (Pharmacology) qualification granted by Maharishi Dayanand University in respect of students being trained at Pt. B.D. Sharma Postgraduate Institute of Medical Science is not recognised by the Council for purposes of the IMC Act, 1956.”

e 4. Dr Gupta challenged the failure of the Departmental Promotion Committee to consider him for promotion by filing an original application before the State Administrative Tribunal. The original application was transferred to the High Court of Himachal Pradesh and registered as CWP (T) No. 7948 of 2008.

f 5. By a judgment and order dated 9-8-2010<sup>1</sup> a learned Single Judge of the High Court rejected the writ petition filed by Dr Gupta. The learned Single Judge held that Section 11(1) of the Indian Medical Council Act, 1956 (for short “the Act”) provides that only those medical qualifications granted by any university or medical institution in India which are included in the First Schedule to the Act shall be recognised medical qualifications for the purposes of the Act. The learned Single Judge held that since an MD in Pharmacology from Maharishi Dayanand University was not included in the

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<sup>1</sup> *D.D. Gupta v. State of H.P.*, CWP (Tri) No. 7948 of 2008, decided on 9-8-2010 (HP)

First Schedule to the Act, Dr Gupta was not eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. It was also held that since Maharishi Dayanand University did not apply for recognition of the qualification to the Central Government in terms of Section 11(2) of the Act, Dr Gupta was also not entitled to the benefit of that sub-section of Section 11 of the Act. The learned Single Judge also referred to Section 2(h) of the Act which defines a recognised medical qualification as meaning any of the medical qualifications included in the Schedules of the Act. It was held that the qualification obtained by Dr Gupta from Maharishi Dayanand University did not fall under any schedule to the Act. Accordingly, the writ petition was dismissed by the learned Single Judge. *b*

6. Feeling aggrieved, Dr Gupta preferred LPA No. 176 of 2010 in the High Court. By its judgment and order dated 19-10-2011<sup>2</sup> the High Court agreed with Dr Gupta and allowed the letters patent appeal and set aside the judgment and order<sup>1</sup> of the learned Single Judge. The official respondents were directed by the High Court to hold a Review Departmental Promotion Committee for the post of Assistant Professor within a period of eight weeks. It was also held that Dr Gupta would be entitled to all consequential benefits in case he is found suitable by the Review Departmental Promotion Committee for appointment to the post of Assistant Professor in 2001. *c*

7. The High Court was of the view that the eligibility criteria only required a recognised postgraduation degree. It did not require a postgraduation degree recognised by MCI. The degree obtained by Dr Gupta was a recognised postgraduation degree inasmuch as it was conferred by a recognised statutory university. Therefore, Dr Gupta was eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. The High Court also noted that in a later Departmental Promotion Committee held on or about 25-11-2002 Dr Gupta was found eligible for being considered for promotion to the post of Assistant Professor and was in fact so promoted, while holding the same qualifications. *d*

8. We are of the opinion that no fault can be found with the view taken by the High Court in the letters patent appeal filed by Dr Gupta. The Service Rules mainly concern themselves with a recognised postgraduation degree. There is nothing to suggest that recognition of the postgraduation degree must be by MCI. On the contrary, we have gone through the Service Rules and find that wherever recognition by MCI is postulated, there is a specific reference to it in the Service Rules. *e*

9. Rule 2(n) of the Service Rules defines a postgraduate qualification as meaning a qualification as specified in Appendices C-I and II. We are concerned with Appendix C-II which contains a list of postgraduate qualifications. Some of the postgraduation degrees that require recognition by MCI are specifically mentioned therein. These are as follows: *f*

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*2 D.D. Gupta v. State of H.P.*, LPA No. 176 of 2010, decided on 19-10-2011 (HP)

*1 D.D. Gupta v. State of H.P.*, CWP (Tri) No. 7948 of 2008, decided on 9-8-2010 (HP)

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Sl. No.	Subject	Part A	Part B
23.	Cardiology	DM Cardiology 2/3 years' course as recognised by MCI after MD Medicine, or MBBS and 5 years' direct course leading to DM Cardiology.	-
24.	Gastroenterology	DM Gastroenterology 2/3 years' course as recognised by MCI after MD Medicine, or MBBS and 5 years' direct course leading to DM Gastroenterology.	-
25.	Thoracic Surgery	MCh CTS 2/3 years' course as recognised by MCI after MS Surgery, or MBBS and 5 years' direct course leading to MCh CTS.	-
26.	Urology	MCh Urology 2/3 years' course as recognised by MCI after MS Surgery, or MBBS and 5 years' direct course leading to MCh Urology.	-
31.	Nephrology	DM Nephrology 2/3 years' course as recognised by MCI after MD Medicine, or MBBS and 5 years' direct course leading to DM Nephrology.	-
32.	Neonatology	DM Neonatology 2/3 years' course as recognised by MCI after MD Medicine, or MBBS and 5 years' direct course leading to DM Neonatology.	-
33.	Paediatric Surgery	MCh Paediatric Surgery 2/3 years' course as recognised by MCI after MS Surgery, or MBBS and 5 years' direct course leading to MCh Paediatric Surgery.	-
34.	Neurosurgery	MCh Neurosurgery 2/3 years' course as recognised by MCI after MS Surgery, or MBBS and 5 years' direct course leading to MCh Neurosurgery.	-

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35.	Plastic Surgery	MCh Plastic Surgery 2/3 years' course as recognised by MCI after MS Surgery, or MBBS and 5 years' direct course leading to MCh Plastic Surgery.	-	<i>b</i>
36.	Surgical Gastroenterology	MCh Surgical Gastroenterology 2/3 years' course as recognised by MCI after MS Surgery or MBBS and 5 years' direct course leading to MCh Gastroenterology.	-	<i>c</i>

**10.** It is quite clear from a perusal of the above chart that except the postgraduation degrees specified therein the Service Rules merely require a recognised postgraduate degree for meeting the eligibility criteria.

**11.** The learned counsel for Dr Kaundal submitted that if the appeal is dismissed, rights that have accrued or vested in his client, including his seniority over Dr Gupta, will be disturbed and this is not permissible. The submission is stated only to be rejected. In view of the fact that Dr Gupta was wrongly not considered for promotion to the post of Assistant Professor in Pharmacology, he deserves to be now considered and if found suitable, entitled to all consequential benefits. In this context, we may note that the State of Himachal Pradesh has not challenged the decision of the High Court directing reconsideration. *d*

**12.** It was also contended that the postgraduation degree obtained by Dr Gupta was subsequently recognised by MCI by a notification issued in 2004 and that the notification would not have retrospective effect so as to make Dr Gupta eligible for consideration for promotion. It is not necessary for us to deal with this contention since we have held that Dr Gupta's postgraduation degree did not require any recognition by MCI. *e*

**13.** Finally, it was contended that if Dr Gupta is promoted it would be contrary to the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998. This submission was not made by Dr Kaundal at any point of time and was only raised in passing by his learned counsel in his rejoinder submissions. We are not inclined to entertain this submission at this stage. *f*

**14.** We find no merit in this appeal and it is accordingly dismissed. *g*

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