

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 248 of 2021 (D.B.)

Dr. Ashok Zadbaji Nitnaware,
Aged about 61 years,
Occupation Professor, ENT,10
Swaraj Nagar, near Onkar Nagar, Water Tank,
Nagpur- 440 027.

Applicant.

Versus

- 1) The Secretary,
Medical Education and Drugs Department,
Gokuldas Telpal Hospital Campus Building, 9th floor,
Lokmanya Tilak Road,
Mantralaya, Mumbai-400 001.
- 2) The Secretary,
Maharashtra Public Service Commission,
Bank of India Building,
Mahatma Gandhi Marg, Mumbai-400 001.
- 3) The Director of Medical Education and Research,
4th floor, Government Dental College Building,
St. George Hospital Campus, Mumbai-400 001.
- 4) The Dean,
Government Medical College Hospital,
Nagpur-440 003.

Respondents.

S/Shri Rajendra Patil & M.R. Patil, Advs. for applicant.

Shri S.A. Deo, learned C.P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 30th June,2022.

Date of Pronouncement of Judgment : 14th July, 2022.

JUDGMENT

(Delivered on this 14th day of July, 2022)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri M.R. Patil, learned counsel for the applicant and Shri S.A. Deo, learned C.P.O. for the respondents.

2. The applicant Dr. Nitnaware was initially appointed as Assistant Lecturer in anatomy at Vasantnao Naik Medical College, Yavatmal on 10/7/1991. He was promoted to the post of Associate Professor at Vasantnao Naik Government Medical College, Yavatmal on 19/4/1997. The applicant was working at Nagpur as a Professor (ENT) from 14/6/2018. On 22/7/2020, the respondent no.3 circulated letter to all Deans of the Government Medical Colleges asking them to submit willingness of eligible candidates to work on the post of Dean. On 24/7/2020, the applicant has given consent for the post of Dean at Government Medical College (GMC), Nagpur. On 26/10/2020, the applicant has made representation to the respondent for consideration of his name for the additional charge of Dean, Government Medical College, Nagpur and further requested to consider regular promotion

to the post of Dean, because, Dr. Sajal Mitra, Dean moved application for V.Rs.

3. On 11/09/2019, the respondent no.1 issued an order of promotion of Dr. Sudhir Gupta at Government Medical College, Gondia, but he did not accept. The respondent / authority issued orders on 08/02/2021 and 23/02/2021 by giving promotion/ additional charge to Dr. Gupta to the post of Dean, GMC, Nagpur. Dr. Sudhir Gupta has denied the promotion and charge of Gondia, he cannot be considered for further promotion and additional charge of Dean, GMC, Nagpur by cancelling previous order dated 11/9/2019.

4. As per the order dated 25/7/2003 issued by respondent no.1, it is seen that Dr. Gupta, is holding the regular post of Professor (Gastroenterology), but mean while MPSC respondent no.2 issued letter to respondent no.1 that Dr. Sudhir Gupta is not eligible for the post of Professor of Medicine. Therefore he cannot be promoted to the post of Dean.

5. On 12/10/1993, the Government issued G.R. which clearly says that the Government employee who is not eligible for appointment, he / she is liable to be dismissed from service. Dr. Sudhir Gupta is not eligible, hence, he should be removed from service.

6. It is submitted that the applicant has rendered his service out of Nagpur at various Medical Colleges for about 23 years, therefore, he is eligible for the post of Dean at GMC, Nagpur.

7. The O.A. is strongly opposed by respondent nos.1,3 & 4. It is submitted that the applicant has not filed O.A., after getting correct information. It is submitted that the prayer in respect of recommendation of MPSC dated 27/5/2003 about the eligibility of the Dr. Gupta for the post of Associate Professor. This issue is already decided long back in the year 2009. As per the letter of MPSC, the Committee was formed of Dr. Ambhore and Dr. Bahadure and they have submitted their report. It was accepted by the Government in the year 2009 itself. It is not challenged within limitation, therefore, the O.A. is liable to be dismissed.

8. It is submitted that as per the contention of applicant, the first appointment of Dr. Sudhir Gupta was not legal and proper, because, he has not completed four years of service as per the rules. In this respect, it is submitted that Dr. Sudhir Gupta was working in the Mahatma Gandhi Institute of Medical Science, Sevagram, Dist. Wardha. Dr. Sudhir Gupta entered into an agreement with the Mahatma Gandhi Institute of Medical Science, Sevagram, Dist. Wardha. The said agreement was in writing on Stamp paper (at page no.85). As per this agreement, extra ordinary leave for two years was

granted to Dr. Sudhir Gupta and there was lien on the said post of Dr. Sudhir Gupta. It is submitted that Dr. Sudhir Gupta had completed five years, 10 months service for the post of Reader / Additional Professor. This fact was also noted by the two Members Committee of Dr. Ambhore and Dr. Bahadure, therefore, the contention of the applicant that Dr. Sudhir Gupta was not qualified, is wrong. It is submitted by the respondents that Dr. Sudhir Gupta is not made party. Hence, the relief sought against Dr. Sudhir Gupta cannot be granted, on that ground only the O.A. is liable to be dismissed.

9. It is submitted that Dr. Sudhir Gupta was working as a Professor in the GMC, Nagpur. He was appointed as a Dean, Government Medical College, Gondia. Dr. Sudhir Gupta could not join on the said post, because, Dr. Sudhir Gupta was the only Doctor having DM qualification in Gastroenterology subject. Three students were pursuing their DM Course under the guidance of Dr. Sudhir Gupta. This fact was informed to the respondent no.1 and 3 and contended that if he would be posted at Gondia, those three students who were pursuing their studies under his guidance, they will be at loss. Not only that the students will be at loss, but ultimately the State Government would lose the seats granted by MCI/ MUHS and therefore the State Government has taken a conscious decision

considering the special circumstances to grant extension to Dr. Sudhir Gupta for joining the post of Dean as per the order dated 8/2/2021.

10. It is submitted that as regards contention of the applicant that Dr. Sudhir Gupta has refused to accept the promotion of Dean, Government Medical College at Gondia. It is submitted that the said allegations made by the applicant is not only illegal, but obnoxious as Dr. Sudhir Gupta has never refused to accept the promotion and to join at Government Medical College, Gondia. It is already submitted that considering the circumstances, the State Government on its own granted extension to Dr. Sudhir Gupta for joining on the post of Dean at Government Medical College, Gondia treating it to be a special case. It is submitted that Dr. Sudhir Gupta was seniormost to the applicant and others, therefore, he was given additional charge of Dean, GMC, Nagpur. At last submitted that the O.A. is without any merit and liable to be dismissed.

11. Heard Shri M.R. Patil, learned counsel for the applicant. He has submitted that the applicant was appointed as Assistant Lecturer in the year 1991. He was promoted in the year 1997. The respondent no.3 called willingness for the post of Dean. The respondent no.1 granted promotion to Dr. Sudhir Gupta. He had not accepted the promotion, therefore, in view of the G.R. dated

12/9/2016, Dr. Sudhir Gupta cannot be continued as a Dean, GMC, Nagpur.

12. The learned counsel has pointed out para nos.1&4 of the G.R. dated 12/9/2016 which are reproduced as below –

“ १. वरच्या संवर्गात पदोन्नतीसाठी निवड झाल्यानंतर अथवा तत्पुर्वीच एखाद्या कर्मचा-याने पदोन्नतीचे पद स्विकारण्यास नकार दर्शविल्यास, त्याचे नांव पदोन्नतीसाठी पात्र असणा-या अधिकारी/ कर्मचा-यांच्या निवडयादीतून काढून टाकण्यात यावे व पुढील दोन वर्षी होणा-या निवडसूच्यांमध्ये संबंधित अधिकारी/ कर्मचा-याच्या नावाचा विचार न करता तिस-या वर्षाच्या निवडसूचीत संबंधित अधिकारी/ कर्मचा-याची पदोन्नतीसाठीची पात्रता तपासण्यात यावी. त्यावेळेच्या गुणवत्तेप्रमाणे संबंधित अधिकारी/ कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास त्याचा नियमित निवडसूचीत समावेश करण्यात यावा.

(उदा. सन २०१५ च्या निवडसूचीकरिता (दिनांक १/९/२०१४ ते दिनांक ३१/८/२०१५) दिनांक १५/१/२०१५ रोजी झालेल्या निवडसूचीत एखादया अधिका-याच्या समावेश करण्यात आला असेल व त्यांनी पदोन्नतीस नकार दिल्यास त्यांचे नाव २०१५ च्या निवडसूचीतून वगळून त्यांचा सन २०१६ व सन २०१७ च्या निवडसूचीकरिता देखील विचार न करता सन २०१८ च्या निवडसूचीकरिता विचार करण्यात यावा.) -----

४. ज्या प्रकरणात निवडसूची तयार करण्याची कार्यवाही पुढील २ वर्षे न होता तिस-या वर्षी निवडसूची केल्यास पहिल्या वेळेस पदोन्नतीस नकार दिलेल्या अधिकारी/ कर्मचा-यांच्या तिस-या वर्षी होणा-या निवडसूचीत पदोन्नतीसाठी विचार करण्यात यावा. (उदा. सन २०१५ च्या निवडसूचीत नकार दिलेल्या अधिकारी/ कर्मचा-यांचा सन २०१६ व २०१७ मध्ये जरी निवडसूची झाली नाही तरी सन २०१८ मध्ये निवडसूची झाल्यास सन २०१८ च्या निवडसूचीमध्ये त्यांचा विचार करण्यात यावा.)”

13. The learned counsel for the applicant has submitted that Dr. Sudhir Gupta was not eligible for the post of Professor. There was LAQ in the Assembly. Dr. Sudhir Gupta had not completed four years service, therefore, his appointment on the post of Professor is illegal. The learned counsel has submitted that promotion of Dr. Sudhir Gupta is illegal as he has not completed five years service as Assistant

Professor / Lecturer as per the Rules of Medical Council of India (MCI).

14. The learned counsel for applicant has submitted that applicant was eligible / entitled for the post of Dean, GMC, Nagpur, but he was not considered. The learned counsel has fairly submitted that during the pendency of this O.A., the applicant is posted as Dean at Government Medical College, Chandrapur. At last submitted that the O.A. be allowed.

15. Heard learned CPO Shri S.A. Deo. He has strongly objected the relief prayed in the O.A. The Id. CPO submitted that prayer nos.1 and 3 in the O.A. itself are in respect of Dr. Sudhir Gupta. Dr. Sudhir Gupta is not made party in this O.A. If the relief is granted to the applicant, then Dr. Sudhir Gupta will affect, therefore, he is necessary party in this O.A. on that ground only, the O.A. is liable to be dismissed.

16. The learned C.P.O. has pointed out prayer in respect of promotion of Dr. Sudhir Gupta as a Professor. The Id. CPO has submitted that Dr. Sudhir Gupta was appointed on the post of Professor in the year 1999. The applicant has challenged the initial appointment of Dr. Sudhir Gupta and thereafter his promotion. The letter issued by MPSC in respect of eligibility of Dr. Sudhir Gupta was

taken into consideration by the respondent no.1. Two Members Committee of Dr. Ambhore and Dr. Bahadure were appointed and they had submitted their report. On the basis of their report, the issue was finally resolved as per the decision dated 2/9/2009. That decision is not challenged within time and therefore, the O.A. is liable to be dismissed.

17. The learned CPO has submitted that Dr. Sudhir Gupta was regularly promoted as a Dean, GMC, Gondia as per order dated 11/9/2019. There is nothing on record to show that Dr. Sudhir Gupta refused to accept the said promotion as a Dean. Hence, the O.A. is liable to be dismissed.

18. The learned CPO has submitted that Dr. Sudhir Gupta is senior to the applicant, therefore, he was given additional charge of the Dean, GMC, Nagpur in place of Dr. Sajal Mitra. The appointment of Dr. Sudhir Gupta as a Dean at GMC, Nagpur is legal and proper, hence the O.A. is liable to be dismissed. During the course of argument, the learned CPO has submitted that Dr. Sudhir Gupta is now posted as a regular Dean of GMC, Nagpur. The applicant is also now posted as a Dean, GMC, Chandrapur. Therefore, most of the reliefs claimed in this O.A. cannot be granted. Hence, the O.A. is liable to be dismissed.

19. The applicant has prayed in this O.A. relief no.(i) which is as under –

“(i) Stay the effect and operation and revoke the order of Dr. Sudhir Gupta issued by the respondent no.1 on 08/02/2021 and 23/02/2021 these are the fresh causes of action at Annexure no.A-1 and A-2 collectively”.

20. This relief is to stay the orders dated 8/2/2021 and 23/2/2021. From the perusal of these orders, it is clear that Dr. Sudhir Gupta was appointed as a Dean, GMC, Gondia as per order dated 11/9/2019. He could not join on the said post, because, the Doctor Gupta was the only person who was having qualification of DM subject of Gastroenterology. Three students were perusing their DM course under the guidance of Dr. Sudhir Gupta at GMC, Nagpur, therefore, the Government has extended the time to Dr. Sudhir Gupta to join at GMC, Gondia. As per order dated 23/2/2021 one Dr. Sajal Mitra was proceeded on long leave, therefore, additional charge of Dean, GMC, Nagpur was given to Dr. Sudhir Gupta, in addition to his charge of the post of Professor of Gastroenterology. Both these orders were not stayed by this Tribunal. Moreover, this relief cannot be granted against Dr. Sudhir Gupta without joining him party to this O.A. Hence, this relief no.1 is without any substance.

21. The applicant has prayed relief no. (ii) as under –

“(ii) direct the respondent no.1 to revoke the order of promotion as a Dean Dr. Sudhir Gupta dated 11/09/2019 which is as Annexure no.A-8”.

22. In relief no.2, the applicant has prayed to revoke the order of promotion as a Dean of Dr. Sudhir Gupta, GMC, Gondia dated 11/9/2019.

23. The learned counsel for the applicant has submitted that Dr. Sudhir Gupta had not completed five years service and therefore he was not eligible for the post Dean. He has submitted that Dr. Sudhir Gupta was not qualified as well as he refused to accept the promotion of the Dean, GMC, Gondia. The learned counsel has pointed out the G.R. dated 12/9/2016. The relevant portion of G.R. dated 12/9/2016 is reproduced as under –

“ १. वरच्या संवर्गात पदोन्नतीसाठी निवड झाल्यानंतर अथवा तत्पुर्वीच एखाद्या कर्मचा-याने पदोन्नतीचे पद स्विकारण्यास नकार दर्शविल्यास, त्याचे नांव पदोन्नतीसाठी पात्र असणा-या अधिकारी/ कर्मचा-यांच्या निवडयादीतून काढून टाकण्यात यावे व पुढील दोन वर्षी होणा-या निवडसूच्यांमध्ये संबंधित अधिकारी/ कर्मचा-याच्या नावाचा विचार न करता तिस-या वर्षाच्या निवडसूचीत संबंधित अधिकारी/ कर्मचा-याची पदोन्नतीसाठीची पात्रता तपासण्यात यावी. त्यावेळेच्या गुणवत्तेप्रमाणे संबंधित अधिकारी/ कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास त्याचा नियमित निवडसूचीत समावेश करण्यात यावा.

(उदा. सन २०१५ च्या निवडसूचीकरिता (दिनांक १/९/२०१४ ते दिनांक ३१/८/२०१५) दिनांक १५/१/२०१५ रोजी झालेल्या निवडसूचीत एखादया अधिका-याच्या समावेश करण्यात आला असेल व त्यांनी पदोन्नतीस नकार दिल्यास त्यांचे नाव २०१५ च्या निवडसूचीतून वगळून त्यांचा सन २०१६ व सन २०१७ च्या निवडसूचीकरिता देखील विचार न करता सन २०१८ च्या निवडसूचीकरिता विचार करण्यात यावा.) -----

४. ज्या प्रकरणात निवडसूची तयार करण्याची कार्यवाही पुढील २ वर्षे न होता तिस-या वर्षी निवडसूची केल्यास पहिल्या वेळेस पदोन्नतीस नकार दिलेल्या अधिकारी/ कर्मचा-यांच्या तिस-या वर्षी होणा-या निवडसूचीत पदोन्नतीसाठी विचार करण्यात यावा. (उदा. सन २०१५ च्या निवडसूचीत नकार दिलेल्या

अधिकारी/ कर्मचा-यांचा सन २०१६ व २०१७ मध्ये जरी निवडसूची झाली नाही तरी सन २०१८ मध्ये निवडसूची झाल्यास सन २०१८ च्या निवडसूचीमध्ये त्यांचा विचार करण्यात यावा.)’

24. It is pertinent to note that nothing is pointed out by the side of applicant to show that Dr. Sudhir Gupta has refused to accept the promotion as a Dean, GMC, Gondia. On other hand, the order issued by respondent no.1 dated 8/2/2021 shows that three students were pursuing the DM course under the guidance of Dr. Sudhir Gupta. Dr. Sudhir Gupta was the only person who was having qualification of DM subject of Gastroenterology and therefore extension was granted to Dr. Sudhir Gupta as per the order dated 8/2/2021 to join at GMC, Gondia on the post of Dean.

25. Dr. Sudhir Gupta was continued at GMC, Nagpur. In the meantime, Dr. Sajal Mitra proceeded on long leave from 21/1/2021, therefore, the additional charge of Dean, GMC, Nagpur was given to Dr. Sudhir Gupta. Dr. Sudhir Gupta was the only senior Doctor and therefore the additional charge was given to him. There is nothing illegal on the part of respondents to promote Dr. Sudhir Gupta as a regular Dean at GMC, Nagpur. Nothing is on record to show that Dr. Sudhir Gupta refused to accept promotion as Dean, GMC, Gondia, therefore, G.R. dated 12/9/2016 is not applicable. It appears that wrong submission is made by the applicant stating that Dr. Sudhir

Gupta has refused to accept the promotion as Dean, GMC, Gondia. Hence, relief no.(ii) is wrongly made by the applicant.

26. The applicant has prayed relief no.(iv) as under –

“(iv) direct the respondents not to issue the fresh order and regular appointment of Dean in favouring Dr. Sudhir Gupta till the disposal of this application.”

27. The applicant has prayed this relief not to issue any regular order for regular appointment of Dean to Dr. Sudhir Gupta.

28. During the course of argument, the Id. CPO has submitted that Dr. Sudhir Gupta is regularly promoted as a Dean, GMC, Nagpur. Dr. Sudhir Gupta is more qualified than the applicant. He is senior to the applicant and therefore he is appointed as Dean, GMC, Nagpur. Nothing is pointed out by the side of applicant as to how the appointment of Dr. Sudhir Gupta on the post of Dean, GMC, Nagpur is illegal. Hence, said relief cannot be granted.

29. The applicant has prayed relief no.(v) as under –

“(v) the applicant should be given chance or his name should be considered for the additional charge of Dean at Government Medical College, Nagpur and lateron to be considered for promotion of Dean on regular basis”.

30. During the course of argument, learned counsel for the applicant and Id. CPO both have submitted that during pendency of

O.A., the applicant is promoted and posted as a Dean, GMC, Chandrapur, therefore, this relief now becomes redundant. The applicant cannot insist that he should be posted Nagpur only. The government employee has to follow the directions given by the Authority. Now the applicant is posted as a regular Dean at GMC, Chandrapur (as per the submission of Id. CPO).

31. The applicant raised material grounds that initial appointment of Dr. Sudhir Gupta as a Professor was not legal and proper in view of the Rules of the Medical Council of India (MCI). As per the Rules of MCI, five years service as an Assistant Professor / Lecturer in General Medicine etc. is required for the post of Professor / Associate Professor / Reader etc. It was pointed by MPSC to respondent no.1 stating that Dr. Sudhir Gupta has not completed five years service. The respondent no.1 formed two Members committee of Dr. Ambhore and Dr. Bahadure. They had submitted their report stating that Dr. Sudhir Gupta was working as a Reader in Mahatma Gandhi Medical Science, Institute, Sewagram, Dist. Wardha from 2/10/1995. He was proceeded on extra ordinary leave of two years for training to Saudi Arabia as a Lecturer of Gastroenterology. After his return, he joined at Mahatma Gandhi Medical Science, Institute, Sewagram, Dist. Wardha. There was agreement between College and Dr. Sudhir Gupta. There was a lien of the said post. Dr. Sudhir Gupta

had completed 5 years, 10 months service for the eligibility of the post of Professor etc. Hence, contention of the applicant that initial appointment of Dr. Sudhir Gupta is not legal and proper, has no any meaning. The contention of the applicant is without any evidence on record.

32. Dr. Sudhir Gupta is the seniormost Doctor and he was eligible for the post of Dean, therefore, he is rightly / legally posted as a Dean, GMC, Gondia. He could not join, because, three students were pursuing their DM course of Gastroenterology under the guidance of Dr. Sudhir Gupta. The respondent no.1 not relieved Dr. Sudhir Gupta looking to the education of three students who learning under the guidance of Dr. Sudhir Gupta. Nothing is on record to show that Dr. Sudhir Gupta intentionally refused to join at GMC, Gondia on the post of Dean.

33. Dr. Sudhir Gupta was continued at GMC, Nagpur. In the meantime, Dean Dr. Sajal Mitra proceeded on long leave. Being a seniormost Doctor, he was given additional charge of the post of Dean, GMC, Nagpur. As per the submission of learned CPO, Dr. Sudhir Gupta is senior to the applicant and eligible for the post of Dean. Therefore, he is regularly appointed as a Dean, GMC, Nagpur.

34. From the above discussion, it is clear that there is no merit in this O.A. Hence, liable to be dismissed. The O.A. itself is not tenable, because, material / all the reliefs are claimed against Dr. Sudhir Gupta. The applicant intentionally not made party to Dr. Sudhir Gupta in this O.A. The O.A. itself is not tenable, because, Dr. Sudhir Gupta is not made party. Hence, the following order –

ORDER

- (i) The O.A. is dismissed.
- (ii) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 14/07/2022.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 14/07/2022.

Uploaded on : 15/07/2022.

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