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**Court :** Punjab and Haryana

**Decided On :** Sep-16-1999

**Reported in :** (2000)124PLR76

**Judge :** Jawahar Lal Gupta and; V.M. Jain, JJ.

**Acts :** Post Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 - Schedule - Regulation 22

**Appeal No. :** Civil Writ Petition No. 11005 of 1999 and Civil Misc. Nos. 18335 of 1999 and 21396 of 1999 (O and M)

**Appellant :** Faculty Association, Post Graduate Institute of Medical Education and Research and ors.

**Respondent :** Union of India (Uoi) and ors.

**Advocate for Def. :** D.S. Nehra, Sr. Adv. and; Munish Bhardwaj, Adv.

**Advocate for Pet/Ap. :** B.S. Walia, Adv.

**Judgement :**

**Jawahar Lal Gupta, J.**

1. The Faculty Association of the Post Graduate Institute of Medical Education and Research as also the 28 ad hoc Assistant Professors are the petitioners. They complain that 105 posts of Assistant Professors have remained unfilled at the Institute 'since the past numbers of years due to the inaction of the respondents.....'. The petitioners allege that against the available vacancies, 'only 40 Assistant Professors have been appointed.....on ad hoc basis.' As a result of this 'ad-hocim', the education, research and patient care have suffered, still more, there has been an 'exploitation of highly trained, qualified and motivated doctors who have been toiling ceaselessly for years.....without any certainly as to their future prospects in the Respondent- Institute.....'. The petitioners maintain that the ad hoc Faculty has been 'subjected to avoidable discrimination.....not conducive to the discharge of duties'. Despite representations, the respondents have not done the needful. Hence, they have filed this petition. The petitioners pray that the respondents be directed 'to frame a scheme for regularisation of service of Assistant Professors who have been working in the Institute on ad hoc basis'. In the alternative, they pray that the respondents be directed to 'carry out selections to the 94 regular and 11 leave vacancies of Assistant Professors as advertised vide advertisement dated 9.11.1998 and to make appointments to the said posts in the Respondent-Institute as expeditiously as possible.....'.

2. A written statement has been filed on behalf of the respondents by Dr. B.K. Sharma, the Director of the Respondent-Institute, it has been averred that the claim of the petitioners regarding 'regularisation of service.....is not tenable. There is no provision in the Rules and Regulations.....to confer regularisation to the ad hoc Assistant Professors.....The present petitioners have not been appointed by the regular Selection Committee.....; have not gone through the proper process of selection..... The Director, PGI, has the power only to appoint on Group 'C and 'D' posts while the President of the Institute has the power to appoint on Group 'B' posts. The Appointing Authority of Group 'A' posts is the Governing Body'. Regarding the delay in regular recruitment, it has been averred that the needful could not be done 'due to prolonged litigation on the subject of the reservation first in the Punjab and Haryana High Court and thereafter in the Supreme Court. The Constitution Bench of the Supreme Court in its judgment dated 17.4.1998 finally decided the issue of reservation and held that there cannot be any reservation in a

single post cadre. The Review Petition made in Civil Appeal No. 3175 of 1997 in the case of PGI, Chandigarh was thereafter allowed and the judgment dated 2.5.1997 of the Supreme Court in the Civil Appeal No. 3175 of 1997 was set aside.....The matter of reservation and further clarified by the Supreme Court in its judgment dated 18.8.1998 in Civil Appeal No. 3997 of 1998 in the case of Government Medical College, Chandigarh v. SC/STs Medical Association Registered, Delhi and Ors. This was brought to the notice of the Ministry of Health and Family Welfare vide letter dated 21.11.1998. The Ministry.....further referred the matter to the Department Personnel.....for their advise'. The advice was received vide letter dated October 5, 1998. As per the advice, the reservation of Faculty posts was worked out.

3. According to the respondents, the Faculty posts had been advertised in the light of the judgment of the Supreme court dated April 17, 1998. The SC/ST Association had represented to the Ministry. Legal opinion was sought. On receipt of the advice, the matter was discussed in a meeting held under the Chairmanship of Union Health Minister. As desired, the matter was placed before the Governing Body in the meeting held on April 6, 1999. The Governing Body constituted a Committee to go into the matter. In the meeting held on May 4, 1999, the Committee made its recommendation which was placed before the Governing Body on June 22, 1999. The Governing Body desired that the Director should talk to both groups of Faculty members and try to reach a written consensus. The matter should then be 'brought back to the next Governing Body Meeting'. Since the Governing Body was not likely to meet, the matter was brought to the notice of the Ministry of Health vide letter dated August, 19, 1999. Vide letter dated August 27, 1999, the Ministry has advised about the grouping of posts 'except where educational qualifications are entirely differently prescribed'. A copy of this communication has been placed on record as Annexure R.1. It has been averred that 'the vacant Faculty posts will be filled up at the earliest as per the advice of the Ministry of Health and Family Welfare, New Delhi'. Reply to each para of the petition is on the same lines.

4. The petitioners have filed a replication to this written statement. It has been averred that they had been appointed as Assistant Professors on ad hoc basis 'on

the basis of the interview carried out by a duly constituted committee and after advertisement of the posts.' The petitioners maintain that the President has full powers to make ad hoc/temporary appointments under Regulation 22 and Clause 61 of Schedule I to the PGI Act. They allege that the 'delay in holding regular selections for close to five years is solely due to the inaction of the respondents to conduct interviews in respect of the posts which were advertised on more than one occasion i.e. in 1995, 1997 and 1998'. It has also been pointed out that in pursuance to the letter dated August 27, 1999, 'the Institute has issued a corrigendum in the Tribune on 6.9.1999 incorporating the revised reservation roster'. A copy has been enclosed as Annexure P.6. The eligible candidates have been asked to apply by September 30, 1999. Thus, the petitioners reiterate their claim as made in the writ petition.

5. We have heard learned counsel for the parties. Mr. B.S. Walia, learned counsel contended that the petitioners have been allowed to continue on ad hoc basis for long durations of time. Their claim for regularisation should be considered. Counsel has placed reliance on the decisions of their Lordships of the Supreme Court in *Dr. Shashi Kant Mishra and Ors. v. State of Bihar and Ors.*, 1987 (Suppl.) S.C.C. 495 and *Dr. A.K. Jain and Ors. v. Union of India and Ors.*, 1987 (Suppl.) S.C.C. 497. He further contended that the Institute should be directed to fill up the available vacancies immediately.

6. On the other hand, Mr. D.S. Nehra, learned counsel for the respondents contended that persons appointed on ad hoc basis have no right to claim that their services be regularised. He further submitted that the respondents have not delayed matters intentionally. Efforts are being made to fill up the posts as expeditiously as possible,

7. The first question that arises for consideration is - Are the petitioners entitled to claim that a writ of mandamus be issued commanding the respondents to frame a scheme for regularisation of service of Assistant Professors who have been working in the Respondent-Institute on ad hoc basis'?

8. The Post Graduate Institute of Medical Education and Research was incorporated by Act No. 51 of 1966. By Section 2, the Institute was declared as 'an

Institution of national importance'. Section 12 embodies the objects which the Institute has to achieve. These are 'to develop pattern of teaching in undergraduate and post-graduate medical education.....so as to demonstrate a high standard of medical education'; to 'bring together.....in one place educational facilities of the highest order for the training of personnel in all important branches of health activity'; and 'to attain self-sufficiency in post- graduate medical education to meet the country's needs for specialists and medical teachers'. The functions of the Institute have been elaborately delineated in Section 13. Thus, the Institute has to provide 'educational facilities of the highest order for the training of personnel'. The mandate of the Parliament as embodied in Section 12 is unambiguous and clear. It has to be carried out.

9. It is in the light of this background that the question as posed above has to be considered.

10. Admittedly, petitioner Nos. 2 to 29 and some others had been initially appointed on ad hoc basis for a period of 89 days. This appointment has been periodically extended. It appears to have continue for a period of few years. It may also be true that the appointment was initially made by the Director on the recommendation of a Committee 'comprising the Head of the Department and two senior Faculty Members of the Department concerned'. Subsequently, it may have been renewed even by the President. Yet it has remained an ad hoc appointment. It was not an appointment made by selection through a regularly constituted Selection Committee as contemplated under the provisions of the Post Graduate Institute of Medical Education and Research, Chandigarh Rules, 1967. Rule 7 clearly contemplates that 'all selection committees' shall be 'constituted by the Institute, for recruitment of faculty posts'. The Institute is as constituted under Section 5 of the Act. No committee as contemplated under Rule 7 had ever considered the case of the petitioners or declared them as suitable for appointment. Still further, the power to make appointments on regular basis to Group A posts vests exclusively in the Governing Body. No order of appointment or extension was ever made by the competent authority. Thus, the appointment was merely ad hoc and not regular. It was not in strict conformity with the procedure which is followed for making regular appointments.

11. Mr. Walia contended that even though the appointment had been initially made by the Director, the extension had been granted with the approval of the President. He referred to the Entry at Sr. No. 61 in Schedule I to the Regulations. A perusal of this entry shows that the power can be exercised for only ad hoc/temporary appointments. It is, in its very nature, for a limited period. In case of the posts of Professors and Assistant Professors, the appointment can be 'for a period not exceeding one year'. In case of Lecturers, it can be even for a longer period. Yet, the arrangement remains temporary or ad hoc. It is not regular.

12. It may be that the petitioners have worked for a substantial length of time. Their performance may have been satisfactory. Yet, according to the mandate of the Parliament, the Institute has the responsibility to provide 'educational facilities of the highest order for the training of personnel in all important branches of health activity'. It has to select and appoint the best out of the available talent. It is not unlikely that a large number of persons who are already teaching in different medical colleges may be wanting to come to the PGI and work as Assistant Professors. They may be as good or even better than the petitioners. It would only be fair that all the eligible persons including the petitioners are allowed to compete. It would be for the appropriate authority to lay down the criteria and to consider the comparative merit of the candidates. Any scheme for regularisation would undoubtedly be in the interest of the petitioners but would be contrary to the spirit of the Statute which insists on selecting and appointing the best persons.

13. Mr. Walia referred to the decision of their Lordship of the Supreme Court in Dr. Shahi Kant Mishra's case (supra). This was a case where the posts of Civil Assistant Surgeons had not been filled up despite the directions given by the Court. In this situation, their Lordships were pleased to 'direct the Public Service Commission of Bihar to complete the examination in every manner and communicate to the State Government the names of the successful candidates by.....'. The decision has no application to the issue in the present case.

14. So far as the decision in A.K. Jain's case (supra) is concerned, it needs to be noticed that the appointments related to the posts of Assistant Medical Officers and Assistant Divisional Medical Officers in the Railways. A perusal of the orders

shows that it was in 'the peculiar facts and circumstances of the case that their Lordships were pleased to direct the authorities to consider the claims of persons who had been initially appointed on ad hoc basis for regularisation. In our view, there is an essential distinction between an appointment to the post of Assistant Medical Officer who may work in a Civil Dispensary or Hospital and the post of Assistant Professor in an Institute of national importance. Secondly, we do not agree with the counsel for the petitioners that the decision of their Lordships is an authority for the proposition that if a person has worked as an Assistant Professor in the PGI for a period of four years, he is entitled to the regularisation of his service.

15. Thus, the counsel can derive no advantage from these decisions.

16. In our view, the PGI is an Institute of national importance. It is under an obligation to provide facilities of the highest order. It has to train personnel in different specialities and super-specialities so as to provide teachers for medical colleges in the country. It cannot compromise on merit. It must select and fill up all the faculty positions by open advertisement, and after considering the claim of all eligible candidates, only the best and none else should be appointed. Any method including regularisation which would result in diluting merit has to be avoided.

17. Thus, we answer the first question, against the petitioners. We hold that the ad hoc appointees have no right to claim regularisation of their services. They will, however, be entitled to be considered for appointment if they apply for the posts. Their claim shall be considered in accordance with the criteria that may be laid down by the competent authority. Of course, experience is always one of the considerations.

18. It was then contended that the Institute has been deliberately delaying the selection.

19. The sequence of events has been noticed above. It is clear that the posts have been advertised more than once. The first advertisement had been issued in the year 1990. The posts had been reserved for the members of Scheduled Castes. Dr. K.L. Nar-sihman and Dr. Indu Dhara had approached this Court through CWP

No. 15302 of 1990. This petition was decided vide order dated March 9, 1992. Thereafter, the battle between the supporters and opponents of reservations has been almost continuous. In the process, the selections and appointments to the faculty positions have been delayed. In this situation, it would not be fair to blame the Institute for its failure to make the selections till April 17, 1998. It was only on this date that the Constitution Bench of the Supreme Court had decided the Review Petition (C) No. 1749 of 1997 in CA No. 3175 of 1997 (Post Graduate Institute of Medical Education and Research v. Faculty Association and Ors.) and authoritatively held that 'there cannot be any reservation in a single post cadre.....' However, after April, 1998, the matter appears to have been unnecessarily dragged for more than a year. The decision of the Supreme Court was clear. The respondents had no choice but to implement it. Yet, the matter was repeatedly tossed from one end to the other. 20. The Director has given the sequence of events. He has referred to the decision to place the matter before the Governing Body. It has also been averred that the Governing Body had desired that the 'Director PGI should talk to both groups of faculty member i.e. for and against reservation and try to reach a written consensus in respect of implementation of the decision of the Supreme Court'. This decision of the Governing Body, we feel constrained to observe, was unfortunate. The two sides had fought the battle before the Apex Court. The issue had been decided. The Institute had to implement the decision. It was under a duty to do so. It should have performed this duty without delay or demur. The Governing Body failed to do the needful for no justifiable reason. The implementation of the decision of the Supreme court could not have been subjected to 'a written consensus'. The Governing Body which was charged with the duty of carrying out the decision had unnecessarily delayed its implementation. We cannot compliment it.

21. Now, the lost time is gone for ever. However, the needful should be done without any delay. It is the admitted position that the posts have already been advertised. Even a corrigendum was issued vide Annexure P.6 with the replication filed by the petitioners. The candidates have to submit their applications by September 30, 1999. We direct that all the applications for the posts of Assistant Professors shall be scrutinized within two weeks after the last date for the receipt. The Selection Committee shall be constituted forthwith. The process of selection

shall be completed by November 30, 1999. The Governing Body shall not be permitted to impede the process of selection and appointment by adopting any dilatory method. Thereafter, further action in accordance with law shall be taken. The posts should be filled up by December 15, 1999.

The writ petitioner is, accordingly disposed of. No costs.

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