

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**SWP No.658/2011, CMA Nos.3683/2011, CMA No.948/2011
c/w**

**SWP No.2407/2011, CMA No.3559/2011,
SWP No.2529/2011, CMA Nos.464/2012 & 3743/2011,
SWP No.233/2012, CMA Nos.3041/2012 & 308/2012,
SWP No.2044/2011, CMA No.3024/2011.**

Date of Decision: 31/12/2012

Dr. Arun Sharma Vs. State and ors.

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing Counsel:

For the Petitioner(s) :	Mr.R.K.Gupta, Sr. Advocate with Mr. Prem Sadotra, Advocate Mr. S.K. Shukla, Advocate Mr. Rahul Pant, Advocate
For the respondent(s) :	Mrs.Neelu Goswami, Dy.AG Mr. D.C. Raina, Sr. Advocate with Mr. F.A. Natnoo, Advocate. Mr. D.S. Thakur, Sr. Advocate with Ms. Aruna Thakur, Advocate Mr. S.S. Ahmed, Advocate Mr.Vikram Sharma, Advocate

1. Whether approved for reporting in law journals? : **Yes**

2. Whether approved for publishing in Press/Media? : **Optional**

1. Controversy running through weft and warp of five petitions, on hand, relates to eligibility of a candidate with Master in Hospital Administration degree (MHA) awarded by TATA Institute of Social Sciences, Mumbai (for short, TATA Institute) to the post of Deputy Medical Superintendent in GMC, Jammu/Srinagar. The petitioners have to their

credit Master in Hospital Administration degree from the aforesaid Institute and are not being allowed to participate in the selection process for the post of Deputy Medical Superintendent in GMC, Srinagar/Jammu initiated by the Jammu and Kashmir Public Service Commission (for short, respondent-Commission) on the ground that the TATA Institute is not recognized Institute under Indian Medical Council Act, 1956 and, therefore, the petitioners do not satisfy the eligibility criteria laid down in Jammu and Kashmir Medical Education (Gazetted Service) Recruitment Rules, 1979 (hereinafter, Rules of 1979).

2. First an overview of the background facts.
3. Four of the five writ petitions awaiting disposal are filed by Dr. Arun Sharma. The petitioner responded to Advertisement Notification No.16-PSC of 2005 issued by the Jammu and Kashmir Public Service Commission (for short, respondent-Commission) in the year 2005, inviting applications from eligible

candidates for the available vacancy of Deputy Medical Superintendent in Government Medical College, Jammu. The petitioner was not considered on the ground that he did not possess experience prescribed under Rules of 1979. The respondent-Commission, however, did not raise any dispute as regards his qualification, i.e. Master in Hospital Administration degree obtained by the petitioner from TATA Institute. The petitioner appears to have felt satisfied with his non-selection and waited for the next chance, expecting to have gained prescribed experience by the time, next selection process for the post was initiated. The opportunity came his way when the respondent-Commission vide Notification No. 02-PSC of 2009 dated 30th January, 2009 invited applications for two posts of Deputy Medical Superintendents in Open Merit and RBA Category in Government Medical College, Jammu and Srinagar (back-log). The petitioner responded to the Advertisement Notice. However, the respondent-Commission did not proceed with

the selection process, because of litigation over the matter.

4. The respondent-Commission through its Deputy Secretary vide No.PSC/DR/28/2008 dated 16th March, 2011 addressed to Principal Secretary and Secretary to the Government, Health and Medical Education Department, requesting him to clarify whether the candidates possessing Master in Hospital Administration degree from TATA Institute are eligible for the post of Deputy Medical Superintendent in Government Medical College, Srinagar/Jammu. The Deputy Secretary to Government, Health and Medical Education Department in his reply dated 23rd March, 2011 to the Secretary, Public Service Commission, Jammu clarified that the candidates possessing Master in Hospital Administration degree from TATA Institute are not eligible for the post of Deputy Medical Superintendent. The reason given was that the TATA Institute was an un-recognized Institute. The petitioner was able to lay hands on

the communication addressed by respondent-Commission to the respondent no.1 on 16th March, 2011 and the reply of respondent no.1 dated 23rd March, 2011. The petitioner without waiting for the Commission to take a decision in the matter rushed to this Court with SWP No.658/2011 seeking quashment of both the communications and a direction to the respondent-Commission to allow the petitioner to participate in the selection process and also restraining it from withdrawing/cancelling the Advertisement Notification No.02-PSC of 2009 dated 30th January, 2009 or issuing any fresh advertisement notice for filling up the posts of Deputy Medical Superintendents advertised vide notification No.02-PSC of 2009. The petitioner pleaded that as Dr. Manoj Kumar Chalotra with Master in Hospital Administration degree from TATA Institute was selected by the respondent-Commission and appointed as Deputy Medical Superintendent vide order no.03-PSC of 2008 dated 16th January, 2008, there was no reason for the

Commission to deny consideration to the petitioner. To reinforce his claim, petitioner further pleads that vide No.02-G of 2009 dated 2nd January, 2009, he was given *in-situ* promotion after putting in seven years of service as Assistant Surgeon on the basis of Master in Hospital Administration degree from TATA Institute; that the respondent no.1 is to be taken to have accepted and acted upon the said degree and, therefore, there is no reason for the respondent-Commission to treat the petitioner ineligible for the post of Deputy Medical Superintendent on the ground that Master in Hospital Administration Degree is granted by an unrecognized Institute. The Court as an interim measure asked the respondent-Commission not to finalize the selection process for the post of Deputy Medical Superintendent, Government Medical College, Jammu, till next date of hearing before the Bench. The interim direction is in force as on date. One Dr. Dara Singh claimed to be beneficiary of the

alleged manipulations, was arrayed as respondent no.9 on 6th August, 2011.

5. The respondent-Commission vide Advertisement Notification No. 18-PSC of 2011 dated 15th November, 2011 invited applications from the eligible candidates for one post of Deputy Medical Superintendent in Government Medical College, Jammu (Ist Special Drive) under RBA Category. The petitioner aggrieved with the Advertisement notice in question rushed to the Court with one more writ petition being SWP No.2407/2011. The case set up in the second writ petition is that the post of Deputy Medical Superintendent under RBA Category in Government Medical College, Jammu having been advertised vide Advertisement Notification No.02-PSC of 2009, the respondent-Commission was neither justified nor had authority to withdraw said post, more so, in face of ad-interim order passed in the earlier writ petition (SWP No.658/2011) and re-advertise the post vide advertisement notification impugned in the writ

petition. The petitioner alleged that the exercise was to benefit Dr. Dara Singh, claimed by the petitioner to be a *protégé* of Minister for Medical Education, Technical Education Service, Youth Services and Sports arrayed as respondent no.3 in the petition. The petitioner sought quashment of Advertisement Notification No.18-PSC of 2011 dated 15th November, 2011 and also a direction to the respondents to de-reserve and fill up the posts advertised vide impugned Advertisement Notification treating it as a part of Advertisement Notification to 02-PSC of 2009 dated 30th January, 2009. The matter came up on 27th December, 2011 and the selection process pursuant to impugned Advertisement Notice was directed not to be finalized till next date of hearing. The ad-interim direction is in force till date. Dr. Dara Singh was arrayed as respondent no.5 on 8th February, 2012.

6. The respondent Commission vide Advertisement Notification No.01-PSC of 2011 dated 7th January, 2011 invited applications from the

eligible candidates for two vacancies of Deputy Medical Superintendents in Government Medical College, Srinagar under Open Merit and Scheduled Caste Category. Petitioner, Dr. Bharat Bhushan and Dr. Major Kumar Bhagat were amongst the candidates, who responded to the Advertisement Notice.

7. The respondent-Commission vide Notices dated 28th November, 2011 and 9th December, 2011 published in local dailies declared amongst others, petitioner-Dr. Arun Sharma, Dr. Bharat Bhushan and Dr. Manoj Kumar Bhagat ineligible for the advertised posts on the ground that they had Master in Hospital Administration degree from TATA Institute - not recognized under Indian Medical Council Act, 1956. The petitioner was joined by Dr. Bharat Bhushan and Dr. Manoj Kumar Bhagat in throwing challenge to the aforestated notices. The petitioners after filing of SWP Nos.658/2011 and 2407/2011 laid hands on a communication addressed by Secretary, Medical Council of India

bearing No.MCI-23(1)/2006-Med./1788 dated 20th April, 2006 to the Under Secretary of the respondent-Commission informing him that Master in Hospital Administration degree from “un-recognized TATA Institute of Social Sciences cannot be treated as equivalent to Master in Hospital Administration degree obtained from recognized medical institutions”. The petitioners, therefore, in the fresh writ petition – SWP No.2529/2011 also sought quashment of the aforesaid communication. The petitioners again succeeded in persuading the Court to stay finalization of the selection process initiated pursuant to the impugned notification till next date. The interim order is in operation.

8. The petitioner – Dr. Arun Sharma in SWP No.233/2012 questions the Government Order No.134-HME of 2010 dated 26th February, 2010 whereby respondent no.5 in the petition (Dr. Dara Singh) has been appointed as Incharge Deputy Medical Superintendent in Government Medical

College, Jammu. The petitioners apprehending that experience gained by respondent no.5 while working as Incharge Deputy Medical Superintendent, Government Medical College, Jammu may be considered by the respondent-Commission while computing the experience in terms of Rules of 1979 also seeks a direction to the respondent-Commission not to count such experience and not to consider the experience certificates issued by Principal Government Medical College, Jammu vide his Nos. GMC/PS/C/50 dated 13th January, 2009, and AHJ/PS/915 dated 10th December, 2011 and experience certificate issued by Medical Superintendent and HOD, Hospital Administration SKIMS –respondent no.4 dated 22nd May, 2010 while making selection for the post advertised vide Advertisement Notification No.18-PSC of 2011 dated 15th November, 2011.

9. Dr. Manoj Kumar Bhagat, who joined Dr. Arun Sharma in filing SWP No.2529/2011, in a separate petition registered as SWP No.2044/2011 has

thrown challenge to the communications dated 16th March, 2011 and 23rd March, 2011 also impugned in SWP No.2529/2011 filed by Dr. Arun Sharma. The petitioner in SWP No.2044/2011 also seeks a direction to the respondent-Commission to allow the petitioner to participate in the selection process for the post of Deputy Medical Superintendent advertised vide Advertisement Notification No.02-PSC of 2009 dated 30th January, 2009 as also a Writ of Prohibition restraining that the respondent-Commission from withdrawing/cancelling Advertisement notice No.02-PSC of 2009 dated 30th January, 2009 or issuing any fresh notification. The petitioner as an interim measure was directed to be allowed to participate in the selection process at his own risk and cost without any rights flowing out of his participation in the selection process.

10. The stand taken by the respondents in opposition to all the writ petitions is identical. Without repeating the averments made in opposition to the individual

writ petitions, it may be appropriate to sum up salient/broad features of their case to resist the petitions.

11. The stand taken by the official respondents is that Master in Hospital Administration degree granted by TATA Institute does not satisfy the eligibility criteria laid down under Rules of 1979 for the reason that the TATA Institute is not an Institute recognized under Indian Medical Council Act, 1956 and the degree awarded is not equivalent to one granted by an Institute recognised by Indian Medical Council. Attention in this regard is invited to the Communication No.MCI-23(1)/2006 – MED/1788 dated 20.04.2006 addressed by Secretary, Medical Council of India to Secretary, respondent Commission. It is pleaded that as the petitioners in the writ petitions on hand have obtained Master in Hospital Administration degree from TATA Institute, they are not eligible for the post of Deputy Medical Superintendent in Government Medical College, Srinagar/Jammu and

have been rightly excluded from the selection process. The respondent-Commission denies that selection process pursuant to Advertisement Notification No. 02-PSC of 2009 dated 30th January, 2009 was delayed to favour the private respondent. It is clarified that the aforesaid Advertisement Notice was withdrawn to the extent, it notified posts available in Government Medical College, Srinagar because of contempt proceedings in case titled “*Dr. Jameel Ahmed Mir and ors. Vs. State*” and ad-interim order in SWP No.1718/2008 titled “*Dr. Rabinder Rattan Pal and anr. Vs. State and ors.*” and that the selection process as regards posts notified in Government Medical College Jammu, was initiated once SWP No.1718/2008 was dismissed as withdrawn on 2nd August, 2010. The respondent-Commission, while admitting that Dr. Manoj Kumar Chalotra with Master in Hospital Administration degree was appointed as Deputy Medical Superintendent, pleads that once suspicion was raised as regards eligibility of the candidates

equipped with Master in Hospital Administration from TATA Institute for the post of Deputy Medical Superintendent in light of Rules of 1979, the matter was taken up with the Government and the Government (respondent no.1) vide ME/Gaz/215/2010 dated 23rd March, 2011 informed the Commission that such candidates were not eligible for the post of Deputy Medical Superintendent and also conveyed mode, method and eligibility criteria for appointment to the post of Deputy Medical Superintendent as per Rules of 1979. It is pleaded that in view of the aforesaid Communication, the petitioners and all other candidates with Master in Hospital Administration degree from TATA Institute were declared ineligible vide notice dated 14th October, 2011 and as only one candidate (Private respondent) was found eligible for the post of Deputy Medical Superintendent under Reserved Backward Area Category, the post under said Category was re-notified/advertised vide notification No.18-PSC of 2011 dated

15th November, 2011. The respondents insist that the private respondent had requisite qualification and was eligible for the post of Deputy Medical Superintendent.

12. The private respondent-Dr. Dara Singh in his reply has clarified that he has applied for the post of Deputy Medical Superintendent under “Reserved Backward Area Category” and as none of the petitioners claim to belong to Reserved Backward Area Category and eligible under said Category, their challenge to his eligibility and participation in the selection process is unwarranted. It is denied that selection process initiated pursuant to Advertisement notification No.02-PSC of 2009 dated 30th January, 2009 was delayed to benefit the private respondent or that the respondent no.3 is interfering in the selection process or ever made an effort to benefit the private respondent. Denying the allegations of *mala fides* or favouritism, the private respondent insists that he has necessary qualification and experience to his credit and cannot

be deprived of his right to be considered for the post of Deputy Medical Superintendent under Reserved Backward Category. The private respondent joins the official respondents in pleading that the selection and appointment for the post of Deputy Medical Superintendent is to be made in accordance with the Rules of 1979 and that the petitioners are not eligible for the post of Deputy Medical Superintendent as Master in Hospital Administration degree relied upon by the petitioners is granted by an unrecognized Institute. In reply to challenge thrown in SWP No.233/2012 questioning his appointment as Incharge Deputy Medical Superintendent and the experience gained by working as such, the private respondent insists that the official respondents are fully competent to make appointment on Incharge basis and that such appointment and the experience gained is not open to challenge.

13. I have gone through the pleadings and have heard learned counsel for the parties.

14. It is admitted position of the parties that the post of Deputy Medical Superintendent is borne on Jammu and Kashmir Medical Education (Gazetted) Service and the post is to be filled up having regard to the Rules of 1979 and minimum qualification and experience prescribed under aforesaid rules. Schedule -I to Rules of 1979 divides the posts borne on the service into three parts, namely, (A) Teaching Wing, (B) Administrative Wing (C) General Wing. The post of Deputy Medical Superintendent - a Clause-II post, is included in Administrative Wing. Schedule ‘II’ to the Rules of 1979 prescribes minimum qualification and experience for posts in different subjects/disciplines. The post of Deputy Medical Superintendent figures at Serial no.29 (b). The minimum qualification and experience for the post is laid down in columns-IV and V of Schedule-II against Serial No.29 (b). It would be appropriate to extract hereunder the relevant part of Schedule II to the Rules of 1979. It reads:

SCHEDULE II

OF J&K MEDICAL EDUCATION (GAZETTED) SERVICE RECRUITMENT RULES, 1979.

S.No.	Subject	Designation of Post	Minimum Qualification	Minimum teaching/research experience
29.	Administration of Colleges and Hospitals	b) Deputy Medical Superintendent of Teaching Hospitals	<p>(i) Possession of recognized Medical Qualification included in the First or Second Schedule (other than Licentiate Qualifications) to the Indian Medical Council Act, 1956.</p> <p>Holder of educational qualifications included in Part II of the Third Schedule should fulfil the conditions stipulated in subsection 3 of section 13 of the Indian Medical Council Act, 1956.</p> <p>Post-graduate Degree qualification in the concerned subject will be preferred;</p> <p>and</p> <p>(ii) Post-graduate qualification in Surgery/Gynaecology/ or Medicine and other clinical subjects/Hospital Administration.</p>	Three years working experience of running a Hospital after Post - graduation

15. A bare look on Serial No.29 (b), Schedule II would reveal that an aspirant for the post of Deputy

Medical Superintendent must have MBBS Degree or other recognized medical qualification from University/Institute mentioned in Ist/IInd Schedule/Part II of the IIIrd Schedule, Indian Medical Council Act, 1956. In the last case, such degree must also fulfil the conditions stipulated in Section 13(3) of the Act. In addition to the aforesaid MBBS or recognized Medical Degree, a candidate must also have Post-graduation in surgery/gynaecology/medicine and other clinical subjects/Hospital Administration. Rule-7 of the Rules of 1979 is required to be noticed, it reads;

7. “Eligibility -

(1) A person shall not be eligible for recruitment/promotion to a post in the service unless he possesses the qualifications and fulfils the requirements of recruitment prescribed for that post in Schedule II:

Provided that the Commission may recommend, for consideration of the Government that appointment of a person to a post in the service who otherwise not eligible under these rules is, in the opinion of the Commission, possessing exceptional merit as well as professional experience of high order in his speciality, such a case will be considered by the Government after obtaining the views of the Medical Council of India.

(2) Without prejudice to the conditions of the eligibility prescribed in Schedule II, every person appointed to a post in the service shall be a permanent resident of the State:

Provided that where any permanent resident is not available for appointment to any post, the Government may appoint a non-permanent resident otherwise eligible for holding such post, on contract basis or on deputation for a term not exceeding three years as it may specify in the order:

Provided further that the Government shall have the power to renew the contract/deputation up to a maximum period of five years in suitable cases.”

It follows that a candidate aspiring for the post of Deputy Medical Superintendent must have the qualification and experience as prescribed in Schedule II [Serial No.29 (b)].

16. In the present case, the petitioners have MBBS from a university mentioned in the Ist Schedule, Indian Medical Council Act, 1956. They admittedly do not have Post-graduation Degree in Surgery/Gynaecology/medicine and other clinical subjects to their credit. The petitioners claim to have Master in Hospital Administration degree from TATA Institute. The respondent-Commission and

other official respondents are not ready to treat the petitioners eligible for the post of Deputy Medical Superintendent on the ground that the TATA Institute is not an Institute recognized under Indian Medical Council Act, 1956. The petitioners deny that the Rules of 1979 make it mandatory to have Master in Hospital Administration degree from an Institute recognized under Indian Medical Council Act, 1956. It is pointed out that the Minimum Qualifications For Teachers In Medical Institutions Regulations, 1998 (for short, Regulations of 1998) do not prescribe any academic qualification and teaching/research experience for the post of Deputy Medical Superintendent and, therefore, requirement of “recognized Post-graduation medical qualification from a recognized institution” as prescribed under Regulations of 1998 is not attracted in case of Deputy Medical Superintendent. It is further argued that in terms of Schedule-I to Rules of 1979, the post of Deputy Medical Superintendent is a part of Administrative Wing and

Regulations of 1998 apply to teachers in medical institutions and not to the administrative posts like that of Deputy Medical Superintendent.

17. The Indian Medical Council Act, 1956 has been enacted to provide for the reconstitution of the Medical Council of India and the maintenance of a Medical Register for India and matters connected therewith. Section 2 (h) defines “recognized medical qualification” as any of the medical qualifications included in the Schedules. Section 3 provides for constitution of Medical Council of India and Section 10-A empowers the Council to make recommendations to the Central Government for establishment of new medical college or introduction of new course of study in colleges set up with permission of the Central Government. In terms of Section 10-B, where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such

medical college would be recognized medical qualification for the purposes of the Act. In terms of Section 11, the medical qualifications granted by any University or medical institution in India included in the First Schedule shall be recognized Medical qualifications for the purposes of the Act. Section 11 (2) makes room for amendment of the First Schedule from time to time, so as to include medical qualifications granted by a University or Medical Institution with the permission of the Central Government after consulting the Council. Schedule II includes the recognized medical qualifications granted by Medical Institutions outside India and Schedule III includes recognized medical qualifications by medical Institutions within India but not included in the Schedule-I. Schedules I, II, and III of the Act catalogue Universities and Medical Institutions and the degrees granted by such Universities recognized under the Act. In case of Part-I of the Schedule-III,

such recognition is subject to the conditions laid down in Section 13 of the Act.

18. The TATA Institute admittedly does not find place in Schedule I or Schedule III of the Act. The communication addressed by Secretary, Indian Medical Council to respondent no.1 under No. MCI-23(1)/2006-Med./1788 dated 20th April, 2006, therefore, reflects correct position as regards Master in Hospital Administration degree awarded by TATA Institute. It is, therefore, beyond doubt that Master in Hospital Administration degree to the credit of the petitioners is not from a recognised Institute.
19. Let us now proceed to see whether Master in Hospital Administration degree from an Institute recognized under Indian Medical Council Act, 1956 is necessary qualification for Deputy Medical Superintendent in Government Medical College, Jammu/Srinagar.
20. It is well settled by now that the Indian Medical Council Act, 1956 has overriding effect and a State

Act or Rules and Regulations made there under are to give way to the Indian Medical Council Act, 1956 and the Regulations made under the Act to the extent, these are in-conflict with the Act. The Medical Council of India under Section 33 of the Act, 1956 is clothed with the power to make regulations, with the previous sanction of the Central Government, generally to carry out the purpose of the Act. The Medical Council of India in exercise of aforesaid powers has made “Minimum Qualification for Teachers in Medical Institutions Regulations, 1998”. The Objective Clause of the Regulations emphasises that the appointment of medical teachers, with minimum qualification and experience in various departments of medical colleges and institutions imparting graduate and post-graduate medical education is a necessary requirement to maintain standard of teaching. The Supreme Court in **“Medical Council of India Vs. State of Karnataka and ors.”** (1998) 6 SCC 131, while commenting upon the Indian Medical

Council Act, 1956 and Regulations made under the Act observed;

"The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entries 25 or 26 of List III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the previous sanctions of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred under Section 33 of the Medical Council At, it will have mandatory force."

The Constitution Bench of the Supreme Court in **"Dr. Preeti Srivastava and ors. Vs. State of M.P. and ors."** (1999) 7 SCC, 120, held that the regulations made by Medical Council of India in exercise of its powers under Section 20 read with Section 33 are binding and the States cannot, in exercise of power under Entry 25 of List III, make rules and regulations which are in-conflict with or adversely impinge upon regulations framed by Medical Council of India for postgraduate medical education. The Division Bench of this Court in **"Arvind Kohli (Dr.) Vs. Sham Singh (Dr.)"**

and ors.” 2011 (3) JKJ 328 [HC], rejecting the argument that a distinction was to be made between the concept of education and employment and that while Medical Council of India regulations regulating medical Education may have an overriding force, same may not be true about the regulations relating to employment or prescribing qualification for teachers in a medical college or medical institution held;

“Even accepting the said argument of the learned senior counsel for the sake of argument, when we examine the said contention and apply the same to the facts of the case on hand, at the risk of repetition it will have to be stated that by Jammu and Kashmir State’s own rules of 1979, as stipulated under Rule 7 read along with Entry 24 to Schedule II and paragraph no.2 of the General Note, the satisfaction of a recognized medical qualification as prescribed under the Medical Council of India Act, was imperative.....”

The Division Bench proceeded to observe;

“Having regard to our earlier detailed discussions, since we have held that the recognition of a medical qualification by including the same under the First Schedule of the Medical Council of India Act would alone entitle a person to validly claim to be in possession of the required medical qualification as defined under Section 2(h) of the Medical Council of India Act, we are not in a position to countenance the argument of learned senior counsel in derogation of what has been stipulated in 1979 Rules.”

The Bench emphasizing that mere permission to set up of a new medical college or a new course of study granted under Section 10-A of the Indian Medical Council Act, 1956 would not suffice and the degree awarded must satisfy the requirement of inclusion in any one of the three Schedules to the Act, observed;

“Having regard to the scheme of the Act it cannot be held that merely going by the permission granted under Section 10A in complete derogation of the other provisions contained in Section 11(2) read along with Section 2(h) and Schedule I to the Indian Medical Council Act, it cannot be held that such qualification can be taken as “recognized medical qualification.”

It follows that Schedules I, II and III do not only mention the Universities or Medical Institutions but also the degrees awarded/granted by such Institutions. In other words reference is to the degree awarded. To illustrate, while a college or medical institution may find place in one of the Schedules, yet a particular degree awarded by it may not find place in such schedule. It is pertinent to point out that the Rule makers by appending

General Note 2 to the Rules of 1979 have, as pointed out in *Dr. Arvind Kohli's case*, provided for adherence to the provisions of Indian Medical Council Act, 1956 while assessing the qualification of an aspirant for the post of a teacher, borne on Jammu and Kashmir medical Education (Gazetted Service).

21. It may be argued that General Note 2 to the Rules of 1979 refers to the basic qualifications and, therefore, requirements of Indian Medical Council Act, 1956 are to be satisfied only as regards “basic qualifications” or “MBBS degree” to the credit of an aspirant for a teaching position in Medical Education Department. However, such an argument is not available in view of the Division Bench judgment in (*Dr.) Arvind Kohli's case (Supra)*). It is pertinent to point out that Lecturer in CVTS appearing at Serial No.24(b) in Column 4 while prescribing the qualification (M.ch in speciality concerned, etc.) did not as in the present case, specifically lay down the requirements of its

recognition under Indian Medical Council Act, 1956. The Division Bench nonetheless held the appellants ineligible for the advertised posts, i.e. Lecturer – Thoracic Surgery. In the said case, the appellants were aspirants for the post of Lecturer in Thoracic Surgery. Dr. Arvind Kohli had M.ch degree in CVTS from JIPMER, Pondicherry whereas Dr. Ishtiaq Mir had M.ch degree in CVTS from SKIMS, Srinagar. The doctors though having M.ch degrees in the speciality concerned to their credit were declared ineligible for the post of Lecturer in CVTS. After challenge to their eligibility was allowed by learned Single Judge in a petition filed by Dr. Sham Singh, the appellants contended before the Division Bench that both JIPMER and SKIMS were recognized under the Indian Medical Council Act, 1956 and that M.ch Course in CVTS was commenced with permission of the Central Government. The Division Bench rejecting the plea observed that not only recognition in terms of Section 10-A was necessary but compliance with

Sections 2(h), 10-B, 11, 12 and 13 of the Indian Medical Council Act, 1956 was also necessary. It is, therefore, now beyond dispute that an aspirant for a teaching post borne on Medical Education (Gazetted) Service is to satisfy the requirements of Indian Medical Council Act, 1956, Regulations made there under as also the Rules of 1979.

22. It is important to point out that the hospitals associated with Government Medical College, Jammu and Srinagar are teaching hospitals. The students enrolled for MBBS and other courses in two Medical Colleges as part of their teaching programme are required to attend the hospitals and are taught by the doctors, who man the posts like Medical Superintendent and Deputy Medical Superintendent, in the administrative hierarchy of the hospital. This is the reason, post of Medical Superintendent and Deputy Medical Superintendent is borne on Medical Education (Gazetted) Service and not Health and Family Welfare (Gazetted)

Service and also that advertised post is shown in Medical Colleges (GMC, Jammu/Srinagar) and not in hospitals. The teaching hospitals are distinguishable and different from non-teaching hospitals. Every hospital may not necessarily be a teaching hospital. In case of non-teaching hospitals, the Medical Superintendent or Deputy Medical Superintendent may have no role to play in teaching/training the students enrolled for MBBS or other programmes in a Medical College. In case of teaching hospitals, they have a significant role to play in teaching/training the students as is also disclosed by duty rosters submitted by the respondents for perusal. This is the reason that the Regulations of 1998 in Table no.1 prescribe academic qualifications and administrative experience for the post of Medical Superintendent of the “affiliated teaching hospital” and expressly make distinction between “affiliated teaching hospitals” and other hospitals. It would be profitable to

extract hereunder the relevant part of Regulations of 1998;

TABLE 1

REQUIREMENTS OF ACADEMIC QUALIFICATIONS, TEACHING AND RESEARCH EXPERIENCE

Post	Academic Qualifications	Teaching/Research Experience
Director/Medical Superintendent of the affiliated teaching hospital	Should possess a recognized post graduate medical qualification from a recognized Institution with 10 years Administrative experience.	_____

Regulation 3 and norm 3 of Schedule-I of Regulations, 1998 also needs to be noticed;

“3. Minimum Qualifications for appointment as a teacher- Minimum qualifications for appointment as a teacher in various departments of a medical college or institution imparting graduate and post-graduate education shall be as specified in the Schedules I and II annexed with these regulations.”

“3. Medical teachers in all Medical Colleges except the Tutors, Residents, Registrars and Demonstrators must possess the requisite recognised Postgraduate Medical qualification in their respective subject. [Dean/Principal/Director of Medical college/institution, who is head of the institute and the Medical Superintendent who is head of the affiliated teaching hospital can be incharge of a Unit but cannot be HOD in the medical college/institution. However, they can teach and practice in the Department concerned.]”

23. It follows that an aspirant for the post of Medical Superintendent of “affiliated teaching hospital” must possess a recognized post-graduate medical

qualification from a “recognized institute” and that a Medical Superintendent can teach in the department concerned. The “recognized post-graduate medical qualification” and “recognized institution” obviously have reference to Sections 2(h), 10-B, 11, 12 and 13 and Schedules I, II and III of the Act. The qualification possessed by the petitioners is, therefore, not in accordance with Regulations of 1998. The plea that Dr. Manoj Kumar Chalotra having Master in Hospital Administration Degree was appointed as Deputy Medical Superintendent in the year 2008 on the recommendation of the respondent-Commission and continues to discharge his duties or that the petitioner – Dr. Arun Sharma on the strength of Master in Hospital Administration Degree from TATA Institute earned *in-situ* promotion does not in any manner strengthen petitioners’ case. The question of pivotal importance is whether the petitioners satisfy the requirements of Rules of 1979 against the backdrop of Regulations of 1998 and not

whether any lapses were committed or concessions extended by the official respondents in the past as any irregularities committed would not justify repetition of such irregularities.

24. However, the Regulations of 1998 do not include post of Deputy Medical Superintendent of such hospitals. The question may arise as to whether qualification prescribed under Regulations of 1998 would be attracted in case of Deputy Medical Superintendent. The answer has to be in affirmative. The reason being that the Rules of 1979 prescribe same qualification for the post of Medical Superintendent of teaching hospital as for the Deputy Superintendent. The difference, if any, is in administrative experience. In case of Medical Superintendent, the aspirant must have a minimum of eight years of administrative experience (5 years as Deputy Medical Superintendent + 3 years of running a hospital after post graduation) whereas an aspirant for the post of Deputy Medical Superintendent must have a minimum of three

years of experience of “running a hospital after post graduation”. The duties to be discharged including the role played in teaching/training the students of the Medical College with which teaching hospital is affiliated are similar. This apart, the post of Medical Superintendent of a teaching hospital is to be filled up by Deputy Medical Superintendent of a teaching hospital having five years experience as such. It would be self-contradictory to conclude that while a Medical Superintendent must have “recognized post graduate medical qualification” from a “recognized institution” in terms of Regulations of 1998, it may not be necessary for an aspirant for the post of Deputy Medical Superintendent to have “recognized post graduate medical qualification” from a “recognized institution”. In case, such a view is taken, a Deputy Medical Superintendent cannot be eligible even after having experience of five years for the post of Medical Superintendent of a teaching hospital. The post of Medical Superintendent of a teaching hospital, therefore, will remain unfilled

because of the non-availability of the Deputy Medical Superintendent having requisite experience but not the qualification prescribed under Regulations of 1998. Such an interpretation could lead to irrational conclusions and would be contrary to the spirit and scheme envisaged under the Rules of 1979 in the context of recruitment of Medical Superintendent and Deputy Medical Superintendent of teaching hospitals.

25. From the above discussion, it emerges that the petitioners are not eligible for the post of Deputy Medical Superintendent in Government Medical College, Jammu/Srinagar. The petitioners, therefore, cannot maintain the writ petitions, wherein the primary question involved is their eligibility for the post of Deputy Medical Superintendent advertised vide Notification No. 02-PSC of 2009 dated 30th January, 2009 and other notifications impugned in the petitions. In the said background, their challenge as regards competence of respondent-Commission to issue Public Notices

dated 28th November, 2011 and 9th December, 2011 and Notification No. 18-PSC of 2011 dated 15th November, 2011 as also the appointment of respondent – Dr. Dara Singh as Incharge Deputy Medical Superintendent is also to fail. Whether Dr. Dara Singh would be equipped with necessary experience, in case, he continues to participate in the selection process and whether he would be eligible for the advertised post is for the respondent-Commission to determine and decide, of course, on the anvil of Rules of 1979 and MCI Regulations of 1998.

26. For the reasons discussed, the petitions bearing SWP Nos. 658/2011, 2407/2011, 2529/2011, 233/2012 and 2044/2011 are devoid of any merit and are, accordingly, dismissed.

**(Hasnain Massodi)
Judge**

Jammu

31.12.2012

Varun Bedi