

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.940/2015
MP No.01/2015

Date of Order:13.08.2015

Dr. Mohammad Arif Lone **Vs.**

State of J&K & ors.

Coram:

**Hon'ble Mr. Justice Mohammad Yaqoob Mir,
Judge**

Appearing Counsel:

For the petitioner(s)/Appellant(s): Mr. Shuja-ul-Haq.

For the respondent(s): Mr. Sajad Ahmad Mir, Dy. AG-for
R1&2.

Mr. M. A. Qayoom-for R3.

- 1) For filling up various tenure posts of Registrars in Government Dental College & Hospital, Shireen Bagh Srinagar, applications were invited. Petitioner and respondent No.3 applied as against one post of Registrar (Prosthodontics). After participation in the process, the Selection Committee in the award sheet recorded as under:

“Since the PG degree of both the candidates is yet subject to the approval of DCI/GOR & as such the committee was not in a position to award the marks for such qualification, hence the committee recommends re-advertising the said post along with other vacancies.”

- 2) In the light of aforesaid conclusion of the Committee, the tenure post of Registrar/Tutor Prosthodontics was re-advertised on 01.04.2015. Again only two candidates i.e. petitioner and respondent No.3 competed. The Selection

Committee prepared the merit list wherein petitioner is shown to have secured 55 marks whereas respondent No.3 is shown to have secured 68 marks. Respondent No.3 has been awarded 20 marks for Post Graduation (MDS) whereas petitioner has not been awarded any marks but in the note the Committee has observed that “for MDS qualification of the petitioner, the Registration Certificate issued by J&K Dental Council is dated 20th Aril, 2015 whereas the cutoff date for submission of the form was 17.04.2015.” It is on this basis, no marks have been awarded to his PG (MDS). For facility of reference, detailed position of the petitioner and respondent No.3 is reproduced herein-below:-

S. No.	Name	Qualification	Service / Non Service	Academic career 40 marks	Distinction Scholarship, Honours Medals and Certificate (05 marks)	House Job career 5 marks	Rural Service 5 marks	Field service 5 marks	Post graduation career 20 marks	Professional publication 10 marks (2 marks for each publication)	Total (5+7+8+9+10+11)
01	02	03	04	05	06	07	08	09	10	11	12
1.	Dr. Mohammad Arif Lone	MDS	Non-Service	40	2	1	-	-	-	4	4
2.	Dr. Imtiyaz Ahmad Magray	MDS	Non-Service	40	-	-	-	-	20	-	6

- 3) It is settled principle of law that if the qualification is acquired after the cutoff date of receipt of the application, same is not to be taken into consideration. In the instant case, the only star question for determination is as to whether petitioner had acquired the qualification of Post graduation(MDS) after the cutoff date. In this connection it shall be quite advantageous to precisely notice the position as it existed vis-à-vis Post-graduation of the petitioner.
- 4) In terms of Section 33 read with Section 34 of The Dentist Act, 1948 (hereinafter for short referred to as the Act), name of the petitioner, on acquiring qualification of BDS, has been entered in the Register on 14.03.2009, as such, was registered. In terms of Section 40 of the Act, a registered dentist shall be entitled to have entered in the register any further recognized dental qualification which he may acquire and it is in terms of Section 40, an additional qualification of Post graduation(MDS) of the petitioner has been entered in the register on 20.04.2015. It is based on this entry dated 20.04.2014, the Select Committee has observed that registration of MDS qualification is dated 20th

April, 2015 which is after cutoff date i.e. 17th April, 2015, therefore, 20 marks were not awarded to the petitioner. The fact of the matter is that the petitioner, in fact, had done his Post graduation(MDS) on 26.06.2014 from Pandit Bhagwat Dayal Sharma, University of Health Sciences, Rohtak as a student of Swami Devi Dyal Hospital & Dental College, Golpura (Panchkula).

- 5) The Government of India, Ministry of Health & Family Welfare, issued notification dated 16th April, 2015 in exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 after consultation with Dental Council of India, whereby Part-I of the Schedule to the said Act has been amended. As against serial No.84 in Part-I of the Schedule to the Dentists Act, 1948 pertaining to recognition of dental degrees awarded by Pandit B. D. Sharma, University of Health Sciences, Rohtak Haryana against Swami Devi Dyal Hospital & Dental College, Panchkula, entries were made in respect of Dental Surgery in various specialties which include Prosthodontics and Crown Bridge, wherein it is provided as under:

“MDS (Prosthodontics and Crown Bridge with 3 seats)

(This shall be a recognized dental qualification when granted by Pt. B. d. Sharma University of Health Sciences, Rohtak, Haryana in respect of students, being trained at Swami Devi Dyal Hospital & Dental College, Panchkula if granted on or after **12.06.2014**).

Emphasis

supplied

Admittedly, MDS degree in favour of the petitioner has been granted on 26th June, 2014, so it stand recognized in terms of notification dated 16th Aril, 2015 from the date of its publication in the Gazette of India. As is a requirement in terms of sub-section (2) of Section 10 of the Dentists Act, 1948, the notification, as has been issued, at the top carries the following entry:

“TO BE PUBLISHED IN PART-II, SECTION 3 OF THE SUB-SECTION (ii) OF THE GAZETTE OF INDIA.”

- 6) The position of the petitioner having acquired the MDS degree on 26th June, 2014 is not disputed. The cutoff date for considering the qualification in terms of advertisement notice was 17th April, 2015. When the petitioner had acquired qualification in Prosthodontics and Crown Bridge

on 26th June, 2014 from Swami Devi Dyal Hospital & Dental College, Panchkula, same has been recognized, as is clear from the notification issued by Government of India, Ministry of Health & Family Welfare dated 16th April, 2015, therefore, there is no question that the petitioner has acquired qualification after the cutoff date i.e. 17th April, 2015.

- 7) The next limb of argument is that in terms of Section 40 of the Act, the additional qualification i.e. Post graduation(MDS) has been entered in the register as well as in the Registration Certificate issued on 20th April, 2015, whether entering additional qualification on 20th April, 2015 in the Registration Certificate or the register would disentitle the petitioner from getting allotted 20 marks. The question in the given circumstances is what can be the logical effect of entry of additional qualification in the Registration Certificate on 20th April, 2015 when same has been acquired in the year 2014 and its recognition has been notified on 16th April, 2015. Learned counsel for the petitioner would submit that the position of acquisition of degree and its recognition is prior in point of time

i.e. prior to cutoff date of receipt of application would not have any adverse effect on the position of Post-graduation degree acquired prior to cutoff date, therefore, the Selection Committee has wrongly chosen not to award 20 marks to the petitioner for his Post-graduation(MDS).

- 8) Learned counsel for respondent No.3 would submit that entry of additional qualification in terms of Section 40 in the Register subsequent to the cutoff date disentitles its consideration for the purpose of selection. In addition, he would submit that the amendment as per notification issued on 16th April, 2015 unless published in the Government Gazette of India, would not take its effect.
- 9) Both the submission of learned counsel for the respondent No.3 are without any substance. When the petitioner has acquired the qualification, its recognition has been notified and the Government of India while issuing notification, at its top, has recorded "to be published in Part-II, Section 3 of the Sub-Section (ii) of the Gazette of India" would mean that it has come into effect. The way notification is issued, same would amount to substantial compliance of Section 10(2) of the Act.

For all practical purposes, the recognition of the degree of MDS in terms of notification has come into effect from 16th April, 2015 itself.

- 10) In case contention of learned counsel for the respondents i.e. the notification dated 16th April, 2015 was not published in the Govt. Gazette, therefore, Post graduation(MDS) of the petitioner is not to take effect then same will apply to respondent No.3 as well because respondent No.3, admittedly, has obtained Post graduation(MDS) Prosthodontics from Rajasthan Dental College & Hospital, Jaipur. Vide notification 25th February, 2015 issued by Government of India, Ministry of Health & Family Welfare in exercise of the powers conferred by sub-section (2) of Section 10 of the Act, Central Government after consultation with the Dental Council of India has made amendment in Part-I of the Schedule to the said Act i.e. in the existing entries of column 2 & 3 of serial No.72 in Part-I of the Schedule to the Dentists Act, 1948, pertaining to recognition of Dental Degrees awarded by Rajasthan University of Health Sciences, Jaipur against Rajasthan Dental College and Hospital, Jaipur, various entries have been

entered which include Prosthodontics and Crown & Bridge MDS (Prosthodontics) Rajasthan University of Health Sciences, Jaipur which would mean that the MDS Prosthodontics and Crown & Bridge awarded by Rajasthan Dental College has been recognized vide notification dated 25th February, 2015. At the top of the said notification it is recorded, "TO BE PUBLISHED IN PART-II SECTION 3 OF THE SUB-SECTION (II) OF THE GAZETTE OF INDIA". It is brought to the notice of the Court by learned counsel for the petitioner that e-copy of the Government Gazette of India is available on the official website www.egazette.nic.in which shows that the issue of the Gazettes from February, 2015 to July, 2015 have not carried the recognition notification of the Colleges from which both the petitioner and respondent No.3 have done MDS Prosthodontics and Crown & Bridge.

- 11) If the argument of learned counsel for the respondents is accepted, then respondent No.3 too was not entitled to award of 20 marks for MDS. In the said background, the judgments relied upon by learned counsel for the respondent No.3, such as,

1972 SC 1515, 1996(6) SCC 634 and 1998 SC 668 are of no help to him.

- 12) In case on the basis of information regarding publishing of notification in the Government Gazette is taken into account, then respondent No.3 will also not be entitled to 20 marks for MDS. Subtracting these 20 marks from the marks as awarded, he would secure only 48 marks whereas petitioner without marks for MDS has been awarded 55 marks. Then he has made the grade to the exclusion of respondent No.3.
- 13) The resultant effect of aforesaid conclusion is that the petitioner would be entitled to 20 marks for having qualification of Post-graduation(MDS). Adding these 20 marks to 55 marks as awarded by the Committee, the total marks of the petitioner would be 75 whereas responding including these 20 marks as secured only 68 marks, therefore, it is the petitioner who makes the grade and should have been selected for the tenure post of Registrar to the exclusion of respondent No.3. The writ petition in the same background succeeds. Order No.124- GDC of 2015 dated 24.04.2015 whereunder respondent No.3 has been appointed as

such is quashed. Respondent No.2 is commanded to engage the petitioner being superior in merit against the tenure post of Registrar in Prosthodontics in Govt. Dental College, Srinagar at an earliest.

- 14) Petition accordingly disposed of along with connected MP.

(Mohammad Yaqoob Mir)
Judge

Srinagar
13 .08.2015
"Mohammad Altaf"