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RAM PAL CHATURVEDI

v.

STATE OF RAJASTHAN & ORS.

September 24, 1969

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[J. M. SHELAT, C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

C

University of Rajasthan—Medical Colleges—Appointment of Principal—Teaching qualification laid down in Ordinance No. 65 made by Senate of University under powers given by University of Rajputana Act 1946—Such qualifications relaxed retrospectively by proviso to R. 30(4) of Rajasthan Medical Service (Collegiate Branch) Rules, 1962 made by Governor of Rajasthan under Art. 309 of Constitution of India, 1950—Rule 30(4) of Ordinance 65 which to prevail—Ordinance 65 whether a provision made under an Act within the meaning of Art. 309—Rule 30(4) of Collegiate Rules whether mala fide.

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The appellant filed writ petitions in the High Court of Rajasthan challenging the appointment of the Principals of three Medical Colleges affiliated to the University of Rajasthan on the ground that the persons appointed did not have the teaching experience necessary for these posts as laid down in Ordinance No. 65 made by the Senate of the University under the University of Rajputana Act, 1946. The appointments were defended on the basis of the proviso to sub-r. (4) of R 30 of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 made by the Governor of Rajasthan under Art. 309 of the Constitution. Sub-r. (4) was added to R. 30 of the Collegiate Branch Rules with retrospective effect during the pendency of the appellant's writ petitions and provided that two years' service rendered in the speciality would be reckoned as equivalent to one year's teaching experience. In view of this sub-rule, the High Court dismissed the appellant's writ petitions. In appeals to this Court by certificate, it was contended on behalf of the appellants that (i) Ordinance No. 65 must prevail over R. 30(4) in the matter of teaching experience required; (ii) the retrospective amendment of R. 30 by the addition of Sub-r. (4) was *mala fide*; (iii) the provision in Ordinance 65 as regards teaching experience was mandatory.

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HELD : Dismissing the appeals,

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(i) The contention that the proviso to sub-r. (4) must yield to the Ordinance could not be accepted. The Collegiate Branch Rules having been made pursuant to the power under Art. 309 of the Constitution must be given full effect subject to the provisions of any Act made by the appropriate Legislature regulating the recruitment and conditions of service of persons appointed to the Rajasthan Medical Service (Collegiate Branch). Such Act need not specifically deal with the State Medical Service but it must be an Act as contemplated by Art. 309 by or under which provision is made regulating the recruitment and conditions of service taking within its fold the said Medical services, [564 D-E]

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Ordinance 65 made under the University of Rajputana Act and dealing *inter alia* with "emoluments and conditions of service of University teachers" was not a provision under an Act regulating the recruitment and conditions of service of persons appointed to Rajasthan Medical Service as contemplated by Art. 309 of the Constitution. The University of Rajputana Act falls under Entry 11 List II which deals with the subject

'education including universities' and not under entry 41 List II dealing with 'State Public services'. The field of operation of the Ordinance is restricted to the question of affiliation of the Colleges concerned with the Rajasthan University. If there is any violation of a provision of the Ordinance, then that may appropriately be taken into account by the Rajasthan University for the purpose of withdrawing or refusing to continue affiliation of the colleges in question. No such action had been taken by the University in the present case. The persons appointed could not be said to be holding their posts without authority of law. The appellant had no right to challenge their appointments. [564 G, 565 D]

(ii) The plea of *mala fide* was unsustainable. There was nothing to show that r. 30(4) was made for a collateral purpose in colourable exercise of the rule making power. [565 F]

[In view of the above findings no opinion was expressed on the question whether the powers of Ordinance No. 65 were mandatory].

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1818 to 1820 of 1968.

Appeals from the judgment and order dated January 22, 1968 of the Rajasthan High Court in D.B. Civil Misc. Writ Nos. 599 of 1966, 100 and 94 of 1967 respectively.

H. R. Gokhale, D. P. Gupta and B. R. Agarwala, for the appellants (in all the appeals).

G. C. Kasliwal, Advocate-General, Rajasthan, Vijay Krishna Makhija, I. M. Bhardwaj and K. B. Mehta, for respondents Nos. 1 and 3 (in all the appeals).

K. B. Mehta, for respondents Nos. 2 and 4 (in all the appeals).

The Judgment of the Court was delivered by

Dua J. These three appeals (Civil Appeals Nos. 1818-1819 and 1820 of 1968) with certificate of fitness presented by Dr. Ram Pal Chaturvedi are directed against a common judgment of the Rajasthan High Court and as they raise common questions, they are being disposed of by one judgment. Civil Appeal No. 1818 of 1968 is concerned with the challenge to the appointment of Dr. D. G. Ojha as Principal of Sardar Patel Medical College, Bikaner. He was appointed a Professor of Surgery and Officiating Principal of the said College on March 2, 1964. At the time of his appointment, he was officiating as Director of Medical and Health Services, Rajasthan at Jaipur. Civil Appeal No. 1819 of 1968 is concerned with the challenge to the appointment of Dr. P. D. Mathur on July 13, 1965 as Professor of Surgery and Officiating Principal of Rabindra Nath Tagore Medical College, Udaipur. This order of appointment was subsequently superseded and Dr. Mathur was appointed as Professor of Surgery and Principal of Rabindra Nath Tagore Medical College, Udaipur.

- A** pur with effect from the date of his taking over charge. It may be pointed out that Dr. Mathur's appointment as a Professor of Surgery was not challenged either in the High Court or before us and his appointment as Principal alone was assailed in this Court. Civil Appeal No. 1820 is concerned with the challenge to the appointment of Dr. Rishi dated July 28, 1966 as Principal of
- B** Medical College, Jodhpur. The appointment was made on a purely temporary and *ad hoc* basis till further orders.—On December 31, 1966, this order was partially modified in so far as Dr. Rishi's remuneration is concerned, but his appointment as Professor of Surgery and Principal of Medical College was re-affirmed to be on a purely temporary and *ad hoc* basis. The challenge to
- C** these three appointments by means of writ petitions failed in the Rajasthan High Court and the present appeals are directed against the common order of that Court. In the High Court, it was common ground between the parties that Dr. Ojha, Dr. Rishi and Dr. Mathur did possess academic qualifications prescribed by the University Ordinance and it was also not disputed there that these respondents had acquired the qualifications prescribed by Rule
- D** 30(4) of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereafter called the Collegiate Branch Rules). The High Court made the following observations in the impugned order :—

- “We would, however, observe that Rule 30(4) empowers the State Government to make only a temporary or officiating appointment and the appointments of Dr. Ojha, and Dr. Rishi will be deemed to be temporary or officiating even though these words may not have been used in the orders of their appointments as Professors of Surgery. Learned Advocate General has also conceded that the Government cannot make permanent appointments under R. 30(4) and the omission of the words ‘temporary’ or ‘officiating’ in the orders was by mistake. It is, therefore, not necessary to pursue the matter any further as these appointments will be considered only as temporary or officiating.”

- G** These observations deserve to be borne in mind while dealing with the present appeals. The High Court further took the view that the qualifications relating to teaching experience were directory and not mandatory and in view of the fact that the University was not objecting to the impugned appointments, that Court did not consider it proper, in its judicial discretion, to interfere in proceedings for *quo-warranto* at the instance of the appellant. In this connection, it was observed that the breach of the relevant
- H** Ordinance No. 65 could have afforded a ground for the University to withdraw affiliation of the Colleges concerned, but it was not open to the appellant to found his claim on this grievance.

In this Court, the question raised principally centres round the validity and effect of the proviso to sub-rule (4) of Rule 30 contained in Part VIII of the Collegiate Branch Rules. These rules were made by the Governor of Rajasthan under Article 309 of the Constitution of India and were duly published in the Rajasthan Gazette (Extraordinary) dated November 5, 1962 and came into force with effect from the date of their publication. The argument canvassed before us was that these rules could not override the provisions of Ordinance No. 65 made under the University of Rajputana Act of 1946. This Ordinance lays down the minimum qualifications for teachers of various stages of University Education in the affiliated Colleges. Part VIII deals with the Faculty of Medicine etc., and according to paragraph (A)(3), teachers in Medical Colleges for M.B., B.S. and Post-graduate Courses must possess the special academic qualifications and teaching experience prescribed therein. The requisite qualification by way of teaching experience prescribed for Professors/Additional Professors/Associate Professors in Surgery is, to reproduce the language of the Ordinance, "at least five years as Assistant Professor or Reader or Lecturer in a Medical College." The minimum qualifications for Principals of affiliated Colleges in the Faculty of Medicine etc., are prescribed in Part X(B) (3) and they read as under :

"Master's Degree or equivalent Post-Graduate qualification or a higher one in one of the branches in which the College is affiliated with a minimum professional experience of 20 years, of which at least 10 years must have been spent as a teacher of Post-Graduate Classes and 5 years in administrative work."

We may now turn to the Collegiate Branch Rules and examine the appellant's argument. These Rules framed under Art. 309 of the Constitution for regulating the recruitment to posts in, and the conditions of service of persons appointed to, the Rajasthan Medical Service (Collegiate Branch) directly govern the impugned appointments and their binding character is beyond question. Rule 6 providing for the composition and strength of the Rajasthan Medical Service (Collegiate Branch) lays down that the Service shall consist of two wings viz., Clinical and non-Clinical and the right of promotion shall be confined to each wing. The nature of conditions included in each wing are as specified in column 2 of the Schedule attached to the Rules. Procedure for promotion is dealt with in Part V of these Rules. Rule 23 provides that the persons enumerated in column 4 of the Schedule shall be eligible, on the basis of seniority-cum-merit, for promotion to posts specified in column 2 subject to their possessing minimum qualifications and experience as laid down by the Rajasthan University for the teaching staff in Medical Colleges. In selecting candidates for

- A** promotion, regard is to be had to six factors mentioned in sub-rule (2) which include, *inter alia* academic qualifications and experience. In the Schedule in the non-Clinical wing, the selection posts consisting of Professors and Additional Professors are to be filled 100 per cent by promotion from Readers. There is nothing specific in this Schedule in regard to the posts of Principals and these rules do not provide specifically for their appointments.
- B** Rule 30, on the basis of which arguments were principally addressed in these three appeals, may now be reproduced *in extenso* :—

“30. Temporary or officiating appointments. (1)

- A temporary vacancy in a Senior or Selection post, may be filled by Government by appointing thereto in an officiating capacity an officer whose name is included in the list prepared under Rule 24(3) or in the lists under Sub-Rules (2) and (3) of Rule 23 :
- C**

Provided that till the preparation of the first list or in case the list is exhausted, a vacant post may be filled by Government by appointing thereto a member of the Service eligible for appointment to the post by promotion or by appointing thereto temporarily person eligible for appointment by direct recruitment to the service under the provisions of these Rules.

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- (2) A temporary vacancy in the Junior posts may be filled by Government by appointing thereto temporarily a person eligible for appointment by direct recruitment to the service under the provisions of these Rules.
- E**

- (3) No appointment made under Sub-Rule (1) and (2) above, shall be continued beyond a period of six months without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur.
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- (4) Notwithstanding anything contained in Sub-rules (1) or (3) above or any other provisions in the rules, any selection or senior posts falling vacant may be filled in temporarily by appointment of any Specialist (Jr. or Senior) in the service of the State, who is a post-graduate and has teaching experience and practice in the speciality, for such periods as are required by the University Ordinance for the time being in force on the date of such appointment—
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Provided that :—

- Two years of service rendered in the speciality shall be reckoned as equivalent to one year teaching experience gained in the Speciality.”
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Sub-rule (4), it may be pointed out, was added on August 22, 1966 with retrospective effect during the pendency of the writ petitions in the High Court, with the result that the writ petitions were allowed to be amended so as to include a challenge to the validity of this amendment. The amendment was assailed on the grounds of *mala fides* and unconstitutional discrimination. The validity of the retrospective operation of this sub-rule was not questioned before us by Shri Gokhale, though a lukewarm challenge was suggested before the close of the arguments on the grounds of *mala fides*. It may be noted that the requirement of teaching experience as laid down in the University Ordinance also finds place in sub-rule (4) of Rule 30 as added in 1966 and it is only the proviso which has the effect of modifying to some extent this condition. The narrow question requiring consideration therefore is whether the proviso, according to which two years of service rendered in the speciality is to be reckoned as equivalent to one year's teaching experience gained in the speciality, must, as contended on behalf of the appellant, yield to the requirement in the Ordinance which prescribes the minimum qualification of teaching experience and, therefore, must be ignored. We are unable to uphold the contention. The Collegiate Branch Rules having been made pursuant to the power conferred by Art. 309 of the Constitution, they must be given full effect subject to the provisions of any Act made by the appropriate Legislature regulating the recruitment and conditions of service of persons appointed to the Rajasthan Medical Service (Collegiate Branch). Such Act need not specifically deal with the aforesaid Medical Services but it must be an Act as contemplated by Art. 309 by or under which provision is made regulating the recruitment and conditions of service taking within its fold the said Medical Services.

This takes us to the question of scope and effect of Ordinance No. 65. The University of Rajputana Act of 1946 (hereafter called the Act) under which Ordinance No. 65 was made was enacted to incorporate the University of Rajputana. The name of the University was changed in 1956 to the University of Rajasthan. The Syndicate of this University constituted under s.21 of the Act is empowered under s.29 read with s.30 to make ordinances, consistent with the Act and statutes, to provide for the matters listed in s.29. These matters include in clause VI "emoluments and conditions of service of University teachers." But on this basis alone it is not easy for us to hold that Ordinance No. 65 is a provision under an Act, regulating the recruitment and conditions of service of persons appointed to Rajasthan Medical Service, as contemplated by Art. 309 of the Constitution. Shri Gokhale referred us to entry 41 in List II of 7th Schedule of the Constitution which deals with the subject, *inter alia*, of "State Public Services" and submitted that the Act fell within this entry and therefore came within the

- A** purview of Art. 309. We are not impressed by this submission. In our opinion, on a consideration of the pith and substance of the Act and on a comparison of the language used in the entries Nos. 11 and 49 of List II, the field of legislation of the Act more appropriately falls under entry No. 11 which deals with the subject of "education including university." The appointments of Dr.
- B** Ojha, Dr. Mathur and Dr. Rishi thus seem to us to be fully justified by the Collegiate Branch Rules and their appointments cannot be held to be invalid by reason merely of non-compliance with the provisions of Ordinance No. 65 in regard to the condition of teaching experience. The field of operation of this Ordinance appears to us to be restricted to the question of affiliation of the
- C** Colleges concerned with the Rajasthan University. It is noteworthy that the University has not thought fit to object to these appointments. If there is violation of a provision of this Ordinance then that may appropriately be taken into account by the Rajasthan University for the purpose of withdrawing or refusing to continue affiliation of the colleges in question. But clearly that would not render the impugned appointments null and void;
- D** *a fortiori* that cannot confer any right on Dr. Ram Pal Chaturvedi to approach the High Court by means of petition for writ of *Quo-warranto* to challenge the appointments of these three persons. We are unable to hold that these persons are usurpers and are holding the posts of Principals without the sanction of authority.

- E** On the view that we have taken on the scope and effect of the Collegiate Branch Rules it is unnecessary to consider the argument strongly pressed by Shri Gokhale that the provisions of Ordinance No. 65 are mandatory and we refrain from expressing any opinion either way.

- F** The appellant's challenge on the ground of *mala fides* is also unsustainable. Except for the bald assertion at the Bar nothing convincing has been said to persuade us to hold that r. 30(4) added in 1966 was made for a collateral purpose in colourable exercise of the rule making power.

The appeals must, therefore, fail and are dismissed with costs. One set of costs.

R.K.P.S.

Appeals dismissed.