

Ganga Prasad Verma Etc vs State Of Bihar And Ors. Etc on 10 November, 1994

Equivalent citations: AIRONLINE 1994 SC 557

Bench: K. Ramaswamy, N. Venkatachala

CASE NO.:

Appeal (civil) 7721-22 of 1994

PETITIONER:

GANGA PRASAD VERMA ETC.

RESPONDENT:

STATE OF BIHAR AND ORS. ETC.

DATE OF JUDGMENT: 10/11/1994

BENCH:

K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:

JUDGMENT 1994 SUPPL. (5) SCR 455 The following Order of the Court was delivered:

Leave granted.

The appellant, while working as an Assistant Professor, was promoted as an Associate Professor in Neuro Surgery, by proceedings dated September 17, 1993. In the meanwhile, Dr. Basant Kumar Singh, respondent No. 7, had already filed a writ petition claiming the right for promotion as an Associate Professor, Neuro Surgery. During its pendency, the promotion of the appellant came to be made. Therefore, the writ petition was amended questioning the promotion of the appellant The High Court in the impugned order dated January 12, 1994 in CWJC No. 2832/93 allowed me writ petition, set aside the promotion of the appellant and directed the respondent to consider the matter afresh in the light of the judgment of this court in Dr. Arun Kumar Agrawal v. State of Bihar, [1991] 2 SCR491. Thus this appeal by special leave.

The controversy lies in a short compass. Admittedly, the appellant is not possessed of the qualification prescribed for super-speciality, namely, M.Ch. Admittedly, both the appellant and respondent No. 7 had the qualification as M.S. -General Surgery. In addition, 7th respondent had the qualification of M.Ch. in the speciality concerned, namely, Neuro Surgery, acquired in 1989. The question, therefore, is whether the direction issued by the High Court to consider the case in the light of the above-said

judgment, is correct in law. The medical Council of India has framed the regulations under Section 33 (J) of the Indian Medical Council Act, 1956. Clause (a) is for the Professor/Associate Professor which reads as under:

Post	Academic Qualification	Teaching/Research Experience
(a) Professor/ Associate Professor	M.Ch, in speciality concerned after M.S./F.R.C.S.	(a) As Reader, Asstt. Prof, irrespective subjects for 5 years in a medical college after requisite post- graduate qualification,

M.S./F.R.C.S. or an equivalent qualification in surgery with two years special training in the speciality concerned or speciality Board (USA) in the speciality concerned.

(b) Reader/ Asstt. Professor	-do-	(b) As Registrar of an equivalent post for at least 3 years in respective subjects or allied subjects in a teaching institution.
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Sri M.L. Verma, learned senior counsel for the appellant, states that M.S. after M.Ch. in the speciality concerned after M.S./F.R.C.S. or M.S. or F.R.C.S. or a qualification equivalent in Surgery with two years special training in the speciality concerned or Speciality Board (U.S.A.) in the speciality concerned, would be to mean that the requirement of acquiring the qualification of M.Ch. is not a condition precedent for promotion to the post of Associate Professor from the post of Assistant professor Since the appellant had put in more than 15 years experience as an Assistant Professor and also in the speciality concerned in the Neuro Surgery, he is entitled to be considered and the High Court was not right in directing to consider the case in the light of the judgment of this Court in Arun Kumar Agrawal's case. He strongly relied upon the judgment of this Court in Government of Andhra Pradesh and Anr. etc. v. Dr. R. Murali Babu Rao and Anr. etc., [1988] 3 SCR 173.

Where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speaks the intention of the legislature. The interjection of the preposition 'or' at the underlined place amounts to Judicial legislature or supplying omission which is impermissible in the process of construction of the Regulation, So we can not read the regulation in the manner suggested by the Counsel. M.Ch. is a super speciality.

The associate Professor is to teach the students in that subject or guide the research students. So the regulation intended to prescribe M.Ch. after M.S., is a must. It is clear from what we read "after" M.S. or F.R.C.S. In Dr. Murali Babu Rao's case, admittedly Dr. G. Subramanyam, Dr. A. Rajagopala Raju and Dr. Soghra Begum who already had MD (Cardiology) and put in required experience as contemplated under Rule 5 of the Andhra Pradesh Medical and Health Services Special Rules, 1982 were senior to Dr. Murali Babu Rao who had then the MD (Cardiology) but without five years' experience in the super-speciality namely, DM (Cardiology). The question was whether 5 years' experience in DM is a must. While interpreting Rule 5, this Court held that acquisition of experience of five years after DM is a condition precedent and since Dr. Murali Babu Rao had not had five years experience, after acquiring DM (Cardiology), he did not become senior to the aforesaid Dr. Subramanyam and others. Therefore, the Tribunal was right in directing to consider their case ignoring the claims of Dr. Murali Babu Rao and others. That ratio far from helping the appellant is consistent with the regulation framed by the Medical Council of India under Section 33 that degree of speciality is a must. No doubt, this Court had held therein that the regulations framed by the Medical Council of India are only directory and would give place to the statutory rules made under proviso to Article 309 of the Constitution by the Governor. The regulations made by the Medical Council of India does not have any over-riding effect on the statutory rules. Rule 5 prescribed 5 years' teaching experience after DM which was upheld. In this case, admittedly, no statutory rules have been made by the State of Bihar. Therefore, the regulations made by the Medical Council of India under Section 33 would bind the State Government. The conditions prescribed therein namely, for promotion to the Post of Professor or Associate Professor, the qualification in the speciality namely M.Ch. concerned after M.S./F.R.C.S. is a must. Since the appellant did not have the qualification of M.Ch. though he had the experience, he is not entitled to be considered for promotion as Associate Professor in supersession of the claim of the 7th respondent and other similarly situated persons. In Dr. Arun Kumar Agrawal's case, this Court considered the controversy and held that the acquisition of the qualification of M.Ch. in Neuro Surgery is a must and that the omission to consider the case of Dr. Arun Kumar Agrawal though had M.Ch. was not considered. It was held to be illegal and directed to consider his case. Though the post concerned therein was Assistant Professor, since the same qualification has been prescribed for the post of Professor/Associate Professor also, the ratio therein would equally be applicable to the claim of the persons eligible to be considered for promotion to the post of Professor/Associate Professor. Under these circumstances, we hold that the appellant since did not have speciality in M.Ch. (Neuro Surgery), there is no illegality in the directions given by the High Court, warranting our interference. The appeal is accordingly dismissed. No costs.