



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 3180-82 OF 2016

**K.J. Somaiya Medical College
and Research Centre & Anr.**

... Appellants

versus

**Maharashtra University of Health
Sciences & Ors. etc.**

... Respondents

with

CIVIL APPEAL NOS.3183-85 OF 2016

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. Civil Appeal Nos.3180-3182 of 2016 take exception to the common judgment and order dated 17th April 2007 of a Division Bench of the High Court of Judicature at Bombay in three separate writ petitions filed by the appellants. Civil Appeal Nos.3183-3185 of 2016 have been filed for challenging the order

rejecting review petitions seeking review of the judgment and order dated 17th April 2007. Respondent No. 5 in these appeals are Dr Medha V Joshi, Mrs Anjali Khavnekar, and Dr (Mrs) Smita Karandikar. The appellants are running a Medical College. The educational qualifications of Dr Medha V Joshi are B.Sc. (Microbiology, Chemistry), M.Sc. (Biochemistry by research), and PhD (applied Biology by research). She was appointed as a lecturer by the appellants on 31st July 1991 in Biochemistry. The educational qualifications of Mrs Anjali Khavnekar are B.Sc. (Microbiology) and M.Sc. (Microbiology). She was appointed as a lecturer by the appellants on 9th November 1993 in Microbiology. Dr (Mrs) Smita Karandikar has degrees of B.Sc. (Zoology), M.Sc. (Zoology), and Ph.D. (Zoology). She was appointed as a lecturer in Physiology on 4th July 1991. According to the case of the said three lecturers, they were regularly appointed as full-timers. At the relevant time, the Medical College was affiliated to the University of Mumbai. According to the case of the lecturers, at the relevant time, they fulfilled the qualifications laid down by the University of Mumbai for appointment to the post of lecturer.

2. From the year 1998, the Medical College was affiliated to the 1st respondent – the Maharashtra University of Health Sciences. In the year 1998, the 3rd respondent – the Medical Council of India framed the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (for short “the 1998 Regulations”). The norms and qualifications were laid down in Schedule-I to the

said Regulations. According to the case of the lecturers, Clause 2 of Schedule-I provided that in the Departments of Anatomy, Physiology, Biochemistry, Pharmacology, and Microbiology, non-medical teachers may be appointed to the extent of 30 percent of the total number of posts in the department. It was contended by the lecturers that the said Clause 2 provided that for non-medical teachers, the qualification of M.Sc. was sufficient for appointment as a lecturer. The employments of the said three lecturers were terminated with effect from 21st June 2004 on the ground that their employment was void *ab initio* as they were not qualified.

3. The aforesaid three lecturers approached the Grievance Redressal Committee of the 1st respondent – University. A resolution was passed by the Grievance Redressal Committee on 9th May 2006, recommending the reinstatement of the said three lecturers. The resolution provided that the petitioners should forward a proposal for approving their appointment to the 1st respondent – University and the 1st respondent – University shall approve the appointment of these three lecturers with retrospective effect from the year 1998.

4. Being aggrieved by the decision/recommendation of the Grievance Redressal Committee, three writ petitions were filed by the appellants before the High Court of Judicature at Bombay. In the impugned judgment and order, the High Court observed that the relevant date is the date on which the said three lecturers were appointed. The High Court noted that even the appellants agreed

that the said three lecturers were duly qualified in terms of the Regulations existing at the time of their appointment and that the 3rd respondent – the Medical Council of India never raised any objection to their appointments till the date the Medical College got affiliated to the 1st respondent – University. It was held that the 1998 Regulations will have no application. Therefore, the High Court directed the appellants to immediately comply with the recommendations of the Grievance Redressal Committee. After issuing the said directions, in paragraph 7, the High Court observed thus:

“7. It will be open to the petitioners to make a fresh recommendation to the Respondent No.3, pointing out that the concerned teachers were appointed much before the Regulations came into force and they have been teaching in the medical college since the year 1991-92, 1992-93 and that the Regulations of 1998 would not apply to them. If in spite of that the Medical Council does not recognise or consider the same, it is for the petitioners to approach this court to seek appropriate relief.”

5. Notice in this case was issued by this Court on 15th January 2008. On that day, a notice on the prayer for interim relief was also issued. Thereafter, the case was adjourned from time to time. Leave was granted on 28th March 2016. Thus, the impugned judgment and order of the High Court dated 17th April 2007 continued to be operative during the pendency of these appeals. However, the appellants did not implement the impugned order of

the High Court directing them to immediately comply with the decision of the Grievance Redressal Committee.

SUBMISSIONS

6. Mr J P Cama, the learned senior counsel appearing for the appellants submitted that even if the 1989 Regulations of the 3rd respondent – Medical Council of India are perused, none of the three lecturers were qualified. Even under the 1998 Regulations, none of them was qualified. He pointed out that the termination of the employment of the lecturers had to be made as neither the 1st respondent – University nor the 3rd respondent – Medical Council of India accorded recognition to them during the year 2003-04. He submitted that during the inspection by the 3rd respondent – the Medical Council of India, the appointment of these three lecturers was not recognised. He, therefore, submitted that their appointment was void *ab initio*. Hence, the question of reinstatement does not arise at all. He urged that implementation of the impugned order will put huge financial burden on the appellants which they are not capable of bearing.

7. Mr Gaurav Agarwal, Mr Uday Gupta and other learned counsel representing the said three lecturers, firstly, submitted that it is an admitted position that when they were appointed, they were qualified as per the prevailing Regulations. They pointed out that notwithstanding the fact that there is no interim relief granted by this Court during the period of the last sixteen years, the appellants failed to implement the order of the High Court. Their submission is that at the time of appointment, the said three

lecturers were qualified, and therefore, the orders of termination were bad in law.

OUR VIEW

8. On 22nd February 2023, we directed the said three lecturers to file affidavits on the four aspects set out in the said order, which read thus:

“Learned counsel for the respondents will file affidavits of Dr Medha V Joshi, Mrs Anjali Khavnekar and Dr (Mrs) Smita Karandikar on the following aspects:-

1. Whether they had secured any employment either on contract or otherwise after 21.06.2004;
2. If they were in employment, the details of their employment;
3. They shall also to disclose the emoluments received by them during the course of their employment either on contract or otherwise, if any; and
4. Whether they have reached the age of superannuation.

..”

Pursuant to the directions of this Court, affidavits have been filed by the concerned lecturers and the appellants have filed their response to the said affidavits.

9. In paragraph 6 of the impugned judgment and order of the High Court, it is clearly recorded that the appellants agreed that the said three lecturers were duly qualified in terms of the Rules existing at the time of their respective appointments and that the 3rd respondent – the Medical Council of India permitted them to do the teaching job till the Medical College was affiliated to the 1st

respondent – University in the year 1998. As this was a clear concession made by the appellants themselves, the High Court was right in not accepting the contention of the appellants that their appointments were void *ab initio*. While directing the appellants to implement the recommendations of the Grievance Redressal Committee, liberty was granted to the appellants to make a fresh representation to the 3rd respondent – the Medical Council of India for pointing out that the said three lecturers were teaching from the years 1991-92 and 1992-93 and therefore, the said Regulations of 1998 would not apply to them. The High Court reserved the remedy to the appellants to approach the High Court, in the event, the Medical Council of India does not grant recognition. Therefore, *per se*, we do not find any error in the impugned judgment and order of the High Court.

10. Now, the question is whether, at this stage, relief of reinstatement with consequential benefits can be granted. It is necessary to peruse the affidavits filed by the said three lecturers. Dr Medha V Joshi filed an affidavit stating that she would have attained the age of superannuation at the age of 62 years on 31st July 2010. She claimed that after 21st June 2004, when her appointment was terminated, she never secured any employment. According to her, at the time of the termination, her salary was Rs.14,880/- per month. Her contention is that by the time she would have attained the age of superannuation, her salary would have been approximately Rs.1,80,000/- per month. The

appellants have responded by filing an affidavit in which it was accepted that her employment was terminated with effect from 21st June 2004. According to their stand, the said lecturer would have retired on 31st July 2011. Annexure-A to the said affidavit discloses that at the time of termination, her monthly salary was Rs.16,474/- and at the time of her superannuation, her salary would have been Rs.43,566/-.

11. As regards Mrs Anjali Khavnekar, in her affidavit, she stated that from 21st June 2004 till 2nd January 2005, she was not employed. She took up employment from 3rd January 2005 as an Educational Counsellor. According to her, she was employed till 30th September 2021. She has stated that in the Financial Year 2005-06, her annual salary was Rs.1,26,000/- which was increased to Rs.8,30,781/- in the Financial Year 2021-22. According to her, she would have attained the age of superannuation on 31st July 2033. In response, the appellants stated that the said lecturer would have retired at the end of February 2023. In Annexure-A to the affidavit by the appellants, her monthly salary at the time of her termination was Rs.15,476/- and by February 2023, her salary would have been Rs. 1,13,773/- per month.

12. As regards Mrs Smita Karandikar, her case is that she did not take up any employment for a period of six months from the date of her termination. According to her, she would have attained the age of superannuation on 30th April 2019. She has

stated in the affidavit that she was employed in the family business of M/s. Nilmac Packaging Industries Limited as a CEO from 1st January 2005. Initially, her monthly salary was Rs.40,000/-. It is stated that in the Financial Year 2019-20, her annual salary was Rs.25,00,000/-. In response, the appellants stated that she would have retired on 30th April 2021. As per Annexure-A to the said affidavit, at the time of her termination, her monthly salary was Rs.16,142/- and at the age of superannuation, her salary would have been Rs.1,01,000/- per month.

13. We must note here that the stand of 3rd respondent – the Medical Council of India, all along, is that the said three lecturers were not qualified to teach in the Medical College. Considering the passage of time and the stand of the 3rd respondent – the Medical Council of India, we are of the view that it will not be appropriate at this stage to grant reinstatement. Moreover, after 21st June 2004 till date, none of the three lecturers have worked as a teacher.

14. The impugned judgment is based on a concession by the appellants that on the date of the appointment, the said three lecturers were qualified. The appellants did not comply with the impugned judgment. Therefore, we are of the view that reasonable compensation will have to be granted to the lecturers in lieu of their reinstatement in exercise of our jurisdiction under Article 142 of the Constitution of India.

15. Coming back to the case of Dr Medha V Joshi, her stand on oath is that after 21st June 2004, she never took up any employment. She claims that her termination on the ground of the absence of qualification affected her chances of getting any other employment. She has not stated that she made any effort for securing employment during the last about 19 years. She would have attained the age of superannuation on 31st July 2011 as per the affidavit filed by the appellants. If the average is taken of the salary which was being paid to her at the time of her termination and the salary which would have been payable on the date of her superannuation, it will come to approximately Rs.30,000/- per month. As Dr Medha V Joshi was not employed after termination, we propose to grant her compensation equivalent to the average salary of three years. Her average annual salary is Rs.3,60,000/- and therefore, the average salary for three years will be Rs.10,80,000/- which figure can be rounded off to Rs.11,00,000/-. In addition, she will be entitled to the costs of the petition, quantified at Rs.50,000/-.

16. As regards Mrs Anjali Khavnekar, even according to her case, she was employed from 2nd January 2005 till 30th September 2021. It appears that on her own, she gave up the employment. After 30th September 2021, she did not take up any employment. According to her stand, she would have attained the age of superannuation on 31st July 2033. She would have been entitled to work for ten more years if reinstatement was granted.

According to the appellants, she would have reached the age of superannuation by the end of February, 2023. The average salary payable to her on the date of her termination and as of February 2023, is Rs.60,000/- per month. We propose to grant a compensation equivalent to one year's average salary which will come to Rs.7,20,000/-. In addition, she will be entitled to the costs of the petition, quantified at Rs.50,000/-.

17. Now, coming to Dr (Mrs) Smita Karandikar's case, she took up employment on 3rd January 2005 and she continued to work till 30th September 2021. As per Annexure-A to the affidavit filed by the appellants, the average salary payable to her on the date of termination and the date of superannuation will be approximately Rs.58,500/- per month. We propose to grant her compensation equivalent to the average salary of one year which comes to Rs.7,02,000/- which can be rounded off to Rs.7,10,000/-. In addition, she will be entitled to the costs of the petition, quantified at Rs.50,000/-.

18. Though we cannot find fault with the impugned judgment and order, as far as the reinstatement of the said three lecturers is concerned, we mould the relief by directing the appellants to pay the following compensation amounts in lieu of reinstatement to the said three lecturers:

Sl. No.	Name of the Lecturer	Compensation Amount
1.	Dr Medha V Joshi	Rs.11,00,000/-
2.	Mrs Anjali Khavnekar	Rs.7,20,000/-

3.	Dr (Mrs) Smita Karandikar	Rs.7,10,000/-
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19. In addition, they will be entitled to the costs of the petitions quantified to Rs.50,000/- each. The compensation amount and costs amount shall be paid to them within a period of two months from today. On the failure to pay the aforesaid amounts to the said three lecturers within two months from today, the same will carry interest at the rate of 9 per cent per annum from the date of this judgment till the payment of the amounts.

20. We direct the said three lecturers to provide their account details along with copies of cancelled cheques of their respective Bank accounts to the Advocate-on-Record for the appellants within a period of one week from today. The appellants shall transfer the aforesaid amounts to the respective accounts within a period of two months from today.

21. The appeals are disposed of on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
May 19, 2023.