

Before G. S. Sandhwalia & Vikas Suri, JJ.

UNION PUBLIC SERVICE COMMISSION — Petitioner

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
AND OTHERS—Respondents**

CWP No.13875 of 2022

July 04, 2022

Constitution of India, 1950—Arts. 226/227— Actus Curiae Neminem Gravabit—Act of Court shall harm no one— Right for consideration to post being denied only on account of stay granted in favour of superior— UPSC challenged order of CAT directing post of Associate Professor/Reader in Government Medical College and Hospital, Chandigarh filled up on contractual basis as per Rules would not be declared as ‘deemed abolished’— Conclusion of CAT— Decision of Petitioner UPSC to ask Chandigarh Administration to send proposal for revival of post— Not on sound principle— Private Respondent eligible for post – due to litigation qua senior faculty members and interim order passed by High Court — Request for consideration for promotion blocked. Right of private Respondent could not be negatived by UPSC by holding – post abolished— Order of Tribunal directing consideration of private Respondent for promotion upheld—Petition dismissed.

Held, that reliance can be placed upon Mohammad Gazi vs. state of M.P., (2000) 4 SCC wherein the issue was whether any person could be penalized for no fault of his on account of stay order issued by the Court in a petition filed by the another party. In the said circumstances, the maxim was applied and held that once the bid had been accepted and the same could not be acted upon on account of the stay order, the reduction of the earnest money of the appellant could not have been directed by the High Court. The said principle as such would be directly applicable herein also since the petitioner’s right for consideration to the post is being denied only on account of the stay which had been granted in favour of one of her superior.

(Para 17)

Alka Chatrath, Advocate, *for the petitioner.*

Sanjay Kaushal, Senior Advocate with A.P Setia, Advocate for respondent No.2/caveator.

Ashish Rawal, Advocate for respondent No. 3-UOI.

Abhinav Sood, Advocate and Abhivrat Arya, Advocate for
respondent Nos. 4 and 5.

G.S. SANDHAWALIA, J. (Oral)

(1) The challenge, in the present petition filed under Articles 226/227 of the Constitution of India, is to the order dated 06.04.2022 (Annexure P-6) passed by the Central Administrative Tribunal, Chandigarh, surprisingly by the Union Public Service Commission (for short 'Commission').

(2) The Commission is aggrieved against the directions issued by the Tribunal, wherein it came to the conclusion that the post of the Associate Professor / Reader with the Chandigarh Administration in Government Medical College and Hospital, Sector 32, Chandigarh had never remained vacant as the post was filled up on short term contractual basis as per Rules and therefore, would not be declared as 'deemed abolished' in terms of Government Notification dated 12.04.2017. The Tribunal came to the conclusion that the decision of the petitioner-Commission to ask the Administration to send a proposal for revival of the post is not on the sound principle and arbitrary and required interference. Necessary directions were thus issued to direct the Administration to send the proposal of DPC for the post that was temporarily occupied by Dr. Shikha Rani within 4 weeks from the date of receipt of a copy of that order. The DPC was to reconsider the proposal and act in accordance with law after issuing appropriate order within 8 weeks thereafter.

(3) Counsel for the UT Chandigarh - respondent Nos.4 and 5 has informed this Court that relevant proposal has already been sent on 11.05.2022 to the Commission. Apparently, the writ petition was then filed on 27.06.2022 to challenge the categorical directions issued by the Tribunal. It is relevant to note that the Union of India/Chandigarh Administration was never aggrieved against the order and rather, the Administration has always been projecting that the post was never abolished, whereas in the opinion of the petitioner-Commission, it stands abolished and thus, the challenge to the impugned order.

(4) We are of the considered opinion that the Tribunal had discussed the issue in detail and come to the conclusion that against the proposal of two posts, which were to be filled up, for which a request

has been made on 29.12.2020 (Annexure R-II), the necessary action has been taken for one post and Dr. Navneet Takkar, who was senior to respondent No.2, had been granted the said benefit. Regarding the second post in question, it was the consistent stand as such of the petitioner-Commission that the post had been abolished in view of the instructions dated 12.04.2017 and therefore, necessary permission has to be sought from the Union of India. The same was considered by the Tribunal by noting, and referring to the Rules that there is provision to appoint an officer on deputation including that of a short term contract while making direct recruitment under the relevant Rules, which are called the Government Medical College and Hospital, Chandigarh Professor (Obstetrics & Gynecology). Reader (Obstetrics & Gynecology) and Senior Lecturer (Obstetrics & Gynecology), (Group 'A' Gazetted Posts) Recruitment Rules, 2002 (Annexure A-3).

(5) It was noticed that on account of a litigation inter se two faculty members named, Dr. Alka Sehgal and Dr. Poonam Goel, there was litigation and therefore, on their promotion as professors, since the matter was still sub judice before this Court on account of the admission of writ petition CWP 7659-2017 titled Dr. Alka Sehgal vs. Union of India and others on 20.04.2017, wherein the operation of the order passed by the Tribunal had been stayed at the instance of Dr. Alka Sehgal, another faculty member had been appointed on contractual basis to fill up the said post. It is not disputed that the said faculty member had resigned on 31.05.2021, which was after the proposal sent by the Chandigarh Administration. It is, in such circumstances, the Tribunal had come to the conclusion that the post, which was lying vacant on account of the litigation initiated by Dr. Alka Sehgal, had been filled up on a short term contract basis by engaging Dr. Shikha Rani, who was paid her regular salary charged against the Consolidated Fund of India and her engagement was in terms of the Recruitment Rules. Therefore, it could not be held that there was a vacancy of the post of Associate Professor / Reader and thus the instructions dated 12.04.2017 would not apply.

(6) After having gone through the record, we are of the considered opinion that that the reasoning, which had been adopted by the Tribunal, does not suffer from any infirmity, which would warrant interference. It is to be noticed that respondent No.2 has been hankering for the benefit of promotion and filed an Original Application before the Tribunal, wherein a grouse was that she was not being considered against the post on promotion of Dr. Alka Sehgal,

who was to teacher. It was her case that the contest was with Dr. Poonam Goel, who herself had been promoted on 12.02.2020 as a professor and therefore, the litigation inter se both was only qua question of seniority. In such circumstances, she sought consideration for promotion and immediately before filing of the Original Application, she had served a legal notice dated 07.12.2020 (Annexure A-6) for redressal of her grievances from her. Resultantly, the Administration on 29.12.2020 (Annex R - II) had written to the Commission regarding the litigation as such pending between the two senior faculty members working as professors and that the matter was still under consideration of this Court . It was brought to the notice of the Commission that the second post had been vacated by Dr. Poonam Goel on 02.28.2020. On the recommendation of the Commission itself, she had been appointed as professor, which was also subject to the final decision of the litigation and it was held out that there were only two vacancies, which were available one for the year 2017-18 and second for the year 2020. Respondent No.2 was second in the merit list, whereas Dr. Navneet Takkar was at number 1, since both of them had joined on 21.04.2003 and they had requisite qualifications and experience for filing up the two posts and Accordingly recommendation was made of 7 Senior Lectures.

(7) Apparently, communication dated 12.01.2021 was addressed to the Administration, by the Commission which was replied by the Administration in detail on 11.02.2021, wherein it has been mentioned that the second post of the Reader in the field of Obstt. & Gynae was created on 13.05.2003 after the amendment of the Rules. Specifically the litigation inter se two senior faculty members was mentioned and under Clause - 3 , it has been specifically mentioned that the post which had occurred on the promotion of Dr. Alka Sehgal did not fall under ' deemed abolished ' category , as detailed above in point No.2. The petitioner -Commission, however, on 02.03.2021, objected to the said aspect and proposed to the Administration to expeditiously take up the matter with the Department of Expenditure, as per the procedure prescribed in respect of the post in question for necessary action while Referring to the instruction dated 12.04.2017 on the ground that the post was deemed to be abolished for more than 2 years.

(8) The Administration on 17.03.2021 (Annex R - IV) took the same stand again that salary was being drawn against the post of Associate Professor (Obestt. & Gynae) by filling up the post on

contractual basis when the matter was being sub *judice* and a legal notice was served upon it by respondent No.2. Therefore, it was prayed that in view of the academic interest of the students and patients care, in public interest the post be filled up by way of promotion as initiated vide communication dated 29.12.2020. The petitioner - Commission wrote back on 01.04.2021 that there was no such provision for treating the post as live by way of filling the post on contract basis, which in our considered opinion is not as per the Rules, which have been reproduced by the Court in the contested order.

(9) It would be apparent that as per Column-14, there is a provision for making an appointment on a short term contract basis. Thus, in our considered opinion, the stand of the Commission is without appreciating the Rule in question and therefore, the Tribunal was well justified that there was a provision under the Rules itself to fill up the post on contractual basis.

(10) It is a matter of the fact and that is specific stand of respondent No.2 also and as noticed by the Administration that Dr. Shikha Rani has been appointed during the litigation pending on account of the fact that Dr. Alka Sehgal has obtained interim order dated 20.04.2017 in her favor and the Chandigarh Administration had also withdrawn the order of canceling her promotion on 14.08.2017. See a letter dated 11.05.2021 (Annexure R-IX), the petitioner's stand was reiterated to the extent that no communication in the matter has been received from the Department of Expenditure. The stand of the Administration before the Tribunal was also regarding the details of the litigation and the fact that the vacancy had occurred and the proposal has been sent to the Commission.

(11) The stand of the petitioner - Commission in its short reply filed initially was that the vacancy, which had occurred on 14.08.2017, had remained vacant and had deemed to be abolished and there was only one vacancy, which had fallen vacant on promotion of the incumbent and there was no prima facie case in favor of the applicant.

(12) The additional reply was filed and reference was made to a letter dated 28.05.2021 (Annex R - 2 / 2) addressed by the Director of the Medical Education & Research , Chandigarh Administration to the Commission , was stressed upon by the counsel for the Commission. The Administration apparently had a change of thought during the litigation to hold out that the post may be kept in abeyance until the clarification is received from the Ministry of Expenditure. Counsel for

the petitioner Commission has also pointed out that the proposal which was sent by letter dated 01.04.2021 (Annexure R-2/6), that the faculty posts, which were lying vacant for more than 3 years in which the said post of Associate Professor (in the specialty mentioned at Mr. No.24) exists and revival had been sought for. It is thus stand of the petitioner-Commission that the Administration itself was also acting upon by taking active steps to seek revival of the said post and therefore, submitted that the Tribunal has not examined this aspect of the matter and the order was passed.

(13) The additional reply filed by the petitioner - Commission dated 13 23.07.2021 would go on to show that against the claim of Dr. Reeti Mehra, respondent No.2, it was again reiterated that the post filled up on contractual basis would not protect the post from falling under the deemed abolished policy.

(14) A perusal of the instructions dated 12.04.2017 (Annexure R-III), would go on to show that the Union of India issued necessary instructions regarding 'deemed abolition and revival of posts'. The relevant clause reads as under:

“5.1 Deemed Abolition & Revival of Posts:

'a. All posts, except newly created posts, kept in abeyance or remaining vacant for a period of more than 2 years in any Ministry/ Department/Attached office/ Subordinate office/ Statutory body, would be considered as 'deemed abolished' unless an exemption has been given at the time of sanctioning the post.

b. A post falling into the category of 'deemed abolished' cannot be filled up prior to obtaining its 'revival' from Department of Expenditure.

c. Statutory posts, the name and level / pay scale of which is specifically provided for in an Act of Parliament , are exempted from falling in the category of ' deemed abolished on remaining vacant for a period of more than 2 years. Only the posts mentioned in Statute may be considered Statutory, not their support staff.

d. Newly created posts (posts which have been sanctioned recently by Department of Expenditure / Cabinet) , which do not have RRs would fall under the category of ' deemed

abolished ' after a period of 3 years from the date of creation unless it is clarified that this relaxation would not be applicable to those newly created post which have existing RRs.

e. Revival of posts would be considered in rare and unavoidable circumstances only.

f. Proposals for revival of posts may be referred to this Department on file, along with the prescribed checklist issued by this Department (Annexure-II). Separate checklist may be prepared for each post. Proposals received without proper checklist would not be considered.

(15) A perusal of the above clause would go on to show that the post as such which had remained vacant for a period of more than 2 years in the Department, was to be considered as 'deemed abolished'. The relevant Rules which provide filling up of the posts by way of promotion reads as under:

1	2	3	4	5	6	7
2.Reader (obstetrics and Gynaecology)	01*(2002) subject to variation dependent on workload	General central service Group 'A' Gazetted, Non-Ministerial	Rs. 18,350-450-18600-500-20,100/- PLUS Non-Practicing Allowance	Selection by merit	Not exceeding fifty year's. (Relaxable for Government servants upon five year's in accordance with the instructions or orders issued by the Central Government. Note: The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam,	yes

UNION PUBLIC SERVICE COMMISSION v. CENTRAL
ADMINISTRATIVE TRIBUNAL, CHANDIGARH AND OTHERS
(G. S. Sandhawalia, J.)

793

					Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh, Division of Jammu and Kashmir State, Lahaul and Spiti District and Pang sub-Division of Himachal Pradesh, Andaman and Nicobar Island or Lakshadweep).
8	9	10	11		
Essential:	Age: No Educational Qualification	One year for direct recruits.	<u>Promotions/failing which by deputation (including short-term contract) failing both by direct recruitment</u>		
Acquiring postgraduate qualification as Assistant Professor/Senior Lecturer/ Lecturer in a recognized Medical College/ Teaching Institution. Note 1: Qualification are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified. Note 2:					

<p>The qualifications(s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the Scheduled Tribes. If at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the posts reserved for them.</p> <p>Desirable:</p> <p>Minimum four Research Publications indexed in Index Medics/National Journals.</p>			
12	13	14	
<p>Promotion: Senior Lecturer (Obstetrics and Gynecology) with two year's regular service in the grade.</p> <p>Deputation (Including Short term Contract) Governments/ Union Territories/ Statutory Bodies/Autonomous Organizations/ Researches Institutions:</p> <p>(a)(i) Holding analogous posts on regular basis or</p> <p>(ii) with two year's regular service in posts in the scale of pay of</p>	<p>Group 'A' Departmental Promotion Committee for considering promotion):</p> <ol style="list-style-type: none"> 1. Chairman/Member, Union Public Service Commission-chairman 2. Home Secretary, Chandigarh Administration- Member 3. Secretary, Medical Education and Research, Chandigarh Administration- Member 4. Principal, Government Medical College and Hospital, Chandigarh- 		<p>Consultation with Union Public Service Commission is necessary while making direct recruitment and appointing an officer on deputation including short- term contract.</p>

UNION PUBLIC SERVICE COMMISSION v. CENTRAL
ADMINISTRATIVE TRIBUNAL, CHANDIGARH AND OTHERS
(G. S. Sandhawalia, J.)

<p>Rs. 14300-18300/- or equivalent; and</p> <p>(b) Possessing the educational and other qualifications prescribed for direct recruits under column (8).</p> <p>The Departmental Officer in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputationists shall not be eligible for consideration for appointment by promotion.</p> <p>(Period of deputation/Contract including period of Deputation/Contract in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government, shall ordinarily not exceed five years. The maximum age limit for appointment by deputation (including short-term contract) shall be not exceeding fifty six years as on the closing date of the receipt of application).</p>	<p>Member</p>	
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(16) Perusal of the said Rules would go on to show that the post of Reader is to be filled up by promotion from Senior Lectures, which is equivalent to Assistant Professor, who were in regular service as for 5 years. Admittedly, respondent No.2 was appointed on 10.04.2003 as

Senior lecturer in the Department and holds the requisite experience. Clause-11 further provides that there was a provision for making direct recruitment and appointing an Officer including on short term contract basis. The stand of the Administration has been specific that on account of the litigation inter se Senior Faculty members, which is still pending consideration, that Dr. Shikha Rani has been appointed to fill up the gap and only resigned on 05.31.2022. Nothing has been brought on record to show that she was not eligible to be appointed as per the Rules, which are reproduced above. Once she was working as per the said Rules, the stand which has been taken by the Commission, has not been initially opposed by the Administration and rather, the case of respondent No.2 has been supported by the Administration by holding out that it was a short term contractual appointment as per the Rules. Only because the administration has done a volte-face during the litigation by seeking revival would not adversely affect the right of the private respondent.

(17) We are thus of considered opinion that the reasoning given by the Tribunal does not suffer from any infirmity . Respondent No.2, as noticed above, is fully eligible and only on account of the litigation qua senior faculty members and on account of the interim order by this Court, it had come to the stage whereby her request of consideration for promotion is being blocked on the ground that the post stands abolished. Reliance can be placed upon the maxim "Actus Curiae Neminem Gravabit" that the act of Court shall harm no one. Reliance can be placed upon *Mohammad Gazi versus State of M.P.*¹ where in the issue was whether any person could be penalized for no fault of his on account of stay order issued by the Court in a petition filed by the other party. In the said circumstances, the maximum was applied and held that once the bid had been accepted and the same could not be acted upon on account of the stay order, the reduction of the earnest money of the appellant could not have been directed by the High Court. The said principle as such would be directly applicable herein also since the petitioner's right for consideration to the post is being denied only on account of the stay which had been granted in favour of one of her superior. The relevant observations read as under:-

“In the facts and circumstances of the case, the maxim of equity, namely, actus curiae nemium gravabit- an act of the Court shall prejudice no man, shall be applicable. This

¹ (2000) 4 SCC 342

maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibila* – the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this court in ***Raj Kumar Dey Versus Trarpada Dey***, 1987(4) SCC 398.”

(18) Thus, we are of the considered opinion that the right of respondent No.2 cannot be negative by the Commission by holding that the post was abolished, once it was a specific stand of the Administration in supporting the case of respondent No. that the post had been filled up on contractual basis as per the Rules and had never remained vacant. Therefore, keeping in view the said facts, we are of the considered opinion that the Tribunal has not erred, in any manner, in issuing the direction for consideration of the said respondent for promotion.

(19) Resultantly, there is no merit in the present petition, and the same is dismissed.

Shubreet Kaur