

Before A. L. Bahri, J.

MOHAN LAL SHARMA AND ANOTHER,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Amended Civil Writ Petition No. 1618 of 1986.

8th January, 1991.

Punjab State Faculty of Ayurvedic and Unani Systems of Medicine Act, 1963—S. 21—Writ of quo-warranto—Appointment to ex-cadre post of Deputy Director Ayurveda—Challenge on the ground that appointee not in possession of requisite qualification and experience for the post i.e., G.A.M.S. degree not obtained in five years course—Appointee pursued four years Vaidya Vachaspati course at D.A.V. College, Jalandhar-in 1961, the Faculty of Indian Medicines, Punjab constituted for conduct of examinations and issuing of degrees in the field of study of Ayurveda—Appointee contending that after the creation of the Faculty, options were given to students to take up examinations for the degree of G.A.M.S.—Appointee having opted for such examinations and having passed was awarded a degree in G.A.M.S.—Faculty having issued degree in G.A.M.S., the degree should be taken to have been validly granted—Retrospective grant of degree under S. 21 of the Act saves the appointment, therefore, it could not be said that he was not qualified to be appointed to the post of Deputy Director, Ayurveda—The posts of Deputy Director, Ayurveda being ex-cadre posts, government is competent to prescribe qualification as well as sources from which they are to be filled—There is no infirmity in filling one post from the teaching staff and the other from the field (including Inspectors) such as the appointee and the action is not violative of Article 16.

Held, that after Shri B. K. Sharma had completed three years' regular course of Vaidya Vachaspati, he opted for G.A.M.S. course on constitution of the Faculty. Although no examination for the IVth year was held but he continued the study and took the final examination on the basis of which he was awarded the degree of G.A.M.S. by the Faculty. In such circumstances, it is to be deemed that Shri B. K. Sharma completed five years' degree course when he was awarded degree of G.A.M.S. (Para 5)

Held, that when the Faculty has issued the degree of G.A.M.S. course, it will be taken that it was validly granted. (Para 6)

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Held, further, that when the Faculty had issued the degree of G.A.M.S. course which degree is deemed to be valid under S. 21 of the Act, its validity cannot be challenged in the writ petition. By operation of law, a degree issued by the Faculty has to be recognised as valid. This degree is further recognised by the Indian Medical Council. Thus the same is to be treated as valid. (Para 7)

Held, that Shri B. K. Sharma was appointed as Inspector, his name was duly recommended by the Public Service Commission taking into consideration the degree of G.A.M.S. awarded to him. It is not for this Court to sit in appeal against the recommendation of the Public Service Commission which was ultimately accepted by the Punjab State and Shri B. K. Sharma was appointed as Inspector.

(Para 8)

Held, that the post of Deputy Director, Ayurveda, two in number, came into existence subsequently, as Ex-cadre posts and the Government was, therefore, competent to prescribe qualifications as well as the sources from which they were to be filled. If the Government has decided in the present case to fill one post from the teaching staff and the other from the field (including inspectors), the action of the Government is not violative of Article 16 of the Constitution. (Para 11)

Civil Writ Petition under articles 226/227 of the Constitution of India, praying that : this Hon'ble High Court may be pleased to summon the record of the case and after a perusal of the same may be pleased to issue :—

- (a) a writ in the nature of quo warranto declaring the post of Deputy Director and Inspector held by the Respondent No. 3 as vacant and quashing the appointment letter Annexure P. 6.
- (b) A writ in the nature of Mandamus directing the respondents No. 1 and 2 to remove the respondent No. 3 from the office of Inspector and Deputy Director Ayurveda because of his lack of qualifications for holding the same post ; or
- (c) any other writ, order or directing that this Hon'ble Court deems fit under the facts and circumstances of the case.
- (d) Service of advance notices of the motion on the respondents and filing of the certified copies of Annexures P/1 to P/9 may kindly be dispensed with.
- (e) Costs of the petition may also be awarded to the petitioners.

Jagdish Singh Khehar, Advocate with Manpreet Singh, Advocate,
for the Petitioners.

S. S. Kang, A.A.G. Punjab, *for the Respondents I to 4.*

G. K. Chathrath, Advocate with Sarvshri R. C. Chathrath and
A. G. Masih, Advocates, *for Respondent No. 3.*

JUDGMENT

A. L. Bahri, J.

(1) *Vide* this judgment, two Civil Writ Petitions No. 1618 of 1986 and 962 of 1987 are being disposed of. In both these Writ Petitions, the claim is for issuing a writ of *quo warranto* against Shri B. K. Sharma, one of the respondents, who was earlier appointed as Inspector and subsequently appointed as Deputy Director, Ayurveda. Mostly, the facts are common and the same are taken from the Writ Petition of Mohan Lal Sharma. The ground for challenging the appointment of Shri B. K. Sharma as Inspector as well as Deputy Director, Ayurveda, is that he did not possess the requisite qualifications and experience for the posts mentioned above. Though Shri B. K. Sharma possessed degree (G.A.M.S.), the same was not obtained by him in five years course. Likewise, he did not possess the requisite experience required for the post of Inspector as well as Deputy Director, Ayurveda. This claim was refuted on behalf of Shri B. K. Sharma and other respondents, *inter alia*, alleging that the degree issued in favour of Shri B. K. Sharma by the Punjab State Faculty of Ayurveda System of Medicines (Annexure P-5 attached to the Writ Petition) was valid and it related to five years study course. Shri B. K. Sharma possessed requisite experience for the post for which he was appointed/promoted.

(2) In order to appreciate the points canvassed it is necessary to give brief history of the case, Shri B. K. Sharma joined D.A.V. College, Jalandhar, for Vaidya Vachaspati course during the academic session 1956-57. The said course was for a period of four years and was being conducted by the Managing Committee of D.A.V. College. In 1957, he cleared 1st Year Course and in 1958, the IInd Year and in May, 1959, the third year. No IVth year examination was conducted and thus Shri B. K. Sharma did not complete the

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course of Vaidya Vachaspati. The said degree of Vaidya Vachaspati was not conferred upon him. Punjab Government issued Notification on January 27, 1961, (Annexure P-4). *Vide* this Notification, the Faculty of Indian Medicines, Punjab, was constituted whose responsibility was to hold examinations and award degree in the field of study of Ayurveda. Earlier to that, this work was being done by the Board of Examiners under the provisions of Pepsu Ayurvedic and Unani Practitioners Act, 2008, B.K. and the East Punjab Ayurvedic and Unani Practitioners Act, 1949. These Boards were holding examinations of G.A.M.S. course under the rules formulated in these Acts and the Rules (hereinafter called the Rules of 1958). These Boards had nothing to do with the conducting of examinations and issuing of degrees of Vaidya Vachaspati. How Shri B. K. Sharma obtained degree of G.A.M.S. from the Faculty, was not known to the petitioners. However, it was explained by the respondents that after the creation of the Faculty aforesaid, who was authorised to conduct examinations and issue degrees for G.A.M.S. course, the matter of allowing students of Vaidya Vachaspati was considered and options were given to such students to take up examinations for the degree of G.A.M.S. Shri B. K. Sharma opted for such examination and he appeared and was granted degree of G.A.M.S.

(3) The contention of learned counsel for the petitioners is that the conducting of examinations and issuing of degrees of G.A.M.S. were governed by the 1958 Rules which provided a course of five years. Since Vaidya Vachaspati course was not recognised in these Rules, subsequently the Faculty of Indian Medicines, Punjab, could not recognise the Vaidya Vachaspati course and allow such students to take up examinations for the purpose of G.A.M.S. Course. This contention is devoid of merit. The G.A.M.S. degree was issued to Shri B. K. Sharma as far back as 1961 (Annexure P-5). On the basis of this degree, Shri B. K. Sharma was appointed as Vaidya in 1961 and Inspector in 1971 (Annexure P6). After the expiry of about 20 years, it is not considered appropriate to set aside the appointment of Shri B. K. Sharma as Inspector. The Writ Petition only on the ground of laches is liable to be dismissed.

(4) Since the matter has been argued, the point raised is also being disposed of. A uniform study of Ayurvedic Medical Science was to be undertaken when Faculty was constituted in 1961 by issuing Notification by the Punjab Government (Annexure P-4).

This Faculty was authorised to hold examinations and issue degrees retrospectively, that is, for the courses which were already going on. The Punjab State Faculty of Ayurvedic and Unani System of Medicines Act, 1963, subsequently came into force and Section 21 referred to the transitional provisions and reads as under :

- (1) The Faculty of Indian Medicine, Punjab, notified and constituted under Punjab Government, Health Department, Notification No. HB11-24(15) 1961/3607, dated the 27th January, 1961, until the Faculty is established and constituted under and in accordance with the provisions of this Act be deemed to be the Faculty established and constituted under this Act for the purpose of carrying out the provisions of this Act.
- (2) Anything done or any action taken by the Faculty of Indian Medicine, Punjab, so notified and constituted (including any appointment made, notification, order instruction or direction issued, bye-law or form framed, qualifying or other examinations held training or courses of studies prescribed, degrees, diplomas or certificates conferred, granted or issued, institutions recognised or affiliated, fees fixed or levied or stipends scholarships, medals, prizes or rewards awarded shall be deemed to have been done or taken under the provisions of this Act and shall continue to be in force accordingly unless and until superseded or amended by anything done or action taken under this Act."

(5) When in January, 1961, the Faculty was constituted by the Punjab Government, the Diploma Course was being conducted by the D.A.V. College, Jalandhar although other institutions in the State were imparting education for G.A.M.S. course. In order to accommodate the students of Vaidya Vachaspati of D.A.V. College, the Faculty decided to give options to conduct Condense course for G.A.M.S. and Shri B. K. Sharma opted for this and took the final examination and was awarded the degree aforesaid. The question for consideration is as to whether earlier study in the D.A.V. College for doing Vadiya Vachaspati course till he completed G.A.M.S. course as conducted by the Faculty could be taken into consideration for determining his eligibility for the post of Inspector which required G.A.M.S. degree of five years course. Similar question was under consideration before the Supreme Court in *A. N. Sashtri*

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v. *State of Punjab and others* (1). A. N. Shashtri was appointed as Professor of Ayurvedic Medicines by the Punjab Government and thereafter he was appointed as Deputy Director and subsequently Director. A degree of five years or more of regular course in Ayurvedic System of Medicine of a Medical Board or Faculty of Indian Medicines recognised by the Government was qualification for the post of Director of Ayurveda. The High Court had held that Shri A. N. Shashtri had not studied in regular course of five years to obtain the degree. For three years, Shri A. N. Shashtri had read as a regular student and for the remaining two years, he was directly under a qualified professor, though it was not a study in regular Institution. After reading for five years, he had obtained the degree which was recognised by the University. The Supreme Court held the degree to be valid. In the present case, as already stated above, after Shri B. K. Sharma had completed three years regular course of Vaidya Vachaspati, he opted for G.A.M.S. course on constitution of the Faculty. Although no examination for the IVth year was held but he continued the study and took the final examination on the basis of which he was awarded the degree of G.A.M.S. by the Faculty. In such circumstances, it is to be deemed that Shri B. K. Sharma completed five years' degree course when he was awarded degree of G.A.M.S.

(6) It has been argued by the learned counsel for the petitioners that Shri B. K. Sharma did not study all the subjects required for awarding degree of G.A.M.S. and the degree conferred on him was invalid. This question cannot be permitted to be raised in this Writ Petition. Firstly, the Faculty which held the examination has not been impleaded as a party. Secondly, such a course is not permitted to be taken in the Writ Petition, as per reply of some of the respondents, necessary records are not available with them to give details of the course conducted by the Faculty. When the Faculty has issued the degree of G.A.M.S. course, it will be taken that it was validly granted. The Supreme Court in *The University of Mysore v. C. D. Govinda Rao and another* (2), made general observations with regard to the powers of the Court to comment on academic matters. In para 12 it was observed as under :

"The High Court does not appear to have considered the question as to whether it would be appropriate for the

(1) A.I.R. 1988 S.C. 404.

(2) A.I.R. 1965 S.C. 491.

High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University, which appellant No. 2 had obtained, was equivalent to a high Second Class Master's Degree of an Indian University. This aspect of the questions (sic) purely to an academic matter and courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that appellant No. 2 fulfilled the first qualification".

(7) When the Faculty had issued the degree of G.A.M.S. course, which degree is deemed to be valid under Section 21 of the Act aforesaid, its validity cannot be challenged in the Writ Petition. By operation of law, a degree issued by the Faculty has to be recognised as valid. This degree is further recognised by the Indian Medical Council. Thus the same is to be treated as valid. In this respect, reference would be made to the decision of the Supreme Court in *Dr. B. L. Asawa v. State of Rajasthan and others* (3). That was a case of Post-Graduate Medical Degree granted by the University duly established by the Statute in India, which was recognised by the Indian Medical Council. Such a degree was included in the Schedule of the Medical Council Act. It was held that the same was to be regarded, accepted and treated as valid throughout the Country (Para-II). *Vide* item No. 83 of the Schedule of Indian Medical Council, G.A.M.S. degree has been recognised by the Indian Medical Council and throughout the country, it is to be accepted as valid.

(8) When Shri B. K. Sharma was appointed as Inspector, his name was duly recommended by the Public Service Commission taking into consideration the degree of G.A.M.S. awarded to him. It is not for this Court to sit in appeal against the recommendation of the Public Service Commission which was ultimately accepted by the Punjab State and Shri B. K. Sharma was appointed as Inspector.

(9) The post of Deputy Director, Ayurveda, is an Ex-Cadre post. It was open to the State Government to prescribe qualifications for eligibility for the said post. The 1958 Rules quoted in the Writ Petition cannot be considered as a guidance for the said post. When

(3) A.I.R. 1982 S.C. 933.

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two posts of Deputy Director, Ayurveda, remained to be filled, a policy decision was taken by the Government that one of the posts should be filled by 100 per cent promotion from amongst the Assistant Director, District Ayurvedic and Unani Officers and Inspectors, Ayurveda, with ten years' experience on these posts on the basis of merit-cum-seniority and with respect to the other post, 100 per cent promotion from the professors, that is, a policy was adopted to give representations to the teaching staff as well as to the staff working in the field such as Inspectors. The contention of learned counsel for the petitioners is that when first post was advertised, there was no such policy and the post was required to be filled as per requirement of the 1958 Rules. There is no merit in this contention. Merely by inserting an advertisement by the Public Service Commission or the State Government, no right is vested in any person to the post. Even if some persons are selected by the Public Service Commission they do not get a right to be appointed. *Dr. Surinder Nath Joshi v. The Punjab Public Service Commission and others* (4), decided by the Division Bench of this Court was a case where a direction was given to the Public Service Commission to readvertise the post in accordance with the amended rules. It was observed that the employer was competent to decide qualifications for eligibility of the post and the same could not be challenged in the absence of any *mala fides*. It was observed as under :

“If Government was not bound to appoint a person who had even been selected by the Public Service Commission, there could not be any bar against the Government to reconsider the matter of appointment before the selection had been made by the Commission, as in the present case. We are at one with the learned counsel in regard to the above contentions. Even on first principles, it is for the employer to decide about the qualifications for eligibility of a certain post to be filled in by him. If at a given time the Government, for a *bona fide* reason desires to effect a change in the requirements of eligibility, it is not for the Public Service Commission to propose any such change on the ground that it would undermine their independence. As already noticed, admittedly interviews had not taken place so far, for selection to the post in question. In the

absence of any allegations of *mala fides*, we see no justification for respondent No. 1 not to comply with the fresh requisition made by the Government for readvertising the post. As already noticed, the post was advertised first in 1981 and then twice in 1982, but no eligible/suitable candidate was available on those occasions. These facts are indicative of the *bona fides* of the Government in making a fresh effort by raising the maximum age limit so as to attract better talent."

(10) The Supreme Court in *Jotinder Kumar and others v. State of Punjab and others* (5), held that the persons selected by the Public Service Commission had no right to be appointed. It was left to the Government to decide how many appointments were required to be made. No *mandamus* could be issued in the circumstances. However, it was observed in para No. 12 that if the vacancy was to be filled, the Government was to make appointments strictly adhering to the order of merit as recommended by the Public Service Commission. When there existed two posts of Deputy Directors, it was competent for the State Government to decide from which source they were to be filled. Such a matter was under consideration of the Full Bench of this Court in *Daljit Singh Minhas and others v. The State of Punjab and others* (6), and it was held as under :

"Therefore, if the employer State can clearly indicate a reasonable classification for the source to which it has confined itself to select persons to man public offices, then no fault can be found therewith on the basis of any doctrinaire approach to Article 16."

(11) As already observed, the post of Deputy Director, Ayurveda, two in number, came into existence subsequently, as Ex-Cadre Posts and the Government was, therefore, competent to prescribe qualifications as well as the sources from which they were to be filled. If the Government has decided in the present case to fill one post from the teaching staff and the other from the field (including Inspectors), the action of the Government is not violative of Article 16 of the Constitution. Reference may be made to the decision of this Court in *Ajit Kumar v. State of Punjab and others* (7). In para No. 5 of

(5) A.I.R. 1984 S.C. 1950.

(6) 1978 (1) S.L.R. 32.

(7) 1979 (3) S.L.R. 1610.

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the judgment, it was observed as under :—

“The Government had the right to recruit from either of the two sources as stated above. It, in its wisdom, thought, to recruit only from direct sources. The right of the Government to do so cannot be challenged on this ground under Article 16 of the Constitution of India.”

(12) For the reasons recorded above, both the Writ Petitions are dismissed with costs.

R.N.R.

Before G. R. Majithia, J.

IRRIGATION DEPARTMENT, PUNJAB,—Appellant.

versus

M/S CHAHAL ENGINEERING AND CONSTRUCTION COMPANY PRIVATE LTD., CHANDIGARH,—Respondent.

First Appeal from Order No. 364 of 1988.

11th January, 1991.

Arbitration Act (X of 1940)—Arbitrator—Power to award interest—Powers of the Arbitrator—Such powers—Controlled by conditions contained in the Arbitration Act—Where Arbitrator ignoring such conditions—Award irrelevant.

Held, that the arbitrator must conform to the conditions contained in the arbitration agreement. Failure to carry out the mandate in the agreement will render the award invalid. If he ignores such limits or restrictions, the award would be liable to be set aside for misconduct. (Para 6)

Held, that the arbitrator could only award interest if the question of interest is generally or specifically referred to him or if he is required to decide the dispute expressly or by implication in accordance with law. He will have the power to award interest on the principal sum found due. The arbitrator could not award